

Nos. 131026 & 131032 (Consolidated)

IN THE SUPREME COURT OF ILLINOIS

CONCERNED CITIZENS & PROPERTY OWNERS, ILLINOIS AGRICULTURAL ASSOCIATION a/k/a ILLINOIS FARM BUREAU, CONCERNED PEOPLE ALLIANCE, NAFSICA ZOTOS, and YORK TOWNSHIP IRRIGATORS,	)	
	)	
	)	
	)	
	)	
	)	
Respondents-Appellees,	)	
	)	
v.	)	On Petition for Leave to
	)	Appeal from the Appellate
	)	Court of Illinois, Fifth District,
	)	Appeal No. 5-23-0271
	)	
ILLINOIS COMMERCE COMMISSION, GRAIN BELT EXPRESS LLC, CLEAN GRID ALLIANCE, HANSON AGGREGATES MIDWEST, INC., GREYROCK, LLC, CITIZENS UTILITY BOARD, LEONARD BRAD DAUGHERTY, as TRUSTEE OF THE LEONARD DAUGHERTY TRUST DATED JULY 9, 2010, REX ENCORE FARMS LLC, and ILLINOIS MANUFACTURERS ASSOCIATION,	)	On appeal from the Illinois
	)	Commerce Commission,
	)	Docket No. 22-0499
	)	
	)	
	)	
	)	
	)	
Petitioners-Appellants.	)	

**RESPONSE BRIEF OF RESPONDENTS-APPELLEES,
CONCERNED CITIZENS & PROPERTY OWNERS (“CCPO”),
ILLINOIS AGRICULTURAL ASSOCIATION, a/k/a ILLINOIS FARM BUREAU
(the “FARM BUREAU”), CONCERNED PEOPLE ALLIANCE (“CPA”),
NAFSICA ZOTOS (“ZOTOS”), and YORK TOWNSHIP IRRIGATORS (“YTI”)
TO APPELLANT GRAIN BELT EXPRESS LLC’S OPENING BRIEF
(CCPO, the Farm Bureau, CPA, Zotos and YTI are collectively referred to as the
“Landowner Alliance”)**

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220 ILCS 5/8-509

Due to the length of these provisions, the pertinent text of each statute shall be set forth in the appendix.

ISSUES PRESENTED FOR REVIEW

1. Whether the Illinois Commerce Commission (“ICC”) is entitled to deference in its statutory interpretation of Section 8-406.1(f)(3)?
2. Whether Grain Belt Express, LLC (“GBX”) met the burden of showing it is capable of financing the Project pursuant to 220 ILCS 5/8-406.1(f)(3) (West 2024) (“Section 8-406.1(f)(3)”)?
3. Whether the ICC exceeded its authority under the Illinois Public Utilities Act, 220 ILCS 5/1-101 *et seq.* (West 2024) (“PUA”) by utilizing the Revised Financing Condition to establish compliance with Section 8-406.1(f)(3)?
4. Whether the ICC’s 2023 Order is statutorily deficient for not explicitly addressing the criteria of Section 8-503 of the PUA, 220 ILCS 5/8-503?
5. Whether the ICC exceeded its authority under the PUA by awarding a Certificate of Public Convenience and Necessity (“CPCN”) that allows GBX to begin construction of the project in 5 years rather than the 2 years required by 220 ILCS 5/8-406(f) (West 2024)?
6. Whether the ICC’s reservation of the power to prohibit GBX from allocating to ratepayers the cost of its interstate electricity transmission line violates 220 ILCS 5/10-201(e)(iv)(B) (West 2024)?
7. Whether 220 ILCS 5/8-406(b-5) is unconstitutional?

STATEMENT OF FACTS

This is the second attempt by GBX, a private, for-profit merchant transmission line, to obtain a CPCN in Illinois. *Concerned Citizens & Property Owners, et al. v. Illinois Commerce Comm’n, et al.*, 2024 IL App (5th) 230271-U, at ¶ 1 (“Appellate Court Order”). GBX applied to obtain a CPCN pursuant to the PUA in 2015 and 2022 to construct, operate, and maintain a high voltage direct current (“HVDC”) transmission line and to operate and construct a transmission line public utility business (the “Project”).¹ In both cases, the ICC issued a CPCN to GBX; however, each ICC Order has been overturned by the Illinois Appellate Court for the Fifth District (“Appellate Court”) on separate grounds. *Concerned Citizens & Property Owners*, 2024 IL App (5th) 230271-U; *Concerned Citizens & Property Owners v. Illinois Commerce Comm’n*, 2018 IL App (5th) 150551.

This appeal followed GBX’s second application with the ICC, on July 26, 2022 (“GBX’s Application”), seeking a CPCN to construct, operate, and maintain the Illinois portion of the Project. 220 ILCS 5/8-406(b-5); 220 ILCS 5/8-406.1; (C. 18). The Landowner Alliance intervened at the ICC to oppose GBX’s CPCN application, and to contest the special legislation enacted specifically for GBX, 220 ILCS 5/8-406(b-5) (“Section 8-406(b-5)”). (C. 5838). In its Final Order issued on March 8, 2023 (the “2023 ICC Order”), the ICC approved GBX’s Application and granted a CPCN to GBX. The ICC determined GBX’s proposed financing approach met the capability of financing requirement of Section 8-406.1(f)(3) as required by Section 8-406(b-5). (C. 5854). GBX

¹ GBX, formerly known as Grain Belt Express Clean Line, LLC, was sold to Invenergy Transmission LLC, an affiliate of Invenergy LLC, in 2020. (See C. 23-24; E. 2802-2885).

also sought an order pursuant to Sections 8-503 and 8-406.1(i) authorizing it to construct the transmission line and related facilities. 220 ILCS 5/8-503; 220 ILCS 5/8-406.1(i).

On August 8, 2024, the Appellate Court overturned the 2023 ICC Order granting a second CPCN to GBX. Appellate Court Order, at ¶1. The Appellate Court held the 2023 ICC Order was against the manifest weight of the evidence because GBX failed to prove it is capable of financing the project as required by Sections 8-406(b-5) and 8-406.1. *Id.*

For some historical context, GBX first applied for a CPCN on April 10, 2015, pursuant to Section 8-406.1, to construct, operate and maintain a HVDC transmission line and to operate a transmission public utility business, and to construct the transmission line pursuant to Section 8-503, along the same nine-county route included in the current application (the “2015 Application”). *Grain Belt Express Clean Line LLC*, Ill. Comm. Comm’n No. 15-0277. On November 12, 2015, after a review of the evidence and positions submitted by GBX’s, Staff’s, and intervenors’, and after hearing, the ICC granted a CPCN to Grain Belt Express Clean Line LLC to construct, operate and maintain the proposed transmission line. (C. 29); *Grain Belt Express Clean Line LLC*, Ill. Comm. Comm’n No. 15-0277 (Order Nov. 12, 2015) (the “2015 Order”). The ICC authorized construction of the transmission line pursuant to Sections 8-503 and 8-406.1(i) of the PUA. (C. 29).

The intervenors in Docket No.15-0277 sought review of the 2015 Order through an appeal filed with the Appellate Court. On April 17, 2018, in *Concerned Citizens & Property Owners*, 2018 IL App (5th) 150551, the Appellate Court reversed the 2015 Order (and the CPCN granted thereunder) on the basis that GBX was not a “public utility,” within the meaning of Section 3-105(a) of the PUA, 220 ILCS 5/3-105(a), which the court held

was a prerequisite to obtaining a CPCN under the PUA. (C. 30). Specifically, the Appellate Court, relying on *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm’n*, 2017 IL 121302, overturned the 2015 Order because GBX did not own, control, operate, or manage, within this State, directly or indirectly, for “public use,” any plant, equipment or property to be used for or in connection with the transmission of electricity at the time of its application, and therefore it could not meet the definition of “public utility” under Section 3-105(a) of the PUA. (*Id.*).

Since GBX does not meet the definition of a public utility, GBX filed its second application as a “qualifying direct current applicant,” and the Project as a “qualifying direct current project” under Section 8-406(b-5). 220 ILCS 5/8-406(b-5). This was possible because following the Appellate Court’s 2018 decision, GBX lobbied the legislature for an amendment to the PUA that would allow it to file for a CPCN without being a “public utility.” (C. 29-30; R. 233-35); 102nd Ill. Gen. Assem., House Proceedings, Sept. 9, 2021 at 62). During the debates in the Illinois House on GBX’s proposed law, the legislation’s restriction to the nine specific counties involved in GBX’s Project was discussed, and the bill’s advocates acknowledged that the legislation was specifically for GBX, which they identified as a non-public utility private company. 102nd Ill. Gen. Assem., House Proceedings, Sept. 9, 2021, at 62. The ICC’s counsel confirmed during appellate arguments at the Appellate Court on February 14, 2024, that the special legislation was enacted specifically for GBX, stating that “the legislature wanted to get this project moving.” Oral

Argument at 17:22-18:00, *Concerned Citizens & Property Owners v. Illinois Commerce Comm'n*, 2024 IL App (5th) 230271-U².

The General Assembly enacted Public Act 102-0662 (“P.A. 102-0662,” also known as the Climate and Equitable Jobs Act, or “CEJA”), which became effective on September 15, 2021, and added new subsection (b-5) to Section 8-406 of the PUA to, among other things, create a new type of CPCN applicant that did not have to be a “public utility” under the PUA: a “qualifying direct current applicant.” P.A. 102-0662. Under GBX’s special legislation in Section 8-406(b-5) of the PUA, the criteria and required evidence for issuance of a CPCN to be a “qualifying direct current applicant” are completely different and much less onerous than those for applicants pursuing a CPCN as a public utility under the generally applicable Sections 8-406(b) and 8-406.1. 220 ILCS 5/8-406(b); 220 ILCS 5/8-406.1. Even under the relaxed requirements of Section 8-406(b-5), though, GBX is the only known entity that can satisfy them because only GBX proposes to route its transmission line through the nine specific Illinois counties named in the legislation, and because the legislation has a sunset provision requiring that all “qualifying current” project applications be submitted on or before December 31, 2023. 220 ILCS 5/8-406(b-5).

In the end, the Appellate Court found dispositive GBX’s failure to satisfy the financing requirement of Section 8-406.1(f)(3). Consequently, the Appellate Court’s Order did not reach several issues raised on appeal because GBX failed to meet a condition precedent to the issuance of a CPCN. Appellate Court Order, at ¶ 42. The ICC and GBX

² See <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/d957c992-3262-41c8-a965-35ea6872edc5/5-23-0271%20Concerned%20Citizens%20&%20Property%20Owners%20v.%20Illinois%20Commerce%20Commn.mp3>

then filed petitions for leave to appeal the Appellate Court's Order, which were granted by the Court.

STANDARD OF REVIEW

In administrative review cases, the standard of review depends upon what is in dispute: the facts (manifest weight), the law (*de novo*), or a mixed question of fact and law (clearly erroneous). *Goodman v. Ward*, 241 Ill. 2d 398, 405 (2011). The Appellate Court reviewed the ICC's finding that GBX demonstrated it was capable of financing the proposed Project and concluded that such finding was against the manifest weight of the evidence. Appellate Court Order, ¶¶ 26-38, *citing Northern Moraine Wastewater Reclamation District v. Illinois Commerce Comm'n*, 392 Ill. App. 3d 542, 556 (2d Dist. 2009).

The Landowner Alliance's continued position is that certain findings in the 2023 ICC Order are not supported by the evidence in the record. Issues relative to the findings of the ICC are reviewed on a manifest weight of the evidence standard. *Northern Moraine Wastewater Reclamation District*, 392 Ill. App. 3d at 556.

The Landowner Alliance argues that the ICC erred in its interpretation of both Section 8-406(b-5) and 8-406(f). 220 ILCS 5/8-406. Statutory interpretation is a question of law and is reviewed *de novo*. *Shields v. Judges' Retirement System*, 204 Ill. 2d 488, 492 (2003). The PUA "governs the courts, and their review of the Commission's decisions." *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2015 IL 116005, ¶ 20. "While the Commission's interpretation of statutory standards is entitled to deference," reviewing courts "are not bound by the Commission's interpretation of law." *Citizens Utility Board v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 121 (1995) (internal citations omitted).

ARGUMENT

GBX’s Project is not an endeavor to operate a utility designed to serve Illinoisans—it is a land grab, for private gain, cloaked with the banner of “renewable energy for all.” This is the second attempt by GBX, a private, for-profit merchant transmission line, to involuntarily deprive Illinois farmers of USDA prime farmland by seeking the power of eminent domain from the ICC. Once GBX has its CPCN, it may take private property by the power of eminent domain pursuant to Section 8-509 of the PUA. 220 ILCS 5/8-509.

At its core, this transmission line is a speculative venture seeking one thing: the power of eminent domain. It offers no meaningful service to Illinois citizens, no access to the energy it transports (R. 806), and no economic reciprocity for the land it commandeers. The Project’s proponents have engineered a statutory shortcut to bypass the rigorous standards of the PUA, all to secure the legal authority to take land from those who have farmed it for generations.

This is not a transmission line designed to serve the State of Illinois—it is a superhighway for electricity, barreling through the state with no exits, no access, and no benefit to the communities it disrupts. (R. 806-07). Imagine a highway overpass stretching from Missouri to Indiana, suspended above Illinois farmland. There are no off-ramps for Illinois consumers, no interchanges for local energy use. Yet beneath this overpass, massive pillars—transmission towers—are driven deep into the soil of working farms, fragmenting fields, impeding irrigation, as well as fertilization, and permanently altering the landscape. (C. 162). The landowners bear the burden of these significant intrusions into their land, while the energy flows elsewhere on a “for profit” basis to people residing outside our state.

Rather than change its business plan or proposed Project to comply with the PUA, after its first attempt in 2015 failed, GBX set out to change the law and obtain special legislation for its sole benefit. It is bespoke legislation tailored for a single project of a single company, designed to circumvent judicial precedent and regulatory scrutiny. Section 8-406(b-5) is not a neutral policy decision. It is a special legislative indulgence designed to benefit only GBX's Project and insulate it from requirements that apply to any other CPCN applicant. It relieves GBX of the obligation to prove public use or necessity, which has been the required benchmark for over a century. It strips Illinois landowners in the impacted counties of their right to challenge the Project on equal footing. It targets rural communities for the benefit of a private developer.

CEJA was enacted to promote clean energy development and equitable job creation, but it does not mandate the construction of GBX's Project or any other transmission line. GBX's 207-mile corridor of property condemnation across Illinois far exceeds what CEJA envisions or supports, making the Project an egregious overreach under the guise of clean energy policy. According to recent reports, Invenenergy may connect natural gas or coal generation for the GBX line, which is contrary to the purported purpose of the Project to allegedly support clean energy. Ben Geman, *Exclusive: Contentious Power Line's Developer Plans Gas Connection*, Axios (July 22, 2025).³

Illinois farmers should not be treated as collateral damage, or their farms used as collateral for speculative financing, in the race to build more transmission lines. They are stewards of the land, significant contributors to the state's economy, and citizens entitled

³ <https://www.axios.com/2025/07/22/invenenergy-grain-belt-express-power-line-gas-connection>.

to equal protection under the law. GBX's Project and the 2023 ICC Order treat Illinois landowners as loan collateral at best and impediments to be obliterated at worst, not as stakeholders to be respected. GBX offers no assurance that the land taken from Illinois landowners will ever serve a public purpose. The only certainty is that once their land is taken, it is gone.

GBX's Project is not a public utility project - it is a private venture for financial profit. It does not serve Illinois; it exploits it. The transmission line may be invisible to most, but its impact is deeply felt by those whose land it crosses. This Court must not allow the misuse of eminent domain to become an easily obtainable tool for speculative venture capital projects like GBX's line. The law must not be bent to accommodate private ambition at the expense of Illinois citizens. The Illinois farmers – and all Illinois citizens – deserve and are entitled to better.

GBX plainly failed to carry the evidentiary burden of its own case-in-chief. Accepting GBX's view that it presented sufficient evidence to the ICC on financial capability is synonymous with the belief that an individual could wander into a local bank, no documents in hand, and present an oral history about their finances, while boasting that they allegedly have rich parents, then walk out with a home loan. GBX's argument requires this Court to believe that a small-town bank's home loan department has financial underwriting standards more onerous than those used by the ICC for multi-billion-dollar electric transmission projects. Affirming the Appellate Court's decision is not only consistent with the statutory text and this Court's precedent (*Citizens Valley View Co. v. Illinois Commerce Commission*, 28 Ill.2d 294 (1963)), it is essential to preserve the rule of law in utility regulation.

GBX's failure to carry its evidentiary burden cannot be cured by agency discretion. It also cannot be excused by public policy arguments about clean energy or economic development. The law requires substantive proof, not speculative promises. The Appellate Court applied the correct legal standard, reviewed the record faithfully, and reached a sound conclusion which is well-based in fact and law. The Appellate Court's judgment should stand.

I. THE APPELLATE COURT APPLIED SECTION 8-406.1(F)(3) CORRECTLY.

To obtain a CPCN, GBX has to satisfy Section 8-406.1(f)(3) of the PUA, which requires a showing by the applicant that: (1) it is capable of financing the proposed construction, and (2) it can do so without significant adverse financial consequences for the public utility or its customers. 220 ILCS 5/8-406.1(f)(3). If the answer to the first question is "no," then the inquiry is terminated.

The Appellate Court's view, which is shared by the Landowners Alliance, is,

GBX must prove that it has the capacity to finance the Project prior to the ICC granting any CPCN. Stated differently, the applicant's capability of financing the project is a condition precedent to the ICC's issuance of a CPCN.

Appellate Court Order, ¶ 28. To satisfy Section 8-406.1(f)(3), the applicant must show that it *is capable of* financing the construction of the proposed project. *Id.* (emphasis added). This clear and unambiguous language, and particularly the General Assembly's expression of this requirement entirely in the present tense, requires the ICC to determine whether the applicant is capable of financing the project prior to any CPCN being issued. *Id.*

A. The ICC’s interpretation of Section 8-406.1(f)(3) should not be given deference.

In its Brief, GBX wholly misrepresents the 2023 ICC Order by asserting that the ICC did not interpret the “is capable of financing” requirement of Section 8-406.1(f)(3) as being a condition precedent to issuance of a CPCN. (GBX Brief at 24, referring to the 2023 ICC Order at C. 5887). The crux of GBX’s argument is that the Appellate Court failed to give deference to this interpretation of Section 8-406.1(f)(3) by the ICC. However, the citation to the 2023 ICC Order provided by GBX does not support this argument. GBX’s citation is not even part of the Commission Analysis and Conclusion on this issue, and GBX inaccurately portrays it as the ICC’s ruling. (*Id.*). Rather, the portion of the 2023 ICC Order cited by GBX is merely a summary of the Staff’s overly narrow and nonsensical position that complying with the “is capable of financing” provision of Section 8-406.1(f)(3) is not a condition precedent to obtaining a CPCN. (C. 5887). The ICC did not adopt the Staff’s flawed interpretation of Section 8-406.1(f)(3) in its finding. The ICC’s actual conclusion was that GBX satisfied Section 8-406.1(f)(3) by “agreeing to be bound by the Revised Financing Condition,” a separate error addressed further below. Like its Project, GBX’s main argument challenging the Appellate Court’s ruling is based on misrepresentations that are disproven once the record is reviewed.

Moreover, the Court should decline GBX’s invitation to apply the *Chevron* deference framework when reviewing the ICC’s interpretation of Section 8-406.1(f)(3). Instead, it should adopt the reasoning articulated by the United States Supreme Court in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overturned *Chevron* and reaffirmed the judiciary’s constitutional role as the final and independent arbiter of statutory interpretation. As stated by Justice Gorsuch in his concurring opinion issued in

Loper Bright: “Today, the Court places a tombstone on *Chevron* no one can miss.” *Id.* at 417 (Gorsuch, J., concurring).

In *Loper Bright*, the Supreme Court expressly overturned the holding of *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), that courts must not defer to agency interpretations of ambiguous statutes merely because ambiguity exists. *Loper Bright*, 603 U.S. at 399. The Court made clear that statutory ambiguity is not, in itself, evidence of congressional intent to delegate interpretive authority to administrative agencies. Rather, courts must interpret statutes using the traditional tools of statutory construction, even where the statutory language is unclear. *Id.* at 412–13. The decision thus restores the proper constitutional balance by placing the responsibility for statutory interpretation squarely within the judiciary, not administrative agencies like the ICC.

Importantly, the Supreme Court emphasized that courts must “exercise their independent judgment in deciding whether an agency *has acted within its statutory authority*.” *Id.* at 412 (emphasis added). This principle compels a departure from any presumption that an agency’s interpretation deserves automatic deference simply because the statutory language is complex or ambiguous. Judicial review is not meant to rubber-stamp agency assertions of authority, particularly where there is no clear delegation from the legislature.

In this case, agency deference should be rejected because of the significant economic and political issues presented on this record, the ICC’s disregard of its statutory authority, and the ICC’s improper dilution of the PUA’s capability of financing requirement.

B. GBX’s arguments regarding the definition of the term “capable” should be disregarded by this Court.

Prior to addressing why this Court should not cede its authority to the ICC, it must first be acknowledged that GBX’s arguments regarding the statutory language at issue, and its evidence presented, are wrong. Ignoring the plethora of evidentiary deficiencies identified by the Appellate Court, GBX argues that the Appellate Court’s Order creates a “financing-in-place condition precedent.” (GBX Brief at 28-32). It also argues that “capability” should be considered on some sort of time spectrum that need not be fully matured as of the date of the issuance of the CPCN. (*Id.*). For the first time during the life of this case, GBX points to the dictionary definition of “capable” for the proposition that the Appellate Court did not apply the correct verb tense to the “is capable” language contained in Section 8-406.1(f)(3). The application of “is capable” has been a key issue asserted by the Landowner Alliance both before the ICC and on appeal. Yet, GBX is now arguing for the first time that the dictionary definition of “capable” somehow permits it to delay establishing its financing capability until after the CPCN is granted. As a matter of law, GBX has waived this argument by failing to raise it before the ICC.

As a general rule, an argument, issue, or defense not raised before the administrative agency will not be considered for the first time on administrative review. *Carpetland U.S.A., Inc. v. Illinois Dept. of Employment Security*, 201 Ill.2d 351, 396-97 (2002); *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 212 (2008). This waiver rule is necessary to avoid piecemeal litigation and to permit opposing parties an opportunity to refute the arguments presented to the agency. *Carpetland*, 201 Ill.2d at 397. This is especially true because administrative review is limited to the proof offered before the administrative agency. *Id.*

Regardless, even if GBX's dictionary definition argument is considered, the definition of "capable" advocated in its Brief (as a question of competency) actually supports the Appellate Court's ruling as GBX did not present evidence showing that it had the general ability or competency to finance the Project at the time its application was made and determined by the ICC. As recognized by the Appellate Court, "[t]he evidence put forward demonstrated that GBX lacked the funding at the time of the hearing, had no customers, contracts, government or bank commitments, and as a result failed to meet the (f)(3) criteria with anything more than speculation." Appellate Court Order, ¶ 38. This finding certainly addresses GBX's claim that it established it was able or competent to achieve its goal of future financing.

Before the ICC, GBX claimed that it would be able to obtain financing for the Project *at a later time*, once customer contracts are executed, supply agreements are executed, and site control is obtained. (C. 4834). However, at the time of CPCN issuance, and still to this day, GBX has no customers for the Project, nor any commitment from any financial institution or the Department of Energy to provide financing for the Project. (R. 339-43).

For example, GBX Witness Rolanda Shine testified that GBX anticipated that the Department of Energy ("DOE") would loan funds for the Project through a loan guaranty program for clean energy projects administered through the DOE's Loan Project Office ("LPO"). (R. 263-66). Ms. Shine estimated that the financing received from the DOE may range from 65% to 80% of the total Project costs. (*Id.*). Though GBX obtained a conditional commitment from the DOE's LPO for a loan guaranty for the Project in November 2024, the DOE terminated that commitment on July 23, 2025, stating that

“[a]fter a thorough review of the project’s financials, DOE found that the conditions necessary to issue the guarantee are unlikely to be met and it is not critical for the federal government to have a role in supporting this project.” Department of Energy Terminates Taxpayer-Funded Financial Assistance for Grain Belt Express, U.S. Dep’t of Energy (July 23, 2025), <https://www.energy.gov/articles/department-energy-terminates-taxpayer-funded-financial-assistance-grain-belt-express>

Rather than providing evidence to the ICC that it was capable of financing its transmission line project *at the time of application*, as required by Section 8-406.1(f)(3), GBX took the position that all it had to do before the ICC was assert that it *will be able* to obtain financing at some indeterminate time in the future from entities that are presently unknown. Alas, assertions about future events are not evidence; rather, they’re simply self-serving predictions and/or rank speculation. GBX told the ICC, “Trust us. We will be able to get the money.” On the element of capability of financing its transmission line, the PUA required proof *at the time of application*, and GBX tendered only prophecy.

Both GBX and the ICC also attempt to improperly characterize the holding of the Appellate Court as a precedent requiring that applicants have financing in place to satisfy Section 8-406.1(f)(3). (GBX Brief, at 12, 19, 24-25, 28, 32; ICC Brief, 4-6, 23, 26, 28, 31-32, 40-41). GBX and the ICC presumably assert this characterization as an attempt to distract this Court from GBX’s failure to present any actual evidence of its financial capability. The Appellate Court did not find that the 2023 ICC Order had to be reversed because GBX did not have a loan in place for the Project. Rather, the Appellate Court ruled that “[u]ltimately, there was no showing that GBX as it was situated at the time of the Commission’s hearing and decision was financially able to finance and construct the

project.” Appellate Court Order, ¶ 34. GBX and the ICC’s mischaracterization of the Appellate Court’s Order should be disregarded by the Court.

In reaching its decision, the Appellate Court did not encroach upon the ICC’s discretion. Instead, it recognized that the ICC’s findings did not comport with Section 8-406.1(f)(3). As further detailed herein, the ICC’s interpretation of Section 8-406.1(f)(3) should not be given deference.

C. Courts apply independent judgment in matters of “economic and political significance.”

Where a statute implicates matters of vast “economic and political significance,” courts should be particularly cautious in presuming legislative delegation of interpretive power. *King v. Burwell*, 576 U.S. 473, 486 (2015). In *King*, the Supreme Court refused to automatically defer to the Internal Revenue Service’s interpretation of the Affordable Care Act because the question at issue—affecting billions of dollars in tax credits—was too significant to assume Congress intended the agency to have final interpretive authority. *Id.* at 486. The Court reaffirmed that any such delegation must be explicit, not inferred. *Id.* (citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)).

The same principle applies here. The ICC’s interpretation of “capable of financing” under Section 8-406.1(f)(3) carries substantial financial implications—potentially involving billions of dollars in infrastructure investment and risk allocation. Granting deference in this context would improperly assume a legislative intent to vest the ICC with unchecked interpretive authority over an economically consequential term, despite no clear indication in the statute that such delegation was intended. Given that GBX has failed to produce evidence demonstrating its actual financing capability, the interpretive authority properly falls to this Court—not the agency.

This concern is further heightened by the fact that a CPCN issued under this statutory scheme effectively confers on the applicant the power of eminent domain. *See*, 220 ILCS 5/8-509. Following the issuance of a CPCN, Section 8-509 of the PUA requires the ICC to issue an order on an eminent domain request within forty-five days. 220 ILCS 5/8-509. Moreover, once the ICC grants a CPCN, the Illinois Eminent Domain Act creates a rebuttable presumption that the project has a public purpose. 735 ILCS 30/5-5-5. This means that once GBX has its CPCN, it may take private property by power of eminent domain pursuant to Section 8-509 of the PUA. 220 ILCS 5/8-509. This Court has cautioned that “[t]he power of eminent domain is to be exercised with restraint, not abandon” and the legislature’s goals in exercising the power “must not be allowed to overshadow the constitutional principles that lie at the heart of the power.” *Southwestern Illinois Development Authority v. National City Environmental, LLC*, 199 Ill.2d 225, 240-42 (2002).

Delegating to an agency the discretion to define ambiguous financing standards that trigger eminent domain power—without clear legislative direction—raises serious constitutional and policy concerns. If the agency’s interpretation were to be accepted without scrutiny, it would effectively allow a private entity to initiate condemnation proceedings based on a nebulous and inadequately supported showing of financial capability. That result not only exceeds the statutory mandate but also threatens fundamental property protections.

Granting deference in this scenario would amount to an improper interpretation of legislative intent, conferring on the ICC wide-ranging interpretive authority over a high-stakes financial decision—despite no express statutory language to that effect. To avoid

this kind of regulatory overreach, courts must independently determine the scope and meaning of economically impactful statutory terms. Doing so protects the public interest, ensures legislative accountability, and upholds the structural integrity of judicial review.

D. Courts apply independent judgment in matters where agencies have not acted within their statutory authority.

As instructed by *Loper Bright*, this Court should apply its independent judgment because the ICC acted outside of its statutory limits, rendering the CPCN awarded to GBX void. The record reflects that GBX, recognizing the insubstantiality of its financing plan, proposed that the ICC expand the statutory limits of the PUA by permitting it to comply with Section 8-406.1(f)(3)'s capability of financing requirement by means of a Revised Financing Condition that was ultimately adopted as part of the 2023 ICC Order (the "Financing Condition"). (C. 5971-72). With logic akin to that used by characters in Lewis Carroll's *Alice in Wonderland*, ICC Staff Witness McNally concluded that if GBX is allowed to satisfy the capability of financing requirement at some indeterminate future time, that means that GBX has satisfied that requirement in the present. (R. 409-10). The ICC concurred with this irrational position by finding that GBX satisfied Section 8-406.1(f)(3) by "agreeing to be bound by the Revised Financing Condition." (C. 5892).

1. The ICC's Order does not comport with the requirements imposed by the legislature.

The Financing Condition suggested by GBX and approved by the ICC contains the following language:

Revised Financing Condition

Grain Belt Express will not install transmission facilities for Phase II of the Project on easement property until such time as Grain Belt Express has obtained commitments for funds in a total amount sufficient to finance the anticipated total project cost. For the purposes of this condition:

“install transmission facilities” shall mean to affix permanently to the ground transmission towers or other transmission equipment, including but not limited to bases, poles, towers and structures, such wires and cables as Grain Belt shall from time to time suspend therefrom, foundations, footings, attachments, anchors, ground connections, communications devices and other equipment, accessors, access roads and appurtenances, as Grain Belt may deem necessary or desirable in connection therewith, 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 Grain Belt Express including the converter station sites;

“easement property” shall mean property on which Grain Belt Express has acquired an easement to install transmission facilities;

“has obtained commitments for funds” shall mean (A) for loans and other debt commitments that Grain Belt Express 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 Grain Belt Express or its parent company has a combination of sufficient cash on hand, funds received from the equity investors, or commitments from the equity investors to provide funds on a schedule that is consistent with the need for funds to complete the Project; and

“total project cost” shall mean the total estimated remaining cost for Phase I and Phase II of the Project, at the time that Grain Belt Express is prepared to begin to install Phase II transmission facilities, for the following: 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 estimated total project cost as of July 18, 2022 is \$4.95 billion not including estimated costs for network upgrades.

To allow the Commission to verify its compliance with this condition, Grain Belt Express 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 Grain Belt Express is prepared to begin to install Phase II transmission facilities:

- a) On a confidential basis, documents sufficient to demonstrate equity and loan or other debt financing agreements and commitments entered into

or obtained by Grain Belt Express or its parent company for the purpose of funding the Project that, in the aggregate, provide commitments for funds for the total project cost;

- b) An attestation certified by an officer of Grain Belt Express that Grain Belt Express has not, prior to the date of the attestation, installed Phase II 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 reviewed by an officer of Grain Belt Express, along with a reconciliation of the total project cost in the statement to the total project cost as of July 18, 2022 of \$4.95 billion (not including estimated costs for network upgrades); and
- d) A reconciliation statement, certified by an officer of Grain Belt Express, showing that the agreements and commitments for funds provided in (a) are equal to or greater than the total project cost provided in (c).

(C. 3701-02; C. 5971-72).

If GBX were capable of financing the Project when it applied for the CPCN, it could have provided the evidence set out in subsections (a) through (d) of the Financing Condition as of the time of its Application. But the self-evident purpose of the Financing Condition is to enable the ICC to issue a CPCN to GBX without GBX having to satisfy Section 8-406.1(f)(3)’s capability of financing requirement. By granting a CPCN to GBX by means of the Financing Condition, the ICC has effectively deleted Section 8-406.1(f)(3) from the PUA. 220 ILCS 5/8-406.1(f)(3).

Even more concerning is the admission by ICC Staff Witness McNally that the Financing Condition permits GBX to obtain a CPCN three to five years *before* it has actually demonstrated it can finance the Project. (R. 409-10). Equally concerning was Mr. McNally’s lack of understanding regarding the process that must be followed for GBX to comply with the Financing Condition, although he did confirm that there will not be

another hearing permitted after the required documentation is submitted. (R. 396-98, 400-05). Thus, the Financing Condition not only eliminates the requirements of Section 8-406.1(f)(3), but also imposes a procedure that prevents intervenors such as the Landowner Alliance from challenging GBX's capability of financing evidence if and when GBX ever submits it to the ICC. Such a condition clearly does not meet the requirements of Section 8-406.1(f)(3). 220 ILCS 5/8-406.1(f)(3).

GBX advocated for the Financing Condition by arguing that in the event it does not obtain the financing to satisfy the Condition, and therefore not able to proceed with the construction of the Project, the only parties experiencing adverse financial consequences would be GBX's investors. (GBX Brief at 42; C. 4838). GBX's statement is not simply incorrect; it places on full display GBX's utter disdain for landowners whose properties lie along its Project's proposed route. If GBX ultimately fails to obtain financing, after having obtained a CPCN through the ICC's dispensation from the requirements of Section 406.1(f)(3), GBX's investors will not be the only ones to have suffered adverse financial consequences. As soon as the ICC issued the 2023 ICC Order, those landowners whose properties lay along the proposed route suffered a material cloud on the titles to their lands, over and above the fees and expenses they incurred during these past ten years of litigation. But GBX, in a feat of truly seigneurial arrogance, evidently does not consider these adverse effects on the landowners of Central Illinois worthy of its notice. GBX should not be allowed to rely upon a Financing Condition that defers the satisfaction of proving its ability to finance the Project until *after* it is granted the authority to construct the Project. See 220 ILCS 5/8-406.1(f)(3).

The 2023 ICC Order also notes that GBX plans to use a project financing approach, has established a single purpose legal entity that will own the facility to be financed, and has no other assets, liabilities, or businesses. (C. 5892). Thus, through the 2023 ICC Order, the ICC recognized that GBX had no assets or capability of funding the Project itself, and therefore, must solely rely upon financing from either its parent company or third parties, such as new investors or lenders. Nevertheless, GBX introduced no evidence establishing the financial health of its parent company or that any specific lender or investor is willing to lend or invest money in the Project, either now or in the future.

The 2023 ICC Order acknowledges that Section 8-406.1(f)(3) requires a showing “that the applicant ‘*is* capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.’” (C. 5892), quoting 220 ILCS 5/8-406.1(f)(3) (Emphasis added.). This language does not permit an applicant to show that it might or will be capable of financing the construction at some later date. Yet this is precisely the process permitted by the 2023 ICC Order through the adoption of the Financing Condition. (C. 5892, 5971-72). The approved Financing Condition postpones a final decision as to the capability of financing the Project to an *ex parte* proceeding sometime in the future when GBX returns to the ICC to prove financing capability, if it ever does. *Id.*

Without any citation to specific evidence or facts in the record, the 2023 ICC Order states:

Based on its review of the Application, the evidentiary record, and the parties’ arguments on this issue, the ICC concludes that [GBX] has demonstrated it is capable of financing the proposed construction without significant adverse consequences for the utility or its customers.

(C. 5892). The ICC provides no citation to any evidence in the record in support of these findings, as GBX provided no evidence that it is capable of financing the Project. The ICC instead relies upon the Financing Condition, which allows GBX to delay meeting this critical criteria until a later date. The ICC is required to make findings of fact from the evidence in the case “to enable a court to intelligently review the decision of the [C]ommission and ascertain whether the facts offered a reasonable basis for the order entered.” *Chicago & W. T. Rys., Inc. v. Illinois Commerce Comm’n*, 397 Ill. 460, 467 (1947); *see, Knox Motor Service, Inc. v. Illinois Commerce Comm’n*, 77 Ill.App.3d 590, 595 (4th Dist. 1979). If the ICC fails to make findings of fact concerning the issues presented by the evidence in the record, the order is void and must be reversed. *Chicago Rys. Co. v. Commerce Comm’n*, 336 Ill. 51, 64 (1929). “It is axiomatic that under all of the established law relating to public utilities in this State that certain findings of fact must be made and that such findings must bear some reasonable relationship to the evidence in the record. It is not enough that any order of the commission contain all necessary findings of fact if there is no evidence in the record to support those findings or if the findings are against the weight of the evidence.” *Gulf Transport Co. v. Illinois Commerce Comm’n*, 402 Ill. 11, 20 (1948).

The ICC’s adoption of the Financing Condition cannot be reconciled with its finding that GBX established its capability of financing its Project *before* the ICC issued the 2023 ICC Order and proves that the ICC’s finding that GBX has the ability to finance the Project is against the manifest weight of the evidence. Consequently, the Appellate Court properly overturned the 2023 ICC Order.

Section 8-406.1(f)(3) does not state that the ICC can accept an applicant's unsupported assurances that it will likely be able to finance the project, or the applicant's assertions that its corporate affiliates are purportedly cash rich without submitting any evidence of the veracity of such claims. By accepting the Revised Financing Condition, the ICC materially overreached its statutory authority and attempted to move the Project forward without requiring GBX to provide the necessary evidence establishing that it is capable of financing the Project, resulting in an impermissible *ultra vires* legislative action.

2. The ICC impermissibly exceeded the scope of its authority, and reversal is warranted based on precedent from this Court and the appellate courts.

This Court has consistently held that state agencies have only the power conferred on them by the legislature, and agency discretion may stretch no further than the statute the agency is applying. *Daniels v. Industrial Comm'n*, 201 Ill. 2d 160, 165 (2002), *as modified on denial of reh'g* (Aug. 29, 2002). In *Daniels*, this Court held, "Where an administrative agency acts outside its specific statutory authority ... it acts without jurisdiction. Its actions are void, a nullity from their inception." *Id.* GBX has failed to show that it has the capability to finance the project, and by pretending that the Financing Condition somehow demonstrates that capability, the ICC impermissibly subverts the PUA's requirements. The 2023 ICC Order does not just misapply the statute; it fundamentally alters the statute by replacing its requirement with a fabricated test – the Financing Condition-- brought forth by GBX, itself a shell company. The ICC thus acted outside its statutory boundaries, and its 2023 Order is a null and void decision from its inception that must be reversed because "courts have an independent duty to vacate and expunge void orders...." *Id.* at 166.

The ICC has been overruled for taking extra-legislative action in the past. This Court has already found that the ICC may not allow an entity to impose its own condition to comply with a statute, if that condition falls short of what the statute requires. In *Business & Professional People for Public Interest v. Illinois Commerce Comm’n*, 136 Ill. 2d 192, 199 (1989) (“*BPP*”), this Court found that the ICC went beyond the bounds of the PUA by allowing Commonwealth Edison to set its own rate schedule. The rate-change element of the statute required agreement with various intervenors as well as evidence on the record that the proposed rate change was reasonable, that the proposed rate change was to fund a “used and useful” power generating facility, and a finding of the financial stability of Commonwealth Edison. *Id.* at 205-208. The ICC, in opposition to statutory requirements, entered an order that Commonwealth Edison may rightfully implement a rate increase without approval from the intervenors, in the absence of proving that the rate change was to fund a “used and useful” power generating facility, and without evidence as to the financial strength of Commonwealth Edison. *Id.* at 240.

The ICC in *Business and Professional People* allowed Commonwealth Edison to use a “trust us, the rate change is necessary” method, rather than performing due diligence as to its veracity. This Court overturned that order, stating, “the Commission had no authority under the PUA to establish a rate increase before it examined all of the evidence ... and determined whether the increase was reasonable.” *Id.* at 239-240. One Commissioner in the case dissented from the ICC’s order and stated succinctly — as this Court rightly emphasized — “It is inconceivable that the Commission would allow an as-yet undetermined rate increase to take effect.” *Id.* at 239. The situation is the same here with GBX and the Financing Condition.

The ICC blithely accepts that GBX will be able to finance the Project in the future, absent evidence to support its claim, controverting the requirement that the ICC find that GBX can finance its Project. The 2023 ICC Order in this case parallels its order in *BPI* allowing Commonwealth Edison to impose a rate increase without any evidence to support it. *See Id.* The onus was on GBX to present evidence that it had the ability to finance the Project. Instead, GBX argued a “trust us” approach, without any supporting evidence, thus allowing GBX to substitute its own “kinder and gentler” requirement for the one enacted by the Illinois General Assembly. Commonwealth Edison tried the same trick, and this Court did not allow it to succeed. In essence, the Financing Condition allows GBX to satisfy Section 8-406.1(f)(3) by merely providing updates on its proposed financing through the extended five-year window granted by the ICC for commencing the Project. The PUA does not permit this delayed process. Just as this Court considered it “inconceivable” that the ICC would allow a rate increase without proper determinations of its reasonableness and necessity, it is equally inconceivable that the ICC would allow GBX to put forth its own Financing Condition as evidence of any actual ability to fund the Project.

In *Illinois Bell Telephone Co. v. Illinois Commerce Comm’n*, 352 Ill. App. 3d 630, 634 (3d Dist. 2004), the Illinois appellate court found that the ICC acted beyond its statutory authority when it imposed capital spending requirements absent evidence to justify the specific amount the ICC required. Regarding the capital spending requirements, Section 13-506.1 of the PUA (220 ILCS 5/13-506.1) required the ICC to submit evidence as to how it determined the amount the telecommunication company must spend in a case involving competitive local exchange carriers. *Id.* at 632. The ICC failed to submit that

evidence: “the specific dollar amounts actually imposed are completely unsupported by the record.” *Id.* at 627. Because of the lack of evidence, the court ruled that the ICC acted outside of its authority and reversed the requirement. *Id.* Likewise, because GBX submitted no evidence of its capability to finance its Project, the 2023 ICC Order is equally beyond the ICC’s authority.

Agency discretion has a limit, specifically, the requirements of the statute itself. Just as the ICC could not impose financial conditions without evidentiary support or legal authority, as demonstrated in the *Illinois Bell* case, the ICC cannot just accept GBX's unsubstantiated prophecies about its future financial capability in place of the express statutory requirement that GBX demonstrate its present capability to finance the Project.

Furthermore, a prior attempt by the ICC to authorize a process that permitted the submission of necessary information following the issuance of its final order (similar to that allowed by the Financing Condition) was rejected by the Illinois appellate court. In *LifeEnergy, LLC v. Illinois Commerce Comm’n*, 2021 IL App (2d) 200411, at ¶ 144, the appellate court held that the ICC erred when it ordered post-decisional submissions regarding customer refunds. *LifeEnergy* argued on appeal that the ICC exceeded its authority by not relying on evidence exclusively in the record and instead improperly reopened the case. *Id.* at ¶ 140. The Second District noted that the ICC did not cite to any authority that allowed it to order a party to submit additional materials that could have been presented and considered prior to the entry of the order. *Id.* at ¶ 147. Because of that, the appellate court concluded that the ICC improperly exceeded the scope of its authority. *Id.* at ¶¶ 147-48.

As in *LifeEnergy*, the ICC here exceeded the scope of its statutory authority when it granted the CPCN *before* the conditions specified in the statute were met. And just as in *LifeEnergy*, the ICC cannot cite to any authority permitting it to do so. Indeed, by issuing the CPCN to GBX, the ICC flouted the boundaries imposed upon it by the legislature in Section 8-406.1(f)(3). Therefore, this Court—like the Second District in *LifeEnergy* and the Appellate Court below—should find that the ICC committed reversible error.

The ICC’s interpretation of Section 8-406.1(f)(3) deserves no deference. While agencies may be afforded respect in matters of technical expertise, they are not free to depart from the relevant statute’s plain requirements or turn a statutory requirement into the agency’s discretionary policy tool. This Court has consistently held that agency discretion cannot override clear legislative mandates. Section 8-406.1(f)(3) is unambiguous, and the ICC’s attempt to circumvent it by adopting a deferred compliance mechanism exceeds its authority. Judicial review expressly exists to prevent such overreach, and the Appellate Court properly exercised its role in rejecting the ICC’s flawed reasoning.

E. GBX did not meet its evidentiary burden to establish it is capable of financing the Project.

The position of GBX and the ICC are that, in addition to presenting sufficient evidence to establish that GBX was capable of financing the Project, it is also true that: (1) the utilization of project financing is commonly accepted at the ICC; (2) having a “rich parent” tips the scales on showing financing capability, even though that rich parent did not provide any evidence of its own financial condition, much less any evidence of any commitment to support GBX financially; and (3) the Missouri Public Service Commission (“MSPSC”) reviewed similar evidence filed by GBX and concluded GBX is capable of

financing the Project without reviewing financial documents. GBX's assertions should all be rejected.

1. GBX's style of project financing – without evidence – is not the standard practice at the ICC.

Both GBX and the ICC cite *Rock Island Clean Line LLC*, Ill. Comm. Comm'n No. 12-0560 (Nov. 25, 2014) to support the premise that project financing has been accepted at the ICC "since at least 2014." (GBX Brief at 34; ICC Brief at 32). First, the ICC must base its decision on the record before it in the instant docket. GBX's naked reference to ICC Docket No. 12-0560, which involved the proposed Rock Island Clean Line, GBX's failed sister project with the same business model, is concerningly deceptive. In that docket, in sharp contrast to the lack of evidence submitted by GBX in this docket, Rock Island Clean Line provided documentary evidence of its prior transactions in equity and debt markets, cash flow, a public consolidated balance sheet, a Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts balance sheet and chart of accounts, as well as witness testimony of David Berry, a Vice President, of the company on the financial aspects of the project. *Rock Island*, Ill. Comm. Comm'n No. 12-0560, at 150-151 (Order-Final Nov. 25, 2014) (A-156); *Rock Island*, Ill. Comm. Comm'n No. 12-0560, at 2-3, 30-47 (Rock Island Exhibit 10.0 Oct. 10, 2012) (A-382). Berry testified that Rock Island intended to raise sufficient funding to complete the project before permanently installing transmission towers on landowners' properties. *Rock Island*, Ill. Comm. Comm'n No. 12-0560, at 2 (Rock Island Exhibit 10.13 Dec. 18, 2012) (A-431).

While the ICC imposed a similar financing condition in the Rock Island docket, the ICC's approval of the Rock Island Clean Line project was reversed on appeal by this Court on other grounds, and thus GBX's assertion that the Rock Island docket supports its

position on the Financing Condition is at best disingenuous. See *Illinois Landowners Alliance*, 2017 IL 121302, ¶ 53.

Though the argument was narrowed in its Brief, GBX cites seven ICC dockets in its Petition for Leave to Appeal, arguing that the “[t]he Commission has consistently interpreted section 8-406.4(f)(3) to require a showing that a utility is capable of obtaining financing in the future, not that the utility has already obtained financing.” (GBX PLA, at 21-22). The dockets cited by GBX do not stand for this proposition: instead, the evidence presented in each of those dockets highlights GBX’s profound evidentiary failure to demonstrate that it is capable of financing the Project being considered in this docket.

In every referenced ICC docket, including the Rock Island Clean Line case cited above, the applicants submitted actual financial data which the ICC analyzed prior to deciding whether the applicant was capable of financing the relevant project. The applicants introduced evidence (e.g. documents) and testimony demonstrating that their projects had secure access to financing at the time that the CPCN was issued.

In ICC Docket No. 13-0115, Ameren Illinois Company’s (“AIC”) witness Hughes testified that the project would be fully supported by its existing lines of credit. *Ameren Illinois Co.*, Ill. Comm. Comm’n No. 13-0115, at 14-16 (Order-Final Sept. 4, 2013) (A-21). AIC also provided financial information demonstrating its access to funds, short-term credit, and borrowing capability through the construction period of the project. *Id.* at 15; *Ameren*, Ill. Comm. Comm’n No. 13-0115, at 2:33-39 (Ameren Exhibit 4.0 Feb. 7, 2013) (A-40).

In ICC Docket No. 15-0064, AIC provided evidence, a credit opinion and Ratings Direct summary, and demonstrated that it had access to Ameren corporate funds and

ongoing cash in the form of retained earnings. *Ameren*, Ill. Comm. Comm’n No. 15-0064, at 11-12 (Order-Final June 16, 2015) (A-51). AIC witness Hughes testified that AIC renewed its short-term credit facility for immediate construction capital requirements. *Id.* at 11; see *Ameren*, Ill. Comm. Comm’n No. 15-0064, at 2-5 (AIC Exhibit 7.0 Jan. 2015) (A-75).

In ICC Docket No. 15-0278, ATXI provided a balance sheet and income statement as well as testimony demonstrating guaranteed funds from Ameren. *Ameren*, Ill. Comm. Comm’n No. 15-0278, at 7-8 (Order-Final Nov. 12, 2015) (A-85). ATXI witness Hughes testified that Ameren was well-capitalized and had adequate financial resources in assets, property, long-term capitalization and retained earnings. *Ameren*, Ill. Comm. Comm’n No. 15-0278, at 2-5 (ATXI Exhibit 6.0 April 10, 2015) (A-117). ATXI also established it had strong credit ratings indicating it had access to debt capital at competitive rates. *Ameren*, Ill. Comm. Comm’n No. 15-0278, at 7 (Order-Final Nov. 12, 2015).

In ICC Docket No. 16-0412, American Transmission Company LLC (“ATC”) provided evidence that it was capable of efficiently managing and supervising the proposed construction because, unlike GBX, it had constructed similar transmission lines over the past fifteen years in conjunction with the Ameren corporation. *American Transmission Co. LLC*, Ill. Comm. Comm’n No. 16-0412, at 5-6, (Order-Final Dec. 20, 2016) (A-127). ATC planned to finance the project from its annual capital transmission line budget, the costs of the relevant project being well-within that budget. *Id.*

In ICC Docket No. 22-0336, Aqua Illinois witness Angela Serafini provided direct testimony regarding its day-to-day working capital and its available bank lines of credit. *Aqua Illinois, Inc.*, Ill. Comm. Comm’n No. 22-0336, at 6 (Order-Final Dec. 15, 2022) (A-

135); see *Aqua*, Ill. Comm. Comm’n No. 22-0336, at 6 (Aqua Exhibit 1.0 May 6, 2022) (A-144); *Aqua*, Ill. Comm. Comm’n No. 22-0336 (ICC Staff Exhibit 3.0, Sept 14, 2022) (A-154).

It is evident from a review of the above noted dockets that the standard practice of the ICC is to require the applicant to provide financial evidence to establish and support its claims of financial capability. For unknown reasons, the ICC drastically departed from its long-standing practice of requiring applicants to provide financial documentation to support present financial capability, and its decision to rely upon bald assertions offered by GBX witnesses is not entitled to deference by any court. *Citizens Utility Board v. Illinois Commerce Comm’n*, 291 Ill.App.3d 300, 304 (1st Dist. 1997). As held in *Citizens Utility Board*, the ICC’s decisions are entitled to less deference “when the Commission drastically departs from past practice.” *Id.*

2. A rich parent is not evidence of financial capability.

In contrast to the applicants in the above-referenced dockets, GBX attempted to plug the gaping evidentiary hole in its application by taking on protective parental coloration at the ICC: GBX presented testimony that its parent company, Invenergy Renewables Holdings LLC, would provide funding to GBX until financing was secured. (C. 4835). To bolster this assertion, GBX claimed that Invenergy Renewables Holdings is “an operating company with billions of dollars in assets.” *Id.* However, GBX failed to introduce any evidence – not even so much as a balance sheet – to establish the financial health of either GBX or Invenergy Renewables Holdings. GBX Witness Rolanda Shine confirmed that Invenergy Renewables Holdings maintains financial records such as annual profit and loss statements, a balance sheet, and cash flow statements that would

demonstrate the financial health of this entity, as of December 31, 2021. (R. 300-07). Nevertheless, GBX did not introduce any of that documentation into evidence in its case before the ICC. (R. 305-08). GBX's failure or outright refusal to provide relevant financial documents in its control creates a presumption that the evidence, if produced, would have been adverse to the party. See *Beery v. Breed*, 311 Ill. App. 469, 474-78 (2d Dist. 1941). This presumption further supports the conclusion that GBX has not demonstrated that it can currently finance the Project.

The ICC argued in its Brief that the presumption created by the *Beery* case is inapplicable here as there is no statute or rule requiring GBX to provide documents to support its financial capability assertions, and the presumption set forth in *Beery* is not mandatory. These arguments underscore the ICC's attempt to gloss over the complete lack of evidence submitted by GBX concerning its financial capability. In fact, the ICC attempts to excuse GBX's failure to provide necessary supporting documents by saying it did not "protect or hide" such documents, but rather the documents were not disclosed because the Landowner Alliance failed to request them through discovery. (ICC's Brief, pp. 38-39). It is not the Landowner Alliance's burden to assist GBX in complying with the financial capability requirements of Section 8-406.1(f)(3). In reality, the ICC Staff, the Farm Bureau, CCPO, and Zotos requested that GBX provide copies of all documentation that supported its claim of financial capability, but instead, the response provided by GBX only included the unsupported assertions contained in its Application and testimony from its management team, with none of the material documents being provided. (A-607—A-624). Thus, the ICC's assertion that GBX did not "hide or protect" the missing documents

necessary to establish its financial capability is both irrelevant as well as inaccurate based on the information requested by the ICC, itself.

As noted above, it is standard practice for the ICC to require and review documents supporting an applicant's financial capability prior to issuing a CPCN. The ICC cannot justify its deviation from this standard practice by arguing that it had the discretion to ignore the presumption set forth in *Beery*. The presumption applies here because GBX failed to provide any actual evidence establishing its financial capability or the financial wherewithal of its parent (assuming that this information is even relevant as the parent was not the applicant for this Project). GBX and the ICC claim that the Appellate Court improperly reweighed the evidence in overturning the 2023 ICC Order. However, the point of the Appellate Court's Order is that there was no evidence provided by GBX in the record to weigh. GBX presented testimony that it had evidence that could have been submitted to prove the unsubstantiated claims relating to Invenenergy's financial capability, and it chose not to do so. (R. 300-307). It is entirely appropriate for the Appellate Court to apply the adverse presumption set out in *Beery*, as the ICC has not historically taken the word of an applicant without the necessary supporting documentation. *Citizens Utility Board*, 291 Ill.App.3d at 304. The finding by any agency that an applicant is capable of financing a \$7 billion project without reviewing any financial documents is mind boggling and warrants reversal.

In their briefs, GBX and the ICC point to *Ameren Transmission Co. of Illinois*, in support of the argument the ICC found in that case "that [the] applicant satisfied Section 8-406.1(f)(3) via a plan to fund a \$1 billion-plus transmission line 'via intercompany loans and equity infusions' by parent." *Ameren Transmission Co. of Illinois*, Ill. Comm. Comm'n

No. 12-0598, at 115-116 (Order-Final Aug. 20, 2013) (A-451); (GBX Brief at 34; ICC Brief at 32). However, a review of that docket discloses that the applicant, ATXI, provided evidence that it was capable of financing the construction of the project because the funds were available and accessible at the time the application was submitted to the ICC. *Ameren Transmission*, Ill. Comm. Comm’n No. 12-0598, at 131 (Order-Final Aug. 20, 2013). ATXI witness, Darrell Hughes, testified regarding the status of AXTI’s financial situation, Ameren’s financial situation, the description of the capital structure of ATXI, and a chart regarding AXTI’s expected cash flow. *Id.* at 131-132; *Ameren Transmission*, Ill. Comm. Comm’n No. 12-0598, at 2-7 (ATXI Exhibit 6.0 Nov. 2012) (A-594). GBX presented no similar evidence in this case. Instead, we are asked to rely upon naked generalizations by GBX unsupported by any documentation.

GBX also cites *Northern Moraine Wastewater Reclamation Dist.*, 392 Ill. App. 3d at 569, for support. However, the company in *Northern Moraine* did not rely solely on assurances of financial support from its parent company. *Northern Moraine Wastewater Reclamation Dist.*, 392 Ill. App. 3d at 569. Instead, it also demonstrated financial capability through evidence of substantial net worth, testimony from a staff member affirming its ability to operate and maintain facilities, and proof of acquired system assets. *Id.* *Northern Moraine* is inapplicable to GBX’s situation, as the facts clearly demonstrate that GBX failed to provide any evidence of financial capability, relying principally on a purported “rich parent” argument.

3. This Court’s precedent undermines GBX’s assertions.

A case substantially similar to the instant case has been before the ICC and this Court once before. In *Citizens Valley*, this Court made clear that unsupported assertions of

financial support do not constitute evidence of financial capability. 28 Ill. 2d 294, 303-304 (1963). In *Citizens Valley*, this Court addressed a dispute between an established utility, Citizens Valley View Company, and a newly formed utility, Sunny Acres Sewer & Water Co., over competing applications to the ICC for the right to provide water and sewer services to a proposed subdivision in DuPage County. *Id.* at 296-97. The ICC had granted Sunny Acres a CPCN, despite Citizens Valley’s existing operations in adjacent areas and its competing application. *Id.* at 297-98.

A key deficiency identified by the Court was the lack of substantial evidence supporting Sunny Acres’ financial capability to provide the relevant services. *Id.* at 304. The ICC had accepted a vague assurance from Joseph Johnson, a principal of Sunny Acres, who testified that he and his brother were financially able to fund the utility’s infrastructure. *Id.* However, the Court found this pledge insufficient. *Id.* There was no documentation or clarity on whether the funds would be provided as a loan, equity investment, or by other means. *Id.* Sunny Acres’ *pro forma* balance sheet listed the entire \$1.21 million needed for infrastructure as “accounts payable,” with only \$1,000 in net worth and no provision for debt retirement or interest payments. *Id.*

In contrast to GBX, *Citizens Valley* presented detailed financials, including consolidated balance sheets from its parent company and evidence of its ability to borrow funds at reasonable rates. *Id.* This Court criticized the ICC for failing to evaluate or compare the financial strength of both applicants, concluding that Sunny Acres’ financial plan lacked transparency and credibility. *Id.* This omission rendered the ICC’s finding on financial capability unsupported and contributed to the reversal of its order. *Id.* Based on this Court’s previous logic, the presence of a purportedly “rich parent” cannot serve as

evidence of financial capability under the PUA, and GBX's attempt to rely upon such evidence to satisfy the criteria under Section 8-406.1(f)(3) should be deemed insufficient.

The only other evidence of financial capability offered by GBX was testimony from its "management team" that they had experience in obtaining financing for projects (although much smaller than the Project at issue) and that GBX should be able to obtain a loan on a "project-finance basis" based on its parent company's financial relationship with various banks, once GBX secures the necessary permits and customers, which it did not have at the time of its application. (GBX Brief at 38; R. 339-43). Essentially, GBX needs the CPCN to allow it to take the land needed from Illinois landowners through eminent domain before it can secure a loan or get customers. The ICC issued the CPCN to GBX to allow it to use Illinois farms as collateral to become bankable. This is not the process contemplated by Section 8-406.1(f)(3), and as such, it should be rejected by this Court.

4. GBX's references to its matter before the MPSC are improper, and highlight its errors in Illinois.

Finally, GBX and *amicus curiae* Illinois Chamber of Commerce ("Chamber") mislead this Court by citing the MPSC 2023 amendment to a CPCN which granted modifications to the GBX transmission line in Missouri it previously approved in 2019. GBX cites to the amendment for the proposition that the MPSC expressly found that it has the qualifications and financial ability to develop, construct and operate the project without reviewing GBX's financial information. MPSC, Report and Order on Remand (Mar. 19, 2019), File No. EA-2016-0358, at 21, 43 (A-626).⁴ (GBX Brief at 40; Chamber Brief at 14). Contrary to GBX and the Chamber's contentions, the MPSC considered confidential

⁴ Available at <https://efis.psc.mo.gov/Document/Display/762090>

financial information supplied by GBX upon which the MPSC made its finding that GBX and Invenergy have the financial ability to develop, construct and operate the Project.

GBX provided the MPSC Staff with its confidential financial information and emphasized in its brief that “after analyzing the financial statements of both Invenergy and Clean Line, Mr. Murray (MPSC Staff witness) concluded that “Invenergy’s financial resources are stronger than Clean Line’s.” (Initial Post-Hearing Brief on Remand of Applicant Grain Belt Express Clean Line, LLC, EA-2016-0358, p. 16). Despite GBX’s assertions, the MPSC’s findings on financial ability do not support the ICC’s erroneous finding that GBX was capable of financing the Project under Illinois law because unlike the ICC, financial documents were actually presented to the MPSC. Nevertheless--and unfortunately for GBX--even if its failure to present any financing capability evidence to the ICC did not trigger the adverse *Beery* presumption, the evidence it presented to the MPSC is of no use to it in this case. Section 10-103 of the PUA provides, in relevant part, as follows:

Sec. 10-103. In all proceedings, investigations or hearings conducted by the Commission, except in the disposition of matters which the Commission is authorized to entertain or dispose of on an ex parte basis, any finding, decision or order made by the Commission **shall be based exclusively on the record for decision in the case**, which shall include only the transcript of testimony and exhibits together with all papers and requests filed **in the proceeding**, including, in contested cases, the documents and information described in Section 10-35 of the Illinois Administrative Procedure Act.

220 ILCS 5/10-103 (emphasis added). Evidence that GBX chose to present to another regulatory agency in another state is not part of the record in this proceeding, and thus under Section 10-103 of the PUA, the ICC (and any reviewing court) may not consider it.

GBX clearly did not meet its burden of proof at the ICC, and a review of ICC precedent on project financing and case law on “rich parent” support solidifies the Appellate Court’s Opinion. The Appellate Court’s Opinion should be affirmed.

II. OTHER VALID BASES TO REVERSE ICC DECISION

A. The ICC’s 2023 Order is Statutorily Deficient for not addressing Section 8-503 of the PUA

The new special legislation passed for GBX specifically identifies Section 8-406.1(f), and its three criteria, as the standard the ICC had to consider. 220 ILCS 5/8-406(b-5). The standards of Section 8-503 are also specifically mentioned. *Id.* Those standards remain the same. While the standards of Sections 8-406(b)(1) and 8-406(f)(1) are presumed via specific legislative mandate, the factors contained in Section 8-503 are not presumed, so if not met, the proposed project must be denied.

Authority to order improvements to public utility facilities is vested with the ICC in Section 8-503. *Sheffler v. Commonwealth Edison Co.*, 399 Ill. App. 3d 51, 60 (1st Dist. 2010); 220 ILCS 5/8-503. Section 8-503 requires necessity for “the additions and improvements to implement the more reliable service.” *Kreutzer v. Illinois Commerce Comm’n*, 404 Ill. App. 3d 791 (2nd Dist. 2010); 220 ILCS 5/8-503. In addition, the ICC must find that the additions “promote the development of any effectively competitive electricity market,” or “in any other way to secure adequate service or facilities.” 220 ILCS 5/8-503. These are the elements that must be shown “after a hearing.” *Id.*

In its Application, GBX correctly asserted that a decision granting a CPCN shall include an order pursuant to Section 8-503 authorizing or directing the construction of the high voltage electric service line and related facilities. (C. 33). It also noted that the new special legislation of Section 8-406(b-5) states that GBX must show that it has otherwise

satisfied the criteria of Section 8-406.1 **and** the criteria of Section 8-503. (C. 34). It claimed that the criteria required to satisfy Section 8-406.1(f)(1) overlaps with the criteria required to satisfy Section 8-503 and concludes that “Since the Commission must deem as satisfied the criteria for §8-406.1(f)(1), the Commission **must** also deem as satisfied the criteria for §8-503.” (C. 34) (emphasis added). GBX argues that “in the alternative to the presumptive finding mandated by [Section 8-406(b-5)], the ICC should find that the Project satisfies the criteria of §8-503” and that it should specify that construction of the Project shall commence within five years, because it “anticipates” commencing Phase II of the project within that period of time. (C. 104).

First, as discussed further below, the ICC cannot grant GBX five years to complete its project. Section 8-406(f) states that the CPCN must be exercised within two years. 220 ILCS 5/8-406(f). This Section was not amended or altered by the new special legislation of Section 8-406(b-5). Section 8-406(b-5) does not contain a timeline at all.

Second, the authorization is premature. GBX is not capable of exercising the CPCN since it does not currently 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, it does not have any customers, and it does not have sufficient funding to start doing transmission work. This emphasizes the reason the PUA only applies to “public utilities” as defined in the PUA. 220 ILCS 5/3-105. If a “public utility” already owns infrastructure, it can easily begin construction within the two years

In addition, to argue that the criteria of Section 8-503 are assumed because the criteria of Section 8-406(f) are assumed, adds a condition to the special legislation that is contrary to the plain language of the PUA. Section 8-406(b-5) states that authority under

Section 8-503 will be found ***if*** the “Qualifying Direct Current Project” (“QDCP”) satisfies the criteria of 8-406, 8-406.1, ***and*** the criteria of Section 8-503. 220 ILCS 5/8-406(b-5). The ICC cannot read into a statute limitations or exceptions that the legislature itself did not create. *People ex rel. Department of Professional Regulation v. Manos*, 202 Ill. 2d 563, 568 (2002).

The plain language of Section 8-406(b-5) requires that GBX comply with Section 8-503 in order to obtain a CPCN. Because GBX made no attempt to satisfy the requirements of Section 8-503, the ICC’s 2023 Order based upon the ICC’s erroneous interpretation of Section 8-406(b-5) that did not require such compliance must be reversed.

B. The Timeframe for Effectiveness of CPCN Granted by Order Goes Beyond ICC’s Authority

The ICC’s 2023 Order authorizes GBX to construct the Project, with the construction “to commence within five years (60 months) following the date of this Order, unless modified by the Commission.” (C. 5940). A reversal of the ICC’s 2023 Order is warranted as the time period in which GBX is authorized to begin construction exceeds the maximum effective period of a CPCN under the PUA. Section 8-406(f) of the PUA specifically provides, “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.” 220 ILCS 5/8-406(f) (Emphasis added).

The ICC does not have the statutory jurisdiction to grant a CPCN that may be exercised beyond the 2-year timeframe mandated by Section 406(f). *Id.* This Court has specifically held that the ICC “cannot extend the vitality of a power granted by its certificate beyond the statutory limit” of two years. *Chicago Rys. Co.*, 336 Ill. at 70. Further, the ICC cannot deem itself entitled to authorize the extended timeframe based on

its ability to alter or modify a CPCN because the power to alter or modify a CPCN “is restricted to such alterations and modifications as are of minor character and which do not affect substantial rights of the person or corporation holding a certificate, or the rights of any other person or utility.” *Illini Coach Co., Inc. v. Illinois Greyhound Lines, Inc.*, 403 Ill. 21, 28 (1949). Allowing GBX the ability to exercise the authority granted under a stale CPCN for a timeframe that is more than twice the statutory limit certainly does not fall within the category of minor alterations or modifications permitted by the PUA.

The ICC’s extension of Section 8-406(f)’s CPCN exercise period from two years to five years is nothing less than the ICC’s *sua sponte* amendment of the PUA. The ICC thought the language in Section 8-406.1(i) stating that it can authorize the Project “in the manner and time specified in the Order,” gave it discretion “to alter or modify the certificate for the Applicant.” (C. 5934). However, the ICC failed to reconcile that with the language in Section 8-406(f), requiring that the CPCN be exercised within two years of its issuance. This is easily done. Reading Section 406 as a whole and so that all sub-sections have meaning, the two-year period in Section 8-406(f) is the upper limit for exercise of the CPCN. The ICC can modify that period *within that time frame*. It could have ordered a period of less than one year, two years, or anything in-between. What it could not do is order the exercise of the CPCN within a period of more than two years. Section 8-406(f) does not grant the ICC unlimited discretion on how long a CPCN will remain valid. The ICC’s attempt to amend Section 8-406(f) is both contrary to the plain language of the statute and manifestly absurd. Two years means two years.

In accordance with Section 8-406(f), GBX is required to exercise the authority granted under the Order within 2 years from March 8, 2023, or the authority conferred

under the Order is null and void. 220 ILCS 5/8-406(f). The ICC simply does not have the statutory power to provide the 5-year effectiveness set forth in the ICC's 2023 Order. (C. 5940). Because the 2023 ICC Order attempts to extend the authority of the CPCN beyond the scope permitted by Section 8-406(f) of the PUA, this constitutes reversible error that requires the 2023 ICC Order to be overturned. See 220 ILCS 5/8-406(f); *Chicago Rys. Co.*, 336 Ill. at 68-70.

C. The ICC's reservation of the power to prohibit GBX from allocating to ratepayers the cost of its interstate electricity transmission line violates 220 ILCS 5/10-201(e)(iv)(B).

The ICC granted a CPCN to GBX on the basis of a cost allocation condition under which the ICC arrogates to itself the power to approve or disapprove the rates, terms and conditions of GBX's transmission of bulk electricity in interstate commerce.⁵ Because that power lies within FERC's plenary and exclusive jurisdiction, the 2023 ICC Order violates 220 ILCS 5/10-201(e)(iv)(B) as the ICC is devoid of subject matter jurisdiction to either impose or enforce its purported cost allocation condition.

The ICC's approval of GBX's proposed route is a valid exercise of the ICC's siting authority. But siting GBX's transmission line does not involve the allocation of its costs. The ICC threatens to rescind the siting authority it granted to GBX in the 2023 ICC Order if it determines that its Cost Allocation Condition has not been obeyed. That is not a valid exercise of siting authority.

⁵ "Cost allocation" is FERC-speak for determining who must pay for building and/or operating an interstate electricity transmission line, and how much they must pay. See, e.g., *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009) ("ICC-FERC 1") (first remand to FERC regarding allocating costs of new high-voltage transmission line within PJM); *Illinois Commerce Commission v. FERC*, 756 F.3d 556 (7th Cir. 2014) ("ICC-FERC 2") (second remand to FERC in the same case regarding allocating costs of the same interstate transmission line).

Through GBX Witness Shine's testimony, GBX offered to hand over to the ICC, a state regulatory body, veto power over whether GBX could recover the costs of its Project from Illinois ratepayers by means of regional cost allocation through PJM or MISO. (C. 1036) (the "Cost Allocation Condition").

The ICC's Cost Allocation Condition is stated in the 2023 ICC Order at 50, as follows:

As the Commission found in 2015, the Commission has the authority to enforce the Cost Allocation Condition. The Commission has the continuing jurisdiction over any CPCN that is granted and within the authority of the Commission, it may rescind a CPCN if a change in facts or circumstances warrants rescission. Grain Belt Express does not have a right to recover its costs through RTO regional cost allocation. As such, the Commission will incorporate a Cost Allocation Condition whereby Grain Belt Express will have to both obtain permission from the Commission to utilize cost allocation to recover costs from Illinois retail electricity ratepayers and to demonstrate to the applicable RTO or RTOs that the benefits of the Project were such that costs should be allocated to all customers through the RTO's transmission tariff.

(C. 5893).

1. The Applicable PUA Section

Section 10-201(e)(iv)(B) of the PUA, provides as follows,

(e) Powers and duties of Reviewing Court:

(iv) The court **shall reverse** a Commission rule, regulation, order or decision, in whole or in part, if it finds that:

B. The rule, regulation, order or decision **is without the jurisdiction of the Commission;**

220 ILCS 5/10-201(e)(iv)(B) (emphasis added).

2. GBX plans to provide interstate transmission service

GBX's own special legislation, Section 8-406(b-5) of the PUA defines a "qualifying direct current applicant" (which is what GBX claims to be) as "...an entity that seeks to provide direct current bulk transmission service for the purpose of transporting

electric energy in interstate commerce.” 220 ILCS 5/8-406(b-5). GBX has confirmed that this is precisely what it plans to do. (C. 25-26, 32). GBX admits that it will be subject to FERC jurisdiction (C. 106), and GBX Witness Shine testified to that effect. (C. 1037). GBX has committed to turn over operational control of its project to one or more regional transmission organizations such as SPP, MISO or PJM. (C. 77-78). GBX therefore admits on the record in this case that its project will be part of such RTO’s regional transmission operations and subject to FERC’s interstate transmission jurisdiction. If GBX seeks to allocate the cost of its transmission line to ratepayers, under the FPA and FERC Orders 2000 and 1000, that cost allocation will be done on a regional (or perhaps inter-regional) basis, and will be subject to the exclusive, plenary, all-encompassing and preemptive jurisdiction of FERC. *See* 16 U.S.C. §§ 824(a), (b) (noting that the transmission of electric energy in interstate commerce is subject to federal regulation).

That GBX has not yet asked for cost allocation is irrelevant. Section 201(e)(iv)(B) of the PUA, 220 ILCS 5/10-201(e)(iv)(B), mandates reversal of the 2023 ICC Order because the ICC lacks jurisdiction to issue it. This section does not require a court to wait until the ICC tries to enforce an order that is outside its jurisdiction.

Despite this, GBX and the ICC both assert that the ICC, a state regulatory agency, can impose and enforce the Cost Allocation Condition and thereby dictate what the ICC believes is the best way to allocate the cost of an interstate bulk electricity transmission line. (GBX Brief at 53; ICC Brief at 35-36).

The ICC’s attempt to control whether costs of GBX’s proposed line should be allocated to Illinois ratepayers goes directly the issue of the rates, terms and conditions of interstate transmission service that GBX would offer. Interstate transmission is exclusively

a matter of federal jurisdiction. 16 U.S.C. §§ 824(a), (b). FERC's jurisdiction over interstate transmission is exclusive and plenary. *Federal Power Comm'n v. Southern Cal. Edison Co.*, 376 U.S. 205, 215-16 (1964). The federal government's preemption of the field of regulating both wholesale electricity markets and interstate transmission is not simply a matter of administrative law but is rather based on the Supremacy Clause of the U.S. Constitution. *Naragansett Electric Co. v. Burke*, 119 R.I. 559, 564 (1977). The federal government has displaced any state jurisdiction and preempted the entire field of interstate transmission and wholesale electricity markets. *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 955, 965-66 (1986).

That GBX freely and graciously offered the Cost Allocation Condition to the ICC carries no weight. GBX cannot confer upon the ICC subject matter jurisdiction over FERC-jurisdictional interstate electric transmission service. The ICC's lack of subject matter jurisdiction over the cost allocation for interstate transmission means that it lacks the inherent power to make any order concerning that condition. *In re Estate of Steinfeld*, 158 Ill. 2d 1, 12 (1994).

This Court must reverse the ICC's 2023 Order pursuant to Section 10-201(e)(iv)(B) of the PUA because by granting a CPCN to GBX premised, even in part, on the Cost Allocation Condition, the ICC transgresses its jurisdiction and unlawfully arrogates to itself power over the rates, terms and conditions for the transmission of electricity in interstate commerce. This state of affairs simply cannot stand as a matter of law.

D. Section 8-406(b-5) is unconstitutional.

The Appellate Court reversed the ICC's decision without addressing appellants' remaining constitutional issues. Appellate Court Order, ¶¶ 23-24, 39. Should this Court

determine that it has jurisdiction to consider the constitutional challenges to Section 8-406(b-5), the Respondent-Appellees respectfully adopt the arguments raised in The Landowner Alliance’s Response to the Opening Brief of the ICC and ask this Court to hold that Section 8-406(b-5) is unconstitutional.

CONCLUSION

The 2023 ICC Order is not merely flawed; it is without legal or evidentiary support. It allows a private, for-profit developer the extraordinary power to use eminent domain without requiring the most basic statutory showing: that the applicant is presently capable of financing the Project. GBX offered no customers, no contracts, no bank commitments, and no financial documents. Instead, it offered promises, predictions, and a “trust us” narrative that would be laughed out of any legitimate lending institution. The ICC’s acceptance of this evidentiary vacuum is not discretion, it is dereliction.

The Appellate Court correctly recognized that Section 8-406.1(f)(3) imposes a condition precedent: GBX must prove it *is* capable of financing the Project *before* a CPCN is issued. The ICC’s attempt to rewrite this requirement through the so-called “Revised Financing Condition” is a transparent end-run around the statute. It allows GBX to obtain a CPCN now and prove financing capability later—if ever. That is not compliance with the law; it is circumvention of the law. And it is precisely the kind of agency overreach that this Court has repeatedly rejected.

This case is not about clean energy. GBX’s project is not a public utility endeavor. It is a speculative land grab, enabled by bespoke legislation and rubber-stamped by a captured regulator. It offers no access to Illinois consumers, no benefit to Illinois

communities, and no accountability to Illinois courts. It is a private toll road for electricity, built on the backs of Illinois farmers, with no exits and no public use.

The 2023 ICC Order exceeds the agency's statutory authority, violates the plain language of the PUA, ignores the evidentiary record, and requires a radical departure from the standard of proof. It also tramples on the constitutional rights of landowners by granting eminent domain powers to a shell company with no demonstrated financial capacity. The Appellate Court's decision must be affirmed—not just to uphold the law, but to prevent the law from being rewritten by those it is meant to restrain.

This Court should send a clear message: the power of eminent domain is not for sale. It cannot be bought with special legislation, nor leased through regulatory indulgence. It must be earned—through evidence, through compliance, and through respect for the rule of law. GBX has earned nothing. Its CPCN must be revoked. The judgment of the Appellate Court should be affirmed in full.

Respectfully submitted,

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Nos. 131026 & 131032 (Consolidated)**IN THE SUPREME COURT OF ILLINOIS**

CONCERNED CITIZENS & PROPERTY	)	
OWNERS, ILLINOIS AGRICULTURAL	)	
ASSOCIATION a/k/a ILLINOIS FARM	)	
BUREAU, CONCERNED PEOPLE ALLIANCE,	)	
NAFSICA ZOTOS, and YORK TOWNSHIP	)	
IRRIGATORS,	)	
	)	
Respondents-Appellees,	)	
	)	On Petition for Leave to
v.	)	Appeal from the Appellate
	)	Court of Illinois, Fifth District,
	)	Appeal No. 5-23-0271
	)	
ILLINOIS COMMERCE COMMISSION,	)	On appeal from the Illinois
GRAIN BELT EXPRESS LLC, CLEAN GRID	)	Commerce Commission,
ALLIANCE, HANSON AGGREGATES	)	Docket No. 22-0499
MIDWEST, INC., GREYROCK, LLC,	)	
CITIZENS UTILITY BOARD, LEONARD	)	
BRAD DAUGHERTY, as TRUSTEE OF THE	)	
LEONARD DAUGHERTY TRUST DATED	)	
JULY 9, 2010, REX ENCORE FARMS LLC, and	)	
ILLINOIS MANUFACTURERS ASSOCIATION,	)	
	)	
Petitioners-Appellants.	)	

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 50 pages.

/s/Charles Y. Davis

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2025, I electronically filed the foregoing with the Clerk of the Illinois Supreme Court, using the eFileIL system, and I hereby certify that a copy of the foregoing instrument was served upon:

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via electronic transmission on this 3rd day of September, 2025.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

/s/ Charles Y. Davis

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220 ILCS 5/8-406. Certificate of public convenience and necessity.

[***]

(b) No public utility shall begin the construction of any new plant, equipment, property, or facility which is not in substitution of any existing plant, equipment, property, or facility, or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

(b-5) As used in this subsection (b-5):

“Qualifying direct current applicant” means an entity that seeks to provide direct current bulk transmission service for the purpose of transporting electric energy in interstate commerce.

“Qualifying direct current project” means a high voltage direct current electric service

line that crosses at least one Illinois border, the Illinois portion of which is physically located within the region of the Midcontinent Independent System Operator, Inc., or its successor organization, and runs through the counties of Pike, Scott, Greene, Macoupin, Montgomery, Christian, Shelby, Cumberland, and Clark, is capable of transmitting electricity at voltages of 345 kilovolts or above, and may also include associated interconnected alternating current interconnection facilities in this State that are part of the proposed project and reasonably necessary to connect the project with other portions of the grid.

Notwithstanding any other provision of this Act, a qualifying direct current applicant that does not own, control, operate, or manage, within this State, any plant, equipment, or property used or to be used for the transmission of electricity at the time of its application or of the Commission's order may file an application on or before December 31, 2023 with the Commission pursuant to this Section or Section 8-406.1 for, and the Commission may grant, a certificate of public convenience and necessity to construct, operate, and maintain a qualifying direct current project. The qualifying direct current applicant may also include in the application requests for authority under Section 8-503. The Commission shall grant the application for a certificate of public convenience and necessity and requests for authority under Section 8-503 if it finds that the qualifying direct current applicant and the proposed qualifying direct current project satisfy the requirements of this subsection and otherwise satisfy the criteria of this Section or Section 8-406.1 and the criteria of Section 8-503, as applicable to the application and to the extent such criteria are not superseded by the provisions of this subsection. The Commission's order on the application for the certificate of public convenience and necessity shall also include the Commission's findings and determinations on the request or requests for authority pursuant to Section 8-503. Prior to filing its application under either this Section or Section 8-406.1, the qualifying direct current

applicant shall conduct 3 public meetings in accordance with subsection (h) of this Section. If the qualifying direct current applicant demonstrates in its application that the proposed qualifying direct current project is designed to deliver electricity to a point or points on the electric transmission grid in either or both the PJM Interconnection, LLC or the Midcontinent Independent System Operator, Inc., or their respective successor organizations, the proposed qualifying direct current project shall be deemed to be, and the Commission shall find it to be, for public use. If the qualifying direct current applicant further demonstrates in its application that the proposed transmission project has a capacity of 1,000 megawatts or larger and a voltage level of 345 kilovolts or greater, the proposed transmission project shall be deemed to satisfy, and the Commission shall find that it satisfies, the criteria stated in item (1) of subsection (b) of this Section or in paragraph (1) of subsection (f) of Section 8-406.1, as applicable to the application, without the taking of additional evidence on these criteria. Prior to the transfer of functional control of any transmission assets to a regional transmission organization, a qualifying direct current applicant shall request Commission approval to join a regional transmission organization in an application filed pursuant to this subsection (b-5) or separately pursuant to Section 7-102 of this Act. The Commission may grant permission to a qualifying direct current applicant to join a regional transmission organization if it finds that the membership, and associated transfer of functional control of transmission assets, benefits Illinois customers in light of the attendant costs and is otherwise in the public interest. Nothing in this subsection (b-5) requires a qualifying direct current applicant to join a regional transmission organization. Nothing in this subsection (b-5) requires the owner or operator of a high voltage direct current transmission line that is not a qualifying direct current project to obtain a certificate of public convenience and necessity to the extent it is not otherwise required by this Section 8-406 or any other provision of this Act.

220 ILCS 5/8-406.1 Certificate of public convenience and necessity; expedited procedure.

(a) A public utility may apply for a certificate of public convenience and necessity pursuant to this Section for the construction of any new high voltage electric service line and related facilities (Project). To facilitate the expedited review process of an application filed pursuant to this Section, an application shall include all of the following:

(1) Information in support of the application that shall include the following:

(A) A detailed description of the Project, including location maps and plot plans to scale showing all major components.

(B) The following engineering data:

(i) a detailed Project description including:

(I) name and destination of the Project;

(II) design voltage rating (kV);

(III) operating voltage rating (kV); and

(IV) normal peak operating current rating;

(ii) a conductor, structures, and substations description including:

(I) conductor size and type;

(II) type of structures;

(III) height of typical structures;

(IV) an explanation why these structures were selected;

(V) dimensional drawings of the typical structures to be used in the Project; and

(VI) a list of the names of all new (and existing if applicable) substations or switching stations that will be associated with the proposed new high voltage electric service line;

(iii) the location of the site and right-of-way including:

(I) miles of right-of-way;

(II) miles of circuit;

(III) width of the right-of-way; and

(IV) a brief description of the area traversed by the proposed high voltage electric service line, including a description of the general land uses in the area and the type of terrain crossed by the proposed line;

(iv) assumptions, bases, formulae, and methods used in the development and preparation of the diagrams and accompanying data, and a technical description providing the following information:

(I) number of circuits, with identification as to whether the circuit is overhead or underground;

(II) the operating voltage and frequency; and

(III) conductor size and type and number of conductors per phase;

(v) if the proposed interconnection is an overhead line, the following additional information also must be provided:

(I) the wind and ice loading design parameters;

(II) a full description and drawing of a typical supporting structure, including strength specifications;

(III) structure spacing with typical ruling and maximum spans;

(IV) conductor (phase) spacing; and

(V) the designed line-to-ground and conductor-side clearances;

(vi) if an underground or underwater interconnection is proposed, the following additional information also must be provided:

(I) burial depth;

(II) type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling;

(III) cathodic protection scheme; and

(IV) type of dielectric fluid and safeguards used to limit potential spills in waterways;

(vii) technical diagrams that provide clarification of any item under this item (1) should be included; and

(viii) applicant shall provide and identify a primary right-of-way and one or more alternate rights-of-way for the Project as part of the filing. To the extent applicable, for each right-of-way, an applicant shall provide the information described in this subsection (a). Upon a showing of good cause in its filing, an applicant may be excused from providing and identifying alternate rights-of-way.

(2) An application fee of \$100,000, which shall be paid into the Public Utility Fund at the time the Chief Clerk of the Commission deems it complete and accepts the filing.

(3) Information showing that the utility has held a minimum of 3 pre-filing public meetings to receive public comment concerning the Project in each county where the Project is to be located, no earlier than 6 months prior to the filing of the application. Notice of the public meeting shall be published in a newspaper of general circulation within the affected county once a week for 3 consecutive weeks, beginning no earlier than one month prior to the first public meeting. If the Project traverses 2 contiguous counties and where in one county the transmission line mileage and

number of landowners over whose property the proposed route traverses is $\frac{1}{5}$ or less of the transmission line mileage and number of such landowners of the other county, then the utility may combine the 3 pre-filing meetings in the county with the greater transmission line mileage and affected landowners. All other requirements regarding pre-filing meetings shall apply in both counties. Notice of the public meeting, including a description of the Project, must be provided in writing to the clerk of each county where the Project is to be located. A representative of the Commission shall be invited to each pre-filing public meeting.

For applications filed after the effective date of this amendatory Act of the 99th General Assembly, the Commission shall, by certified mail, notify each owner of record of the land, as identified in the records of the relevant county tax assessor, included in the primary or alternate rights-of-way identified in the utility's application of the time and place scheduled for the initial hearing upon the public utility's application. The utility shall reimburse the Commission for the cost of the postage and supplies incurred for mailing the notice.

(b) At the first status hearing the administrative law judge shall set a schedule for discovery that shall take into consideration the expedited nature of the proceeding.

(c) Nothing in this Section prohibits a utility from requesting, or the Commission from approving, protection of confidential or proprietary information under applicable law. The public utility may seek confidential protection of any of the information provided pursuant to this Section, subject to Commission approval.

(d) The public utility shall publish notice of its application in the official State newspaper within 10 days following the date of the application's filing.

(e) The public utility shall establish a dedicated website for the Project 3 weeks prior to the first public meeting and maintain the website until construction of the Project is complete. The website address shall be included in all public notices.

(f) The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:

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

(2) That the public utility 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.

(3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

(4) That the Project has complied with training and competence and Diversity Plan requirements under subsections (b) and (d) of Section 15 of the Electric Transmission Systems Construction Standards Act.

(g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before

the 30th day after the filing of the application, the Commission finds that good cause exists to extend the 150-day period.

(h) In the event the Commission grants a public utility's application for a certificate pursuant to this Section, the public utility shall pay a one-time construction fee to each county in which the Project is constructed within 30 days after the completion of construction. The construction fee shall be \$20,000 per mile of high voltage electric service line constructed in that county, or a proportionate fraction of that fee. The fee shall be in lieu of any permitting fees that otherwise would be imposed by a county. Counties receiving a payment under this subsection (h) may distribute all or portions of the fee to local taxing districts in that county.

(i) Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

220 ILCS 5/8-503. Additions, improvements and new structures; joint construction or other actions.

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; provided, however, that the Commission shall have no authority to order the construction, addition or extension of any electric generating plant unless the public utility requests a certificate for the construction of the plant pursuant to Section 8-406 and in conjunction with such request also requests the entry of an order under this Section. If any additions, extensions, repairs, improvements or changes, or any new structure or structures, which the Commission has authorized or ordered to be erected, require joint action by 2 or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been authorized or ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of cost of such additions, extensions, repairs, improvements or changes or new structure

or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

Nothing in this Act shall prevent the Commission, upon its own motion or upon petition, from ordering, after a hearing, the extension, construction, connection or interconnection of plant, equipment, pipe, line, facilities or other physical property of a public utility in whatever configuration the Commission finds necessary to ensure that natural gas is made available to consumers at no increased cost to the customers of the utility supplying the gas.

Whenever the Commission finds, after a hearing, that the public convenience or necessity requires it, the Commission may order public utilities subject to its jurisdiction to work jointly (1) for the purpose of purchasing and distributing natural gas or gas substitutes, provided it shall not increase the cost of gas to the customers of the participating utilities, or (2) for any other reasonable purpose.

220 ILCS 5/1-102. Findings and Intent.

The General Assembly finds that the health, welfare and prosperity of all Illinois citizens require the provision of adequate, efficient, reliable, environmentally safe and least-cost public utility services at prices which accurately reflect the long-term cost of such services and which are equitable to all citizens. It is therefore declared to be the policy of the State that public utilities shall continue to be regulated effectively and comprehensively. It is further declared that the goals and objectives of such regulation shall be to ensure

(a) Efficiency: the provision of reliable energy services at the least possible cost to the citizens of the State; in such manner that:

(i) physical, human and financial resources are allocated efficiently;

(ii) all supply and demand options are considered and evaluated using comparable terms and methods in order to determine how utilities shall meet their customers' demands for public utility services at the least cost;

(iii) utilities are allowed a sufficient return on investment so as to enable them to attract capital in financial markets at competitive rates;

(iv) tariff rates for the sale of various public utility services are authorized such that they accurately reflect the cost of delivering those services and allow utilities to recover the total costs prudently and reasonably incurred;

(v) variation in costs by customer class and time of use is taken into consideration in authorizing rates for each class.

(b) Environmental Quality: the protection of the environment from the adverse external costs of public utility services so that

(i) environmental costs of proposed actions having a significant impact on the environment and the environmental impact of the alternatives are identified, documented and considered in the regulatory process;

(ii) the prudently and reasonably incurred costs of environmental controls are recovered.

(c) Reliability: the ability of utilities to provide consumers with public utility services under varying demand conditions in such manner that suppliers of public utility services are able to provide service at varying levels of economic reliability giving appropriate consideration to the costs likely to be incurred as a result of service interruptions, and to the costs of increasing or maintaining current levels of reliability consistent with commitments to consumers.

(d) Equity: the fair treatment of consumers and investors in order that

(i) the public health, safety and welfare shall be protected;

(ii) the application of rates is based on public understandability and acceptance of the reasonableness of the rate structure and level;

(iii) the cost of supplying public utility services is allocated to those who cause the costs to be incurred;

(iv) if factors other than cost of service are considered in regulatory decisions, the rationale for these actions is set forth;

(v) regulation allows for orderly transition periods to accommodate changes in public utility service markets;

(vi) regulation does not result in undue or sustained adverse impact on utility earnings;

(vii) the impacts of regulatory actions on all sectors of the State are carefully weighed;

(viii) the rates for utility services are affordable and therefore preserve the availability of such services to all citizens.

It is further declared to be the policy of the State that this Act shall not apply in relation to motor carriers and rail carriers as defined in the Illinois Commercial Transportation Law, or to the Commission in the regulation of such carriers.

Nothing in this Act shall be construed to limit, restrict, or mitigate in any way the power and authority of the State's Attorneys or the Attorney General under the Consumer Fraud and Deceptive Business Practices Act.

220 ILCS 5/3-105. Public Utility.

(a) “Public utility” means and includes, except where otherwise expressly provided in this Section, every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers 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, 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 communications purposes;

(2) the disposal of sewerage; or

(3) the conveyance of oil or gas by pipe line.

(b) “Public utility” does not include, however:

(1) public utilities that are owned and operated by any political subdivision, public institution of higher education or municipal corporation of this State, or public utilities that are owned by such political subdivision, public institution of higher education, or municipal corporation and operated by any of its lessees or operating agents;

(2) water companies which are purely mutual concerns, having no rates or charges for services, but paying the operating expenses by assessment upon the members of such a company and no other person;

(3) electric cooperatives as defined in Section 3-119;

(4) the following natural gas cooperatives:

(A) residential natural gas cooperatives that are not-for-profit corporations established for the purpose of administering and operating, on a cooperative basis, the furnishing of natural gas to residences for the benefit of their members who are residential consumers of natural gas. For entities qualifying as residential natural gas cooperatives and recognized by the Illinois Commerce Commission as such, the State shall guarantee legally binding contracts entered into by residential natural gas cooperatives for the express purpose of acquiring natural gas supplies for their members. The Illinois Commerce Commission shall establish rules and regulations providing for such guarantees. The total liability of the State in providing all such guarantees shall not at any time exceed \$1,000,000, nor shall the State provide such a guarantee to a residential natural gas cooperative for more than 3 consecutive years; and

(B) natural gas cooperatives that are not-for-profit corporations operated for the purpose of administering, on a cooperative basis, the furnishing of natural gas for the benefit of their members and that, prior to 90 days after the effective date of this amendatory Act of the 94th General Assembly, either had acquired or had entered into an asset purchase agreement to acquire all or substantially all of the operating assets of a public utility or natural gas cooperative with the intention of operating those assets as a natural gas cooperative;

(5) sewage disposal companies which provide sewage disposal services on a mutual basis without establishing rates or charges for services, but paying the operating expenses by assessment upon the members of the company and no others;

(6) (Blank);

(7) cogeneration facilities, small power production facilities, and other qualifying facilities, as defined in the Public Utility Regulatory Policies Act and regulations promulgated thereunder, except to the extent State regulatory jurisdiction and action is required or authorized by federal

law, regulations, regulatory decisions or the decisions of federal or State courts of competent jurisdiction;

(8) the ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel and the selling of compressed natural gas at retail to the public for use only as a motor vehicle fuel;

(9) alternative retail electric suppliers as defined in Article XVI; and

(10) the Illinois Power Agency.

(c) An entity that furnishes the service of charging electric vehicles does not and shall not be deemed to sell electricity and is not and shall not be deemed a public utility notwithstanding the basis on which the service is provided or billed. If, however, the entity is otherwise deemed a public utility under this Act, or is otherwise subject to regulation under this Act, then that entity is not exempt from and remains subject to the otherwise applicable provisions of this Act. The installation, maintenance, and repair of an electric vehicle charging station shall comply with the requirements of subsection (a) of Section 16-128 and Section 16-128A of this Act.

For purposes of this subsection, the term “electric vehicles” has the meaning ascribed to that term in Section 10 of the Electric Vehicle Act.

220 ILCS 5/8-509. Eminent Domain.

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1 or 8-503 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. If a public utility seeks relief under this Section in the same proceeding in which it seeks a certificate of public convenience and necessity under Section 8-406.1 of this Act, the Commission shall enter its order under this Section either as part of the Section 8-406.1 order or at the same time it enters the Section 8-406.1 order. If a public utility seeks relief under this Section after the Commission enters its order in the Section 8-406.1 proceeding, the Commission shall issue its order under this Section within 45 days after the utility files its petition under this Section.

This Section applies to the exercise of eminent domain powers by telephone companies or telecommunications carriers only when the facilities to be constructed are intended to be used in whole or in part for providing one or more intrastate telecommunications services classified as “noncompetitive” under Section 13-502 in a tariff filed by the condemnor. The exercise of eminent domain powers by telephone companies or telecommunications carriers in all other cases shall be governed solely by “An Act relating to the powers, duties and property of telephone companies”, approved May 16, 1903, as now or hereafter amended.

This Section applies to the exercise of eminent domain powers by an owner or operator of a pipeline designed, constructed, and operated to transport carbon dioxide to which the Commission has granted a certificate under Section 20 of the Carbon Dioxide Transportation and Sequestration Act and may seek eminent domain authority from the Commission under this Section. If the applicant of such a certificate of authority for a new carbon dioxide pipeline seeks

relief under this Section in the same proceeding in which it seeks a certificate of authority for a new carbon dioxide pipeline under Section 20 of the Carbon Dioxide Transportation and Sequestration Act, the Commission shall enter its order under this Section either as part of or at the same time as its order under the Carbon Dioxide Transportation and Sequestration Act. Notwithstanding anything to the contrary in this Section, the owner or operator of such a pipeline shall not be considered to be a public utility for any other provisions of this Act.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company	:	
d/b/a Ameren Illinois	:	
	:	
Petition for a Certificate of Public	:	
Convenience and Necessity, pursuant to	:	13-0115
Section 8-406.1 of the Illinois Public Utilities	:	
Act, and an Order pursuant to Section 8-503	:	
of the Public Utilities Act, to Construct,	:	
Operate and Maintain a New High Voltage	:	
Electric Service Line in Peoria County,	:	
Illinois.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On February 7, 2013, Ameren Illinois Company ("AIC" or the "Company") filed a Petition with the Illinois Commerce Commission ("Commission") for a Certificate of Public Convenience and Necessity ("Certificate") pursuant to Section 8-406.1 of the Public Utilities Act ("Act"), 220 ILCS 5/8-406.1, authorizing AIC to construct, operate, and maintain a new 345 kilovolt ("kV") electrical transmission line (the "Transmission Line") in Peoria County, Illinois ("Peoria Area"), connecting the existing Fargo Substation and Duck Creek-Tazewell transmission line. Authority is also requested to construct, operate, and maintain a proposed, new 345 kV switching station north of Mapleton, Illinois (the "Mapleridge Substation") and substation modifications at the Fargo Substation (which, together with the Transmission Line and all appurtenant land rights, constitute the "Project"). In addition, AIC requested an order pursuant to Sections 8-503 and 8-406.1(i) of the Act directing that the Project be built.

The Staff of the Commission ("Staff") participated in the proceeding. Leave to Intervene was granted to Kathryn and Stephen Smart.

Pursuant to due notice, an evidentiary hearing was held in the Commission's Springfield office on June 13, 2013. At the evidentiary hearings, appearances were entered by counsel on behalf of AIC and Staff. AIC presented the testimony of James L. Verhaar, a Consulting Engineer - Transmission Planning in the Transmission Policy and Planning Department of Ameren Services Company ("Ameren Services"), Roger D. Nelson, a Real Estate Supervisor for Ameren Services, Adam J. Molitor, a Transmission Project Engineer in Ameren Services' Transmission Lines Design group, Darrell E. Hughes, Supervisor Valuation and Cost of Capital - Corporate Finance for Ameren

Services, Donell Murphy, a Partner with Environmental Resources Management, and Heather Heater, a Senior Project Manager with Environmental Resources Management. Staff presented the testimony of Yassir Rashid, an Electrical Engineer in the Energy Engineering Program of the Safety & Reliability Division and Janis Freetly, a Senior Financial Analyst in the Finance Department of the Financial Analysis Division at the Commission, on behalf of Staff. The record was marked "Heard and Taken" on June 27, 2013.

II. APPLICABLE STATUTORY AUTHORITY

The expedited consideration provided for in Section 8-406.1 of the Act is available only to public utilities seeking to construct a new high voltage electric service line and related facilities. Section 8-406.1(a) sets forth in detail the information required to be filed in support of the application. The statute further provides:

- (f) The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:
 - (1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.
 - (2) That the public utility 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.
 - (3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

Section 8-406.1(g) states:

- (g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before the 30th day after the filing of the application, the

Commission finds that good cause exists to extend the 150-day period.

In addition, the statute requires that a decision granting a certificate under Section 8-406.1 shall include an order pursuant to Section 8-503 of the Act:

- (i) Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

Section 8-503 of the Act concerns, among other things, additions to or extensions of public utility facilities. This section 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; . . .

III. DESCRIPTION OF PETITIONER AND THE PROJECT

AIC is an Illinois corporation and wholly-owned subsidiary of Ameren Corporation ("Ameren"). AIC owns, operates, controls and manages within the State of Illinois certain transmission and distribution facilities for the furnishing or delivery of electricity, and is therefore a public utility within the meaning of Section 3-105(a)(1) of the Act. AIC is engaged in the business of supplying electric power and energy throughout its certificated service territory within the State of Illinois, and is therefore also an electric utility within the meaning of Section 16-102 of the Act. AIC has requested authority from the Commission to construct, operate, and maintain a new 345 kilovolt electrical transmission line to connect the existing Duck Creek-Tazewell transmission line to the Fargo Substation in AIC's Peoria service area. In conjunction with the construction of the Transmission Line, AIC proposes to construct a new 345 kV switching station and install 345 kV terminal equipment and a 345-138 kV transformer at the Fargo Substation.

IV. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

A. Filing Requirements: Engineering Data, Application Fee, Notice Requirements, and Website

Subsections 8-406.1(a), (d), and (e) of the Act contain specific requirements including generally: a provision of a complete description of the Project, engineering data, an application fee, notice requirements, and establishment of a dedicated website. Subsections 8-406.1(a)(1) and (2), contain requirements regarding engineering data, and an application fee that a utility must include in or with its application. AIC states its application included the information required by Subsection 8-406.1(a)(1) of the Act. AIC maintains it has paid the application fee of \$100,000 required by Subsection 8-406.1(a)(2). AIC asserts it held at least three public meetings to receive public comments about the Project within six months of filing the Petition pursuant to Subsection 8-406.1(a)(3). AIC filed a copy of the legal notice regarding the Petition in this proceeding; that was published in the Breeze-Courier on February 11, 2013 and February 18, 2013 within 10 days of filing the Petition and filed a Certificate of Publication as Subsection 8-406.1(d) requires. AIC also states that it established, and maintained, a dedicated website about the Project at least three weeks prior to holding the first public meeting.

Staff witness Mr. Rashid testifies that AIC has met these requirements of Section 8-406.1. He testifies that AIC's application included the detailed information about the Project as required by Subsection 8-406.1(a)(1). Staff indicates that AIC has paid the application fee that Subsection 8-406.1(a)(2) requires. In addition, Staff says AIC did hold at least three public meetings to receive public comments about the project within 6 months of filing its petition, as Subsection 8-406.1(a)(3) of the Act requires. Mr. Rashid testifies that AIC did establish a dedicated website about the proposed project at least 3 weeks prior to holding its first public meeting.

B. Route

Section 8-406.1 of the Act requires that it select two alternate routes for a project: "applicant shall provide and identify a primary right-of-way and one or more alternate rights-of-way for the Project" AIC proposed both a Primary and Alternate Route. AIC asserts the routes were selected in a comprehensive process including public and stakeholder meetings, consultation with local governmental representatives, and state regulatory bodies.

AIC states that the study of the potential routes associated with the Transmission Line was conducted through a comprehensive integrated process, where participation by stakeholders and the general public was incorporated into route development and selection. AIC says the process included holding meetings associated with the stakeholder/public process, collecting input as to what factors may be considered for route development and selection (including locations of such considerations), and allowing feedback regarding routing decisions as they have been made at each

milestone phase of route development. AIC says these meetings included the three public meetings required by Section 8-406.1 of the Act. According to AIC, each of these milestone phases of route development included a corresponding stakeholder working group meeting and at least one public open house. AIC says the integrated route development/selection and stakeholder/public process was intended to be an open and transparent process aimed at engaging potentially affected parties early and at regular intervals as routing decisions were being made. AIC testifies this facilitated not only an understanding by stakeholders and the public of the process itself, but also the need for the Project. AIC indicates the final Primary and Alternate Route for the Transmission Line was derived from this process.

AIC also indicates that after the Proposed Routes were selected for the Project, the environmental characteristics of each were evaluated in conjunction with cost, conceptual design, and constructability. AIC says the environmental-related characteristics of the proposed routes were further studied to identify those alternatives having a lesser potential for environmental impact. Concurrent with this evaluation, AIC says conceptual design considerations (such as the estimated number of angle structures or representative pole placement relative to select existing features) and the presence of existing access and easements were also evaluated.

AIC testifies that throughout the process, certain routing considerations were raised for discussion by participants. According to AIC, these considerations included prime farmland and restricted airspace, and proximity to the Peoria International Airport. AIC says route alternatives that would directly conflict, or require additional cost so as not to conflict, with the approach paths and air surfaces associated with the airport were removed from consideration. AIC also says the Wildlife Prairie State Park was a key consideration.

With respect to land rights for the routing of the Transmission Line, AIC contends it will need to acquire new easements, including all necessary and appurtenant land rights, for approximately 8.8 miles of the Primary Route of the Transmission Line. The total length of the proposed Primary Route is 15.7 miles; however, AIC indicates it already has existing easements of sufficient width along approximately 6.9 miles of this route.

As discussed by AIC witness Roger Nelson, as designed, the proposed Transmission Line will require a permanent easement 150 feet in width, the minimum easement required for long span construction. AIC claims the 150 foot wide easement is required to provide adequate clearance from the transmission line conductors to the edge of the right-of-way for operational and maintenance purposes. AIC states that on those portions of the route where the transmission line parallels existing road right-of-way or railroad right-of-way, a portion of the transmission line right-of-way may fall within the road or railroad right-of-way, or additional rights may be required.

AIC says it may, depending upon the route and final design, require additional access or temporary construction easements. During the installation of the wires, AIC

claims the construction contractor may have a need to set up equipment off the 150-foot wide right-of-way. Depending on where this might occur, AIC says there may be a need to obtain construction easements. If such easements are needed, AIC indicates they would be up to and including 150 feet in width.

AIC indicates that it currently owns property at the Fargo Substation site and along the Duck Creek-Tazewell 345 kV corridor where the proposed Mapleridge Substation will be constructed. AIC claims it may be necessary, however, to re-route an existing 69 kV line to accommodate the installation of the Mapleridge Substation. AIC says it would need to acquire additional easement rights for this 69 kV line. AIC asserts it is expected that this easement would be at least 50 feet in width. To the extent additional land rights need to be acquired, AIC says it will follow the requirements of 83 Ill. Adm. Code 300 ("Part 300") in doing so. AIC also says there may be instances where permanent access, temporary access, and construction easements are required. AIC indicates it would intend to acquire any other property or property rights needed through a negotiated process. AIC states that it cannot rule out the possibility that, should negotiations be unsuccessful, eminent domain authority could be required to obtain other property or property rights.

Staff witness Rashid testified that he conducted a review of the petition, testimony, and exhibits filed by AIC outlining the proposed routes. In addition, Mr. Rashid says he participated in a Community Representative Forum held by AIC in August, 2012. Mr. Rashid also states that he conducted a field inspection by driving along the primary and alternative routes.

C. Criteria Necessary for Grant of Certificate

Subsection 8-406.1(f) provides that the Commission shall make a finding that the Project will promote the public convenience and necessity. It also lists three criteria which must be satisfied before a Certificate may be granted. First, the Commission must find that the Project is necessary to provide adequate, reliable, and efficient service and is the least-cost means of satisfying the utility customers' service needs or will promote the development of an effectively-competitive electricity market that operates efficiently, is equitable, and is the least-cost means of satisfying those objectives. Second, a finding must be made that the utility is capable of, and has taken action to efficiently manage and supervise the construction process. Finally, there must be a finding that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

1. Necessary and Least Cost

a. AIC's Position

AIC states the proposed Project is needed for AIC to provide adequate, reliable and efficient service to the Peoria Area. AIC witness James Verhaar testifies that the Project is necessary to prevent loss of service to the Peoria Area due to the coincident

outage of two transmission elements. AIC witness Mr. Verhaar asserts that the transmission system in the Peoria Area is heavily dependent on one substation and one generating station located on the south end of the region. He states that the Peoria Area is completely dependant on supplies from these two stations. Mr. Verhaar discusses recent studies performed by Ameren Services to ensure that the performance of AIC's transmission system meets North American Electric Reliability Council ("NERC") planning standards and the Ameren Transmission Planning Criteria ("ATPC"). He states that the transmission system was assessed to identify projected transmission facility overloads and voltages outside of established limits during both normal and contingency conditions. According to AIC, its review and analysis indicates that by summer of 2016, the Peoria Area could experience a voltage collapse following the loss of two bulk electric system elements.

AIC states that in determining the need for the Project, it performed a contingency analysis, as prescribed by the NERC planning standards and the ATPC, for forecasted 2016 summer peak load conditions in the Peoria Area. Based on the potential impact from the coincident outage of Edwards Units 2 and 3, the coincident outage of the two Tazewell 345-138 kV transformers, or the coincident outage of Edwards Unit 3 and one of the two Tazewell 345-138 kV transformers, AIC says it determined that system reinforcements are needed. AIC says power flow simulations indicated that transmission facility overloading and voltage collapse would occur as a result of any of the contingency events discussed. According to AIC, the foregoing scenarios would result in a NERC Category C3 and a violation of the ATPC. AIC concludes that system reinforcements are required.

AIC proposes the Project to address these concerns with the addition of the new Mapleridge 345 kV substation on the Duck Creek-Tazewell line, the addition of 345 kV equipment and a 345-138 kV transformer at the existing Fargo Substation, and the installation of the 345 kV Transmission Line between Mapleridge and Fargo Substations. With these improvements, AIC says the post-contingency loading and voltage issues described above would be resolved. Following the addition of the Project, AIC asserts that transmission voltages would be greater than 96% for all busses immediately following the outage of Edwards Units 2 and 3, with no thermal overloads on the transmission system. In addition, AIC says no transmission voltages would be less than 98% immediately following the loss of both Tazewell 345-138 kV transformers with no thermal overloads on the transmission system. Finally, AIC indicates no thermal overloads on the transmission system or transmission voltages less than 97% occur with the coincident outage of Edwards Unit 3 and one of the two Tazewell 345-138 kV transformers. According to AIC, the Transmission Line would improve voltages, improve reliability of service, and also add capacity for future load growth in the Peoria Area. In addition, AIC claims the Project provides mitigation for transmission elements with thermal overloads due to the coincident outage of two transmission elements. In AIC's view, construction of the Project would ensure continued reliable service to customers within the Peoria Area and effectively satisfy NERC Reliability Standard TPL-003-0 and ATPC. According to AIC, based on the risk

of voltage collapse and expected load growth, the Project is necessary to provide adequate, reliable and efficient service to the Peoria Area.

AIC explains that it considered alternative projects. Ameren Exhibit 1.9 discusses the upgrades required by each project and the estimated cost to implement each project. The alternatives considered were: (1) tap the existing Duck Creek to Tazewell 345 kV line, install the new Mapleridge switching station, construct a new 345 kV line to the Fargo Substation, and add 345 kV equipment and a 345-138 kV transformer at the Fargo Substation, requiring approximately 15.7 miles of new 345 kV transmission line; (2) install a new 345 kV breaker position at Tazewell Substation, extend a 345 kV line from Tazewell Substation to Richland Switching Station, install a new 345 kV and 138 kV substation, a 345-138 kV 560 megavolt-ampere ("MVA") transformer, and a 345-138 kV 560 MVA transformer at Richland Substation, requiring approximately 30 miles of new 345 kV transmission line; and (3) install a new 345 kV breaker position at Tazewell Substation, extend a 345 kV line from Tazewell Substation to a new substation located where the existing double circuit lines 1357 and 1344 split, and install a new 345 kV and 138 kV substation and a 345-138 kV 560 MVA transformer at this new location, requiring approximately 23.5 miles of new 345 kV transmission line.

AIC states it selected option 1, for the Project (1), because AIC found this option to be the best option for addressing the reliability needs of the Peoria Area. AIC says its route siting analysis resulted in a Primary Route for the Transmission Line which makes use of approximately seven miles of existing easements and certain land already owned in fee by AIC. While there is a marginally greater impact associated with some criteria for the Primary Route in comparison to the Alternate Route, such as the number of homes along the route, AIC asserts there would be no significant reduction in the potential for impact associated with the Alternate Route should this route have been selected instead. AIC indicates the Primary Route is shorter and would therefore result in less ground disturbance. AIC claims there is also a lower occurrence of prime farmland soils (a high sensitivity) along the Primary Route than the Alternate Route. For these reasons, AIC states the record supports the selection of the Primary Route as the least cost option.

AIC states the selected project alternative significantly improves the robustness of the transmission system in the area, eliminates the projected exposure to voltage collapse from double contingency scenarios, and can be constructed in the shortest amount of time. Therefore, it is AIC's position that the proposed Transmission Line represents the best, and least cost option, for providing the required system reinforcement in the Peoria Area by 2016.

Initially Mr. Verhaar testified that the anticipated in-service date was December 1, 2016. He states this date was determined by AIC as an outcome of power flow studies. However, he believes that, should the Commission adopt the primary route proposed by AIC, AIC may be able to move the in-service date to June 1, 2016. Should AIC be unable to complete the proposed transmission line, AIC indicates customer load in the

Peoria Area would continue to be subjected to possible voltage collapse from the outages discussed above.

AIC notes the risk of voltage collapse to the Peoria Area does not occur suddenly at a particular load level, but increases over time as load increases. AIC says there would be some level of risk currently with the loss of Edwards Units 2 and 3; however, the risk would be more significant by 2014 and greater still in 2015 and 2016. AIC claims the risk of exposure to voltage collapse was balanced with the feasibility of completing construction in a cost effective manner in determining the project in-service date. According to AIC, completing any construction project on a highly expedited schedule is usually possible, but it can dramatically increase the cost of construction. In AIC's view, it must balance service needs with the costs of accelerating a construction schedule. AIC says, in other words, it must also consider cost effectiveness when determining a project's in-service date. To address the potential risk for voltage collapse prior to the in-service date, AIC states that Ameren Transmission Operations and Distribution Operations groups will take appropriate measures (e.g. limiting other work in the area, limiting planned line and generator outages, and ensuring capacitors are available during peak load periods), when possible, to reduce the risk of voltage collapse conditions.

In response to Staff's concern about the timing of the in-service date for the Project, AIC asserts that the in-service dates often cannot be advanced because of regulatory, permitting, right-of-way acquisition, and construction time requirements. AIC insists it cannot determine in year 1 that an area will experience voltage collapse in year 2 and then construct the needed facility by year 2 to allow continued provision of adequate and reliable service. AIC claims longer planning horizons are required.

AIC provides a description of what takes place during the planning. Mr. Verhaar explains that annual assessments are done to test the performance of AIC's transmission system under the system conditions projected for future years compared to the relevant NERC planning standards and ATPC, and to identify any projected transmission facility overloads or voltages outside of established limits during both normal and contingency conditions. AIC says the results of these assessments provide an indication of when, and to what extent, system reinforcement is needed. However, AIC asserts that because of the volatility of some load information, and in order to protect ratepayers from unnecessary costs, AIC prefers to see a demonstrated need in two consecutive assessments before committing to a system reinforcement project.

AIC states that after it determines a system reinforcement project is necessary, it begins the studies necessary to perform an in-depth comparison of alternative system reinforcements to assure that the optimum system reinforcement is selected. According to AIC, this involves both documenting the need for the Project based on the latest available information and beginning the preliminary route analysis and public meeting process. Mr. Verhaar estimates that this process takes 6 months to complete. AIC says the regulatory approval process can take over 12 months, including conducting the required public meetings and the time required for the docketed proceeding. Once a

final order is issued, AIC says it must generally allow at least six months for final line design and acquisition of property rights, and one year for any potential circuit court condemnation proceedings.

Mr. Verhaar also describes the procurement activities. He indicates that materials are ordered after final line design is completed, and once ordered will take approximately 35 weeks to be delivered. He states that while some foundation work can begin a little earlier, the bulk of the construction cannot begin until the materials have been delivered, and construction is estimated to take two years to complete. According to AIC, once the need for a project is confirmed, it takes approximately 5½ years for the project to be completed and put in service. AIC says some aspects of the process can be compressed, but typically this will increase the cost. AIC claims it is not possible to compress the timeframe for the regulatory approval process. AIC indicates it may be possible to compress the time required for real estate acquisition or construction, but claims this will increase the cost of a project.

In AIC's view, the risk of exposure to the contingency event must be balanced with the feasibility of completing construction in a cost effective manner in determining the project in-service date and the effectiveness of mitigation measures. AIC asserts that the cost of construction generally increases significantly as the timeframe for construction shortens, an expedited schedule will increase costs, perhaps significantly. AIC says it must consider cost effectiveness when determining a project's in-service date, and must balance service needs with the costs of accelerating a construction schedule. AIC contends that the in-service date must be set realistically and be achievable.

In addition, AIC argues there is a need to ensure that the utility is only proposing facilities that are required to meet expected service demand and reliability requirements. AIC says a utility cannot simply apply for approval for a project on the "off chance" it will be needed; the facilities must be required to provide reliable service or meet market needs. AIC states that in order to demonstrate need, there must be some level of assurance or confidence that the system would be exposed to a particular set of conditions in the absence of a proposed project. AIC says new facilities would then be constructed in order to maintain reliable service or meet those needs, subject to the balancing factors discussed above.

AIC raises a concern about being directed to be more "conservative" or to construct projects earlier on less-solid information. AIC cautions against this, citing the expense, and public engagement required in the process. AIC explains that it is not suggesting that the Commission would require AIC to construct projects based on less reliable information. Rather, AIC says its concern is that confirmation of a project's need would have to be based on longer-range forecasts and forecasts become inherently more uncertain as they go out further into the future. As a result, AIC believes longer range forecast information supporting the need for a project is usually subject to revision, and with such revision the timing of the need for the project may change as well. AIC cites Docket No. 10-0079 as an illustration of its concern. It says

there, AmerenIP used load forecast information following the summer of 2006 to determine the need for the project, but because of the economic downturn, the summer 2009 load forecast information did not show a need for the project until after 2021. AIC emphasizes that selection of in-service dates requires a balancing of factors, including the reliability of information on the need for the project, regulatory and construction time frames, and cost considerations.

AIC explains that the Project in-service date must account for the time required for the entire project regardless of the route approved. AIC states that the in-service date may be advanced depending upon the route approved and timing of the various steps in the process. AIC notes the Primary Route makes use of approximately seven miles of existing easements of sufficient width required for the Transmission Line as well as certain land owned in fee by AIC. AIC states that if the Commission approves the primary Route, AIC can begin the environmental surveys, soil boring, and final line design process on more than half the route as soon as a final order is issued in this case while the negotiation process for the remainder of the land rights is occurring. As a result, if the Commission approves the Primary Route, AIC says it may be able to expedite the current construction schedule, potentially with an in-service date as early as June 2016. AIC notes that protracted condemnation will render this advancement impractical. AIC asserts that the in-service date for the Project (or for any project) cannot assume the Commission will adopt AIC's Primary Route, and therefore must consider the factors relevant to the Project as a whole. AIC states that the Alternate Route is also permissible, constructible, cost effective, and represents the input received from the public process.

AIC avers the in-service date for this Project is appropriate, feasible and is the earliest reasonably achievable in-service date possible due to the time constraints discussed above. AIC states that it shares Staff's concern about preventing the loss of service to customers in the Peoria Area. However, AIC states that identifying a risk of voltage collapse is not the same as predicting at what time and load level voltage collapse will occur. AIC affirms that it will continue to take appropriate steps to ensure that service is adequate and reliable consistent with AIC's statutory obligations under the Act. AIC says this includes steps to ensure in-service dates for projects are such that reliability needs are met for all areas, consistent with these statutory obligations. AIC also expressed willingness to meet with Staff to further discuss the project planning process after the conclusion of this proceeding.

In addition, AIC provides information regarding the steps it is taking to mitigate concerns for 2014. AIC says work is currently in progress to add 138 kV capacitor banks to the Fargo and Keystone Substation to boost voltage support for the Peoria Area. AIC indicates the Fargo Substation Capacitor bank is scheduled to be in service in 2014 and the Keystone Substation Capacitor bank is scheduled to be in service in 2015. AIC notes that while these capacitor banks will minimize the time a voltage collapse is likely to occur, they will not eliminate the risk. AIC says Transmission Operations and Distribution Operations groups will also take appropriate measures when possible to try to reduce the risk of voltage collapse conditions. According to AIC,

these actions include but are not limited to, limiting other work in the area, limiting planned line and generator outages and ensuring system capacitors are available during peak load periods.

b. Staff's Position

Staff concludes AIC has established the need for the Transmission Line. Further, Staff recommends that the Commission approve AIC's Petition to install, operate and maintain the proposed project along the Primary Route as this Project cost the least of the transmission alternatives that AIC considered. Staff witness Yassir Rashid states AIC has provided evidence that the Project is necessary to provide adequate, reliable, and efficient service to its customers. Mr. Rashid relies upon Mr. Verhaar's testimony that AIC's load in the Peoria Area is approximately 1600 MW and the latest load forecast shows the load increasing between 1% to 1.8% per year from which he calculates that the current Peoria Area load projection is 1720 MW in summer 2016.

Staff discusses the three scenarios under which voltage collapse would occur, according to Mr. Verhaar's testimony: i) the coincident outage of Edwards Units 2 and 3, ii) the coincident loss of the two Tazewell 345/138 kV transformers, and iii) the coincident loss of one of Tazewell's 345/138 kV transformers and the loss of Edwards Unit 3. Staff concurs with AIC that the occurrence of any of the three scenarios is classified as a NERC Category C3 event, which AIC must mitigate to comply with NERC requirements.

Staff states that a NERC Category C3 is defined in NERC Standard TPL-300-0 that addresses the system performance following the loss of two or more bulk electric system elements. Mr. Rashid explains that a Category C3 takes place when a generator, transmission circuit, or a transformer is faulted following the fault of another generator, transmission circuit, or a transformer. Staff agrees with AIC that if powerflow models show that reliability would be affected by the occurrence of concurrent losses of two such transmission elements, then AIC is required to mitigate such an occurrence. Staff also agrees that based on the simulation results provided by AIC witness, Mr. Verhaar, the Project would mitigate the voltage collapse situation that would take place if one of these three scenarios occurs.

Staff notes AIC witness Adam J. Molitor's statement that the total cost of the Project, including the new Mapleridge Substation and the modifications to the existing Fargo Substation, ranges from approximately \$62.6 million for the Primary Route to approximately \$79.8 million for the Alternate Route. Mr. Yassir states that both cost estimates include \$20.8 million for construction of the new Mapleridge Substation and modifications of the existing Substation.

Mr. Rashid raises concerns about the Company's in-service date being December 2016 rather than the summer of 2016. He notes that AIC's models predicted a voltage collapse if one of three contingencies occurred in the summer of 2016. Mr.

Rashid questions why AIC did not start planning for the proposed project earlier to avoid running into unnecessary and potentially dangerous delays to the Project's in-service date. Mr. Rashid testifies that AIC demonstrated the need for the Project based on a load forecast of gradual increase in load in the Peoria Area over the years and that it failed to explain the discrepancy between when a voltage collapse might occur and the proposed project's in-service date.

Mr. Rashid provides an explanation of what a voltage collapse is and how it could occur. He testifies that voltage collapse is the process by which a sequence of events results in abnormally low voltages in a substantial portion of a utility's service area. He explains the low voltages result in the electric system network being unable to maintain steady voltage at the load sites at the allowable voltage levels. He states this may ultimately result in a loss of electric service, a blackout, to an area. According to Mr. Rashid, a blackout in a part of the electric system may expand beyond that specific area to other areas of the electric system if the blackout is managed poorly. He states that sometimes, if the magnitude of the initial blackout is unmanageable, the expansion of the blackout is inevitable. Mr. Rashid further testifies the main symptoms of voltage collapse are low voltage profiles, heavy reactive power flows, inadequate reactive support, and heavily loaded systems. He asserts a voltage collapse is often precipitated by low-probability single or multiple contingency events. Mr. Rashid states the consequences of voltage collapse often require long system restoration, during which large groups of customers are left without supply for extended periods of time.

According to Mr. Rashid, AIC predicts that its system will not be able to handle summer 2016 load, given one of three contingencies. Mr. Rashid agrees with AIC that the risk of voltage collapse does not occur at a particular load level, but gradually increases over time as load increases. Mr. Rashid states that AIC's explanation for the timing in this docket is identical to the position AIC took in Docket No. 12-0154, where the Commission stated it shared Staff's concern about timing and urged AIC to proceed with future electric transmission certificate applications in a timely manner using the best information available. Mr. Rashid states AIC minimizes the impact of its inadequate planning. He asserts that the load in the Peoria Area will increase gradually to reach a level in summer 2016 at which point, according to AIC's own analysis, voltage collapse will happen if one of the multiple contingency events takes place. Mr. Rashid recommends that AIC should eliminate delays for future transmission projects to avoid jeopardizing its system reliability which could be detrimental to its customers.

Mr. Rashid states that AIC did not adequately address its plans to mitigate the event of a voltage collapse. Mr. Rashid states that the only mitigation strategy discussed was the installation of capacitor banks. However, he says even AIC admitted that while the capacitor banks will minimize the time a voltage collapse is likely to occur, they will not eliminate the risk of a collapse.

Mr. Rashid recommends the Commission approve the Transmission Line, along the Primary Route, because AIC provided evidence that the proposed Project is necessary to provide adequate, reliable, and efficient service to its customers; and AIC

provided evidence that the proposed Project is the least cost alternative considered to meet the needs of its customers. Mr. Rashid also cautions that AIC should allow itself ample time to plan for all reliability projects, including transmission projects in order to avoid subjecting its customers to situations that may create events like a voltage collapse, which is a possibility between summer 2016 and December 1, 2016. Mr. Rashid emphasizes the importance of a comprehensive mitigation strategy.

3. Managing And Supervising The Construction Process

AIC believes it is capable of efficiently managing and supervising construction of the Transmission Line. AIC claims it has built numerous transmission line projects of this magnitude, and has recently received approval from the Commission (in Docket Nos. 06-0179, 06-0706, 10-0079, 12-0080 and 12-0154) to construct several lines in Illinois. AIC also asserts that the Transmission Line will be constructed in accordance with all applicable federal and state regulations and orders of the Commission, including 83 Ill. Adm. Code 305 and the National Electrical Safety Code.

Staff relies upon the AIC testimony regarding its capabilities with respect to management and supervision of the construction of the 345 kV transmission line that AIC proposes. In particular, Staff notes the testimony about other lines and projects of this magnitude built by AIC and the recently received approval from the Commission for AIC to construct several lines in Illinois. Staff states that AIC is the second largest electric utility in Illinois, supplies more than two million Illinois customers, and controls a vast system of transmission and distribution networks in Illinois. Staff witness Rashid concludes that he has no reason to believe AIC will not be able to efficiently manage and supervise the construction of the proposed Project.

4. Financing The Proposed Construction

Section 8-406.1(f)(3) provides that before the Commission can grant a certificate of public convenience and necessity, it must find that the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

AIC asserts that constructing the proposed Transmission Line will not have adverse financial consequences for AIC or its customers. AIC indicates the total estimated cost of the Project is between \$62.6 million (Primary Route including substation modifications) and \$79.8 million (Alternative Route including substation modifications). AIC says it will finance immediate construction capital requirements with short-term debt. AIC also indicates permanent financing will be done through two primary sources, long-term debt and equity.

AIC testifies the Project has only modest construction needs between now and 2014 that should be fully supported by the existing lines of credit. AIC says any interest expense incurred between now and 2014 will be minimal. After 2014, AIC indicates there are increased funding requirements, but claims that it remains a small portion of

AIC's total capital expenditures and of the total expected borrowing capacity of AIC's renewed credit facility. AIC witness Mr. Hughes explained the interest expense by 2016 (even to fund the more costly alternative route at 6% interest) would be less than 1.6% of AIC's expense in 2011, which AIC claims is not enough to cause any concern from a financing, ratings, or liquidity standpoint. In addition, AIC asserts that the beneficial effect of short-term debt rates would decrease the prospective interest costs by the time the project nears completion. AIC also claims increased transmission revenue would provide adequate cash flow to fully support the amount of debt and equity. AIC says other costs like depreciation, maintenance and operations would also be recovered via the transmission rates. According to AIC, this revenue would have a beneficial sustaining effect on credit metrics and ratings. AIC testifies it can finance the Project without adverse financial consequences to the utility or its customers.

Staff witness Janis Freetly reviewed AIC's filing and the supplemental information provided in response to Staff data requests. Ms. Freetly testifies that AIC's electric utility plant had a net value of \$6,611,492,808 as of December 31, 2011; its electric utility operating revenues for the twelve months ended December 31, 2011, was \$1,941,533,594. Thus, she concludes that the estimated cost of the proposed construction represents 0.99% - 1.26% of AIC's net utility plant and 3.22% - 4.11% of AIC's total utility operating revenue. In addition, She states that the projected capital expenditures for this Project represent 1.64% - 2.08% of AIC's total capital expenditures budgeted for the years 2013 through 2017.

Ms. Freetly also testifies AIC has access to a variety of funds to finance this Project. She notes AIC renewed its short-term credit facilities in November 2012, which provide direct borrowing capability for up to \$800 million within a credit facility of \$1.1 billion that extends through 2017, throughout the construction timeframe of the Project. In addition, Staff says AIC has the ability to draw funds from the Ameren Utility Money Pool and additional liquidity can be provided directly by its parent company, Ameren Corporation. Ms. Freetly recommends that the Commission find that AIC is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

D. Commission Analysis and Conclusion

In this proceeding, AIC requests that the Commission grant a Certificate of Public Convenience and Necessity authorizing it to construct, operate, and maintain the Project, a new 345 kV electrical transmission line in Peoria County, Illinois, connecting the Fargo Substation and Duck Creek-Tazewell transmission line, the 345 kV Mapleridge Substation, and modifications at the Fargo Substation. Subsections 8-406.1 (a), (d), and (e) contain specific requirements including generally: the provision of a complete description of the Project, engineering data, an application fee, a primary and alternative route, three pre-filing public meetings, establishment of a dedicated website, and publication of notice of filing of the application. AIC asserts and Staff agrees that it has complied with these requirements. The Commission finds that AIC has met the requirements set forth in subsections (a), (d), and (e) of Section 8-406.1.

Based on the evidence presented the Commission finds that the proposed construction of the Transmission Line along the Primary Route is necessary to provide adequate, reliable, and efficient service and is the least-cost means of satisfying the service needs of its customers, and is therefore in the public interest and should be approved. The Commission concludes that the construction of the Transmission Line by AIC will promote the public convenience and is necessary to provide adequate, reliable, and efficient electric power service to the Peoria area. The Commission finds the Primary Route to be the best and least cost option for mitigating the risk of voltage collapse in the Peoria Area. The Commission further finds the minimum right of way for the Transmission Line shall be 150 feet. Finally the Commission finds that construction easements, if required, shall be up to or including an additional 150 feet.

The Commission concludes that the record demonstrates that AIC is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof. The Commission also finds that AIC is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

With regard to Staff's testimony about the timing of the in-service date for the Project, the Commission appreciates Staff's concern about preventing the loss of service to customers in the Peoria Area. The Commission shares this concern, and understands AIC does as well. The Commission notes that AIC indicates it has taken certain steps, such as adding 138 kV capacitor banks to the Fargo and Keystone substations to boost voltage support for the Peoria Area, to help mitigate the risk of voltage collapse in 2016. The Commission also observes that, if the Commission adopts the Primary route, AIC may be able to expedite the current construction schedule, potentially with an in-service date as early as June 2016. The Commission urges AIC to utilize best efforts to achieve a June 2016 in-service date.

The Commission notes that AIC acknowledges its obligation to take appropriate steps to ensure that service is adequate and reliable consistent with its statutory obligations under the Act. Consistent with that obligation, the Commission directs AIC to ensure in-service dates for projects are such that reliability needs are met for all areas, consistent with AIC's statutory obligations. Finally, AIC also indicated that it would be willing to meet with Staff to further discuss the project planning process after the conclusion of this proceeding. The Commission endorses such a meeting as an appropriate step to facilitate understanding between AIC and Staff on this issue and directs AIC and Staff to undertake necessary meetings to accomplish this goal.

V. SECTION 8-503 OF THE ACT

AIC also seeks a Commission order authorizing the Project be built pursuant to Section 8-503 of the Act. Section 8-503 of the Act provides whenever the Commission finds that additions to existing plant are necessary and ought reasonably to be made, or that a new structure or structures ought to be erected, the Commission "shall make and

serve an order authorizing or directing that such additions . . . be made, or structure or structures be erected” No party opposes a grant of authority under Section 8-503. In compliance with Section 8-406.1(i), the Commission authorizes AIC under Section 8-503 of the Act to construct the Project as set forth in this Order.

VI. FINDINGS AND ORDERING PARAGRAPHS

Having given due consideration to the entire record, the Commission is of the opinion and finds that:

- (1) AIC is a public utility and an electric utility pursuant to the Act;
- (2) the Commission has jurisdiction over AIC and the subject matter of this proceeding;
- (3) the recitals of fact and legal argument identified as the parties’ respective positions are supported by the record
- (4) the facts recited and conclusions of law reached in the Commission Analysis and Conclusion are hereby adopted as findings herein;
- (5) pursuant to Section 8-406.1(f)(1) of the Act, the Commission finds that the Project is necessary to provide adequate, reliable, and efficient service to the public utility’s customers and is the least cost means of satisfying the service needs of the public utility’s customers;
- (6) pursuant to Section 8-406.1(f)(2) of the Act, the Commission finds that AIC 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;
- (7) pursuant to Section 8-406.1(f)(3) of the Act, the Commission finds that AIC is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;
- (8) the Primary Route, as shown and described in the Appendix hereto, is the least-cost route, is reasonable, and should be approved;
- (9) the easements for the Transmission Line as approved herein are reasonable and appropriate and should be approved;
- (10) the Project as approved herein, including a new switching substation north of Mapleton, modifications to the Fargo Substation, and the construction of the Transmission Line as described in this Order, is necessary and ought reasonably to be made to promote the security or the convenience of the public and to secure adequate electric service or facilities to AIC’s customers;

- (11) pursuant to Section 8-406.1(h), the Commission finds that AIC shall pay a one time construction fee to each county in which the project is constructed within 30 days after the completion of construction; the construction fee shall be \$20,000 per mile of high voltage electric service line constructed in that county, or a proportionate fraction of that fee; the fee shall be in lieu of any permitting fees that otherwise would be imposed by a county;
- (12) pursuant to Section 8-406.1(i) of the Act, AIC is authorized, pursuant to Section 8-503 of the Act, to construct the high voltage electric service line at the locations and in the manner specified herein on, over, along, across, and through the parcels of land along the route described in and shown on the Appendix hereto, as well as construct the new switching station, modify an existing substation, and related facilities as approved by the Commission in the prefatory portion of this Order; and
- (13) 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 a Certificate of Public Convenience and Necessity is hereby issued to Ameren Illinois Company d/b/a Ameren Illinois pursuant to Section 8-406.1 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 Ameren Illinois Company d/b/a Ameren Illinois of a new 345 kilovolt electrical transmission line within Peoria County, Illinois, as shown on the Appendix attached hereto connecting the existing Fargo Substation and Duck Creek-Tazewell transmission line; a new 345 kilovolt switching station north of Mapleton, Illinois; and substation modifications at the Fargo Substation, and (2) the transaction of an electric public utility business in connection therewith, all as herein before set forth.

IT IS FURTHER ORDERED that the Transmission Line Primary Route, as legally described and the location of which is shown on the Appendix hereto, is hereby approved, and the right-of-way width on such route shall be as set forth in the Commission Analysis and Conclusion portion of this order;

IT IS FURTHER ORDERED that pursuant to Section 8-503 of the Act, Ameren Illinois Company d/b/a Ameren Illinois is authorized to construct the Project described herein, including a new switching substation north of Mapleton, modifications to the Fargo Substation, and construction of the Transmission Line on, over, along, across,

and through the parcels of land along the route described in and shown on the Appendix attached hereto.

IT IS FURTHER ORDERED that Ameren Illinois Company d/b/a Ameren Illinois is authorized and directed to commence construction of the Project specified herein within three years of the date of this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the 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.

By order of the Commission this 4th day of September, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman

Ameren Exhibit 4.0

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 13-_____

DIRECT TESTIMONY

OF

DARRELL E. HUGHES

Submitted On Behalf Of

AMEREN ILLINOIS COMPANY

d/b/a Ameren Illinois

February 7, 2013

Ameren Exhibit 4.0**TABLE OF CONTENTS**

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1 **ILLINOIS COMMERCE COMMISSION**2 **DOCKET NO. 13-_____**3 **DIRECT TESTIMONY OF**4 **DARRELL E. HUGHES**5 **Submitted On Behalf Of Ameren Illinois Company**6 **I. INTRODUCTION AND WITNESS QUALIFICATIONS**7 **Q. Please state your name and business address.**

8 A. Darrell E. Hughes, 1901 Chouteau Avenue, St. Louis, Missouri 63103.

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

10 A. I am employed by Ameren Services Company (“Ameren Services”). I hold the
11 position of Supervisor Valuation and Cost of Capital – Corporate Finance for Ameren
12 Corporation (“Ameren”) and its affiliates, including Ameren Illinois Company d/b/a
13 Ameren Illinois (“AIC”).

14 **Q. Please summarize your educational background and professional experience.**

15 A. A summary of my educational and professional experience is attached as an
16 Appendix to my testimony.

17 **Q. What are your responsibilities in your current position with Ameren**
18 **Services?**

19 A. In my current position, I have additional responsibilities for supporting the
20 development of financial projections provided to the rating agencies, long term cash
21 forecasting, asset valuations and financial due diligence related to proposed business
22 initiatives and project justifications.

23 **II. PURPOSE AND SCOPE**24 **Q. What is the purpose of your testimony?**

25 A. The purpose of my testimony is to discuss the financing required for AIC's
26 proposed 345 kV Fargo to Mapleridge transmission line and related facilities (the
27 "Project") and to explain why AIC can finance the Project without adverse financial
28 consequences for AIC or its customers. Based on current financial considerations, my
29 analysis indicates that AIC will be able to support all of the financing for the Project
30 during its construction phase without experiencing adverse financial consequences for
31 itself or its customers as a result of the financial requirements imposed by construction of
32 the Project.

33 **Q. In addition to your direct testimony, are you sponsoring any additional**
34 **exhibits?**

35 A. Yes. I am sponsoring the following:

- 36 • Ameren Exhibit 4.1: Moody's June 2012 Credit Opinion
- 37 • Ameren Exhibit 4.2: S&P March 2012 RatingsDirect Full Report
- 38 • Ameren Exhibit 4.3: S&P Sept 2012 RatingsDirect
39 Summary Report

40 **III. FINANCING OF THE PROJECT**41 **Q. Please describe the expected cash flow required to finance the Project.**

42 A. The forecasted completion date is 2016. The expected cost of the Project
43 (without AFUDC) is between \$57.6 million (for the Primary Route) and \$73.2 million
44 (Alternate Route), depending on the selected route. (AFUDC is the "allowance for funds

45 used during construction". It is an estimate of financing cost that accumulates as the
46 project is built.) Excluding AFUDC shows the direct cost of the project before it is
47 financed, and estimates the amount of capital financing that would be required. Thus,
48 these costs estimates are different from the project cost estimates used by AIC witness
49 Mr. Adam Molitor, which include AFUDC. The following alternative construction costs
50 (without AFUDC) are estimated by year:

51	<u>Year</u>	<u>Primary Route</u>	<u>Alternative Route</u>
52	Prior	\$ 0.42 million	\$ 0.42 million
53	2012	\$ 0.22 million	\$ 0.22 million
54	2013	\$ 1.70 million	\$ 3.42 million
55	2014	\$ 6.40 million	\$ 10.63 million
56	2015	\$ 23.09 million	\$ 29.39 million
57	2016	\$ 25.30 million	\$ 28.62 million
58	2017	\$ 0.48 million	\$ 0.52 million

59 By comparison, AIC's historical level of capital expenditures from 2008 to 2011 has
60 averaged \$332 million per year. It is a reasonable expectation that future capital
61 expenditures will grow in subsequent years in response to requirements for infrastructure
62 improvements, transmission upgrades, and improved metering.

63 **Q. Please describe AIC's financing plan for this Project.**

64 A. AIC will finance immediate construction capital requirements with short-term
65 debt. Permanent financing will be done through two primary sources, long-term debt and
66 equity. Generally, AIC seeks long-term financing of roughly 50% of its capital needs

67 through long-term debt and 50% through equity. Long-term debt issuances are staged
68 based on the overall lending requirements of the whole company. Equity can be funded
69 at any time through retained earnings, preferred stock, or equity infusions from AIC's
70 parent company, Ameren.

71 **Q. Please describe AIC's current financial situation.**

72 A. AIC renewed its short-term credit facilities in November 2012, which provide
73 direct borrowing capability for up to \$800 million within a credit facility of \$1.1 billion.
74 This facility is in place through 2017, throughout the construction timeframe of the
75 Project. Further, AIC has the ability to draw from an Ameren corporate money pool and
76 Ameren could provide additional liquidity as needed.

77 With respect to permanent financings, AIC has access to the bond markets with
78 credit ratings that have been recently upgraded by Moody's Investor Service on June 12,
79 2012 and ratings by S&P that were sustained on September 25, 2012. Moody's senior
80 secured rating is A3 with a stable outlook. S&P senior secured rating is BBB/BBB+ with
81 a stable outlook. Thus, AIC will have the ability to access long-term credit markets with
82 terms and conditions that compare favorably with other similarly rated companies.

83 In summary, the access to short-term credit facilities and the ability to acquire
84 long-term debt with favorable ratings ensure the Project can be financed at competitive
85 rates.

86 **Q. What is the current outlook for AIC credit ratings?**

87 A. Moody's provides conditions that would change ratings, either up or down, in
88 their June 13th report, included as Ameren Exhibit 4.1. Ratings could go down if future

89 rate cases do not provide sufficient rate relief to maintain financial metrics as well as
90 other conditions described in their opinion, which principally concern availability of
91 liquidity to meet debt obligations on an on-going basis. To state generally, in my
92 opinion, currently credit ratings agencies rating utilities are concerned with the ability of
93 utilities to recover costs in order to support operations and liquidity necessary to meet
94 operational requirements. Credit agencies evaluate the regulatory support and resulting
95 cash flow across all of AIC's operations, including distribution and transmission services.
96 I believe that both of these conditions are currently stable and prospectively improving
97 from AIC's standpoint. It is noteworthy that Moody's states if there is an improvement in
98 the supportiveness of the regulatory environment and the company continues to maintain
99 strong financial metrics, the rating could improve. Moody's comments favorably on the
100 December 2011 passage of the Energy Infrastructure Modernization Act ("EIMA") [220
101 ILCS 5/16-108.5], which provides a formula rate making process. In addition, AIC's
102 transmission investment receives rider recovery via Rider TS. To the extent that
103 transmission investment builds over the next several years, the resulting cash flow is
104 credit supportive.

105 In a similar manner, S&P cites the passage of the EIMA in December 2011 in
106 their March and September reports included as Ameren Exhibits 4.2 and 4.3. S&P
107 comments: "We also recognize AIC's continuing efforts to manage regulatory risk in
108 Illinois. Ameren (AIC) took the initiative in engaging state legislators and regulators to
109 effect reform in the utility regulatory process . . . We view these developments as
110 potentially enhancing Ameren's (AIC's) credit quality." Thus both S&P and Moody's
111 note positive credit trends for AIC.

112 In summary, AIC's sustaining and potentially improving outlook for credit ratings
113 ensures competitive interest costs for long-term financings. Further, the liquidity
114 perspective is not affected by changes in my review of the Project's prospective financial
115 requirements. The \$800 million of short-term credit is more than adequate to fund the
116 debt requirements of this Project.

117 **Q. How does the timeframe and magnitude of this Project affect costs of**
118 **prospective financings and future credit ratings?**

119 A. The expected completion date of this Project is 2016. This Project has only
120 modest construction needs between now and 2014 that should be fully supported by the
121 existing lines of credit. Any interest expense incurred between now and 2014 will be
122 minimal. After 2014, there is increased funding, but it remains a small portion of AIC's
123 total capital expenditures and of the expected borrowing capacity of AIC's renewed
124 credit facility. As an example, assume 50% of the accumulated construction costs for the
125 Alternate Route of the Project (\$73 million) will be financed with equity (in the form of
126 retained earnings) and 50% will be financed with debt. 50% of \$73.2 million would
127 mean \$36.6 million of debt could accumulate by the time the Project is in service.
128 Assuming the costs of debt would be no greater than 6%, a maximum of \$2.2 million in
129 annual interest expense would be possible by 2016 when the Project is placed in-service.
130 The \$2.2 million can be contrasted to the \$136 million of interest expense incurred for
131 AIC in 2011. Thus, the interest expense by 2016 (even to fund the more costly
132 alternative route at 6% interest) would be less than 1.6% of 2011's expense, which is not
133 enough to cause any concern from a financing, ratings, or liquidity standpoint. In

134 addition, the beneficial effect of short-term debt rates (which would be used to fund
135 portions of the Project during construction) would decrease the prospective interest costs
136 by the time the Project nears completion.

137 **Q. What about any impact on credit ratings after this Project goes in-service?**

138 A. Increased transmission revenue would provide adequate cash flow to fully support
139 the amount of debt and equity. Other costs like depreciation, maintenance and operations
140 would also be recovered via the transmission rates. This revenue would have a beneficial
141 sustaining effect on credit metrics and ratings.

142 **Q. Are there other sources of financing for the Project?**

143 A. Yes. As I stated earlier, there are equity sources. This will normally be used for
144 finance around 50% of the Project.

145 **Q. Please explain.**

146 A. Continued operations of AIC's regulated business provides on-going cash from
147 operations in the form of retained earnings. Retained earnings are a source of equity that
148 would build on the balance sheet and provide a source of financing for the Project. In
149 addition, periodic infusions of equity from Ameren would also be a potential source of
150 equity. This appears as accumulated paid-in capital on the balance sheet. In total, we
151 would expect AIC would maintain a balanced capital structure that continues to utilize
152 both debt and equity funding for future projects.

153 **Q. Are there any other sources of cash flow available to the Project?**

154 A. Yes. Deferred taxes are an expected consequence of making investments like the
155 Project. In addition AIC will be undertaking other projects that also contribute to

Ameren Exhibit 4.0
Page 8 of 8

156 deferred taxes. Deferred taxes are a source of financing in that funds that would
157 otherwise be paid to the government are available now to pay for current capital projects.
158 Deferred taxes alleviate the need for either debt or equity financing. The taxes eventually
159 have to be paid, but this repayment can be spread over a number of years. This is
160 essentially a form of long-term financing that would be available to AIC.

161 **Q. Will AIC receive funding from any individual customer or group of**
162 **customers for this Project?**

163 A. No. This Project is being done for reliability purposes, and not in response to the
164 specific needs of any individual customer or group of customers. Other witnesses attest
165 to the benefits of the Project.

166 **IV. CONCLUSION**

167 **Q. What is your conclusion regarding AIC's ability to finance the Project?**

168 A. I conclude that AIC can finance the Project without adverse financial
169 consequences to the utility or its customers.

170 **Q. Does this conclude your testimony?**

171 A. Yes, it does.

Ameren Exhibit 4.0 - Appendix
Page 1 of 1

APPENDIX

STATEMENT OF QUALIFICATIONS
DARRELL E. HUGHES

I graduated with a Bachelor of Science degree in electrical engineering from Washington University in St. Louis, Missouri in 1975. Upon graduation, I was employed by Union Electric Company in the engineering services division of the information technology group. I held a variety of positions providing specialized support for transmission and distribution system analysis and design. I was promoted to Staff Assistant, Computer Services in 1982. I subsequently earned a Masters of Business Administration from Webster University in St. Louis, Missouri in 1991. I was promoted to Key Account Executive in 1995. In 2000, I accepted the position of Senior Corporate Development Specialist in Corporate Finance for Ameren Services. I provided financial review and guidance to senior management regarding business initiatives proposed by all Ameren business lines. I completed financial projections and due diligence for Ameren's subsidiaries in the acquisition of new long term debt in 2002. In 2003, I assumed additional responsibilities as Supervisor Valuation and Cost-of-Capital. In this role, I support Ameren's capital budgeting and project evaluation activities.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company	:	
d/b/a Ameren Illinois	:	
	:	
Petition for a Certificate of Public	:	
Convenience and Necessity,	:	
pursuant to Section 8-406.1 of the	:	15-0064
Illinois Public Utilities Act, and an	:	
Order pursuant to Section 8-503 of	:	
the Act, to Construct, Operate, and	:	
Maintain Two New High Voltage	:	
Electric Transmission Lines in	:	
Macon County, Illinois.	:	

ORDER

DATED: June 16, 2015

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STATE OF ILLINOIS

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Macon County, Illinois.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On January 26, 2015, Ameren Illinois Company d/b/a Ameren Illinois ("AIC" or the "Company") filed with the Illinois Commerce Commission ("Commission") a petition seeking a certificate of public convenience and necessity pursuant to Section 8-406.1 of the Public Utilities Act (the "Act"), 220 ILCS 5/8-406.1, authorizing AIC to construct, operate, and maintain two new 138 kilovolt ("kV") electric transmission lines in Macon County connecting AIC's existing substation at the Fuyao Glass Illinois, Inc. ("Fuyao") (formerly Pittsburgh Plate Glass Industries ("PPG")) Plant in Mt. Zion to the new substation that Ameren Transmission Company of Illinois will construct south of Mt. Zion pursuant to the Commission's orders in Docket No. 12-0598. AIC also sought an order authorizing or directing construction of the transmission lines and related PPG substation modifications pursuant to Section 8-503 of the Act, 220 ILCS 5/8-503. AIC refers to the transmission lines and the PPG substation modifications together as the "Faraday-PPG Transmission Project" or the "Project."

Staff of the Commission ("Staff") participated in the proceeding. Leave to intervene was granted to the Village of Mt. Zion ("Mt. Zion") and Fuyao.

Pursuant to due notice, an evidentiary hearing was held at the offices of the Commission at 527 E. Capitol, Springfield, Illinois on April 22, 2015. AIC presented the testimony and exhibits of seven witnesses: Kevin J. Gerhardt, Project Manager in the Ameren Services Company Transmission Department; Dennis D. Kramer, Senior Director of Transmission Policy, Planning, and Stakeholder Relations at Ameren Services Company; Eric V. Seidler, Senior Director, Transmission Design Engineering

and Maintenance in the Ameren Services Company Transmission Department; Justin L. Johnson, Transmission Line Design Engineer in the Ameren Services Company Transmission Department; Craig D. Hiser, Real Estate Supervisor for Ameren Services Company; Emily Hyland, Public Involvement Manager with HDR Engineering, Inc.; and Darrell E. Hughes, Supervisor of Valuation and Cost of Capital in the Corporate Finance Department of Ameren Services Company. Staff presented the testimony and exhibits of Greg Rockrohr, Senior Electrical Engineer in the Safety and Reliability Division of the Commission. Staff also submitted the Verified Statement of Rochelle M. Phipps, Senior Financial Analyst with the Finance Department of the Financial Analysis Division of the Commission. Fuyao presented the testimony of David M. Burkett, President and Plant Manager at the Mt. Zion plant. Mt. Zion did not present testimony. At the conclusion of the evidentiary hearing, there were no contested issues presented by the evidence, and the record was marked "Heard and Taken." A draft order was prepared by AIC and approved by the other parties to this proceeding.

II. APPLICABLE STATUTORY AUTHORITY

The statutory deadline provided for in Section 8-406.1 of the Act is available only to public utilities seeking to construct a new high voltage electric service line and related facilities. Section 8-406.1(a) sets forth in detail the information required to be filed in support of the application. The statute further provides:

- (f) The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:
 - (1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.
 - (2) That the public utility 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.
 - (3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

220 ILCS 5/8-406.1(f).

Section 8-406.1(g) states:

- (g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before the 30th day after the filing of the application, the Commission finds that good cause exists to extend the 150-day period.

220 ILCS 5/8-406.1(g).

In addition, the statute requires that a decision granting a certificate under Section 8-406.1 shall include an order pursuant to Section 8-503 of the Act:

- (i) Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

220 ILCS 5/8-406.1(i).

Section 8-503 of the Act concerns, among other things, additions to or extensions of public utility facilities. This section 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;

220 ILCS 5/8-503.

III. NATURE OF THE PETITIONER'S OPERATIONS

AIC is an Illinois corporation and wholly-owned subsidiary of Ameren Corporation ("Ameren"). AIC owns, operates, controls, and manages within Illinois electric distribution and transmission facilities for the purpose of furnishing or delivering

electricity, and it supplies electricity to the public in portions of the State. AIC is a public utility within the meaning of Section 3-105(a)(1) of the Act, 220 ILCS 5/3-105(a)(1).

AIC is an affiliate of Ameren Transmission Company of Illinois ("ATXI") and Ameren Services Company ("AMS"), also wholly-owned subsidiaries of Ameren. ATXI owns, operates, controls, and manages within Illinois electric transmission facilities for the purpose of furnishing or delivering electricity. AMS provides administrative support and other services to Ameren and its affiliates and subsidiaries, including AIC and ATXI. Those services include the planning, design, construction, operation, and maintenance of AIC's and ATXI's transmission facilities.

IV. PROJECT BACKGROUND AND DESCRIPTION

AIC provides electric service to customers in the Decatur, Illinois, Macon County area. To serve its customers in that area, AIC has constructed certain electric transmission and distribution facilities in and around the area, including a substation at the Fuyao (formerly PPG) plant on east Elwin-Mt. Zion Road in Mt. Zion, south of Decatur (the PPG substation).

In Docket No. 12-0598, the Commission granted ATXI a Section 8-406.1 Certificate of Public Convenience and Necessity and issued a Section 8-503 Order authorizing ATXI to construct, operate, and maintain the Illinois Rivers Project, over 300 miles of new 345 kV electric transmission line, nine new or expanded substations, and six 345/138 kV transformers. In authorizing the Illinois Rivers Project, the Commission found that it is necessary to provide adequate, reliable, and efficient electric service, including the reliable delivery of renewable energy such as wind power, to Ameren Illinois area customers, and that it will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. The Commission recognized that the Illinois Rivers Project would also provide local reliability benefits to certain portions of Illinois. And the Commission found that it is the least-cost means of satisfying all those objectives.

Decatur is one of the areas the Commission found would realize the reliability benefits of the Illinois Rivers Project. In Docket No. 12-0598, ATXI asserted that the Decatur area will be exposed to a risk of low voltages and, absent the Illinois Rivers Project, a risk of voltage collapse, by 2016. To address this reliability issue, the Commission specifically approved a route for the Illinois Rivers Project through the Mt. Zion area, including construction of a new substation south of Mt. Zion, located along Henry Road in Macon County (the Faraday substation).

In this proceeding, AIC requests Commission authorization to connect its existing electric transmission system in and around the Decatur area to the Illinois Rivers Project. Specifically, AIC proposes to construct the Faraday-PPG Transmission Project—two 138 kV electric transmission lines connecting the AIC PPG substation and the ATXI Faraday substation, and related PPG substation modifications. AIC explains that the Faraday-PPG Transmission Project will integrate the Illinois Rivers Project into

AIC's existing electric transmission system in and around the Decatur area, thereby permitting the full benefits of the Illinois Rivers Project to be realized, including the reliability benefits to the Decatur area.

AIC explains, through its witness, Mr. Johnson, that the Faraday-PPG Transmission Project will consist of two 138 kV overhead transmission circuits between the Faraday and PPG substations. Single shaft steel poles on concrete foundations will support the circuits. The poles will range from 70 to 120 feet in height, above ground. The support structures will consist of tangents, running angles, and dead ends. AIC explains that these structures were selected because they are self-supporting structures, which will require no permanent guy wires and, therefore, minimize the impact on agricultural land. Four new 138 kV circuit breakers and associated equipment will also be installed at the PPG substation as part of the Project. AIC explains that the Project will not include any other above-ground fixtures. AIC maintains that the Project will be designed in accordance with National Electrical Safety Code ("NESC") requirements and 83 Illinois Administrative Code Part 305.

AIC explains that the circuits will require a 100-foot wide right-of-way along the route approved by the Commission. AIC witness Johnson explains that a 100-foot wide right-of-way is the minimum right-of-way width required to provide adequate clearance from the 138 kV transmission line conductors to the edge of the right-of-way for operational and maintenance purposes, public safety, and proper NESC code clearances per Ameren's Transmission Planning Criteria and Guidelines, its Transmission Vegetation Management Strategy, and the United States Department of Agriculture Rural Utilities Services ("RUS"), Bulletin 1724E-200, page 5-9, table 5-3. Mr. Johnson also explains that, during installation of the wires, the construction contractor may need to set-up equipment off the 100-foot-wide right-of-way. So, depending on where this might occur, AIC may need to also obtain construction easements to construct the Project.

AIC explains that the expected in-service date of the Project, which will connect ATXI's Faraday substation to AIC's existing transmission system in the Decatur area through AIC's PPG substation, is before the end of 2016.

V. SECTION 8-406.1 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

A. Filing Requirements: Engineering Data, Application Fee, Notice Requirements, and Website

Section 8-406.1 of the Act requires that a utility include with an application under that Section certain information regarding the project for which it requests Commission approval, and to provide certain notice of the project. See 220 ILCS 8-406.1(a), (d), (e). In order to facilitate review of its application, AIC provided with its application a checklist identifying where the Section 8-406.1 information is located in its filing (Petition Exhibit E; Ameren Ex. 1.1).

AIC provided a summary of the engineering data required by Section 8-406.1(a)(1)(B) in Petition Exhibit D and Ameren Exhibit 4.2.

As AIC witness Gerhardt explains, with its filing, AIC provided the Chief Clerk of the Commission an application fee of \$100,000 to be paid to the Public Utility Fund, pursuant to Section 8-406.1(a)(2). AIC also published notice of the filing in the official State newspaper, the Taylorville Breeze-Courier on January 28, and February 4, 2015, within ten days following the date that its petition was filed, pursuant to Section 8-406.1(d).

AIC witness Hyland explains AIC's public outreach process related to the Project. As Ms. Hyland explains, AIC held pre-filing public meetings to receive public comment concerning the Faraday-PPG Transmission Project in Macon County, the only county where the Project will be located, on September 30, October 1, October 2, and November 5, 2014, pursuant to Section 8-406.1(a)(3). AIC published notice of the meetings in two newspapers of general circulation in Macon County, once a week for at least three consecutive weeks, beginning no earlier than one month prior to the first public meeting. AIC also provided notice of the public meetings, including a description of the Project, in writing to the Macon County Clerk, and it invited a representative of the Commission to each public meeting, pursuant to Section 8-406.1(a)(3).

Ms. Hyland continues that AIC established a dedicated website for the Faraday-PPG Transmission Project at FaradayTransmission.com on September 5, 2014, which AIC will maintain until construction of the Project is complete, pursuant to Section 8-406.1(e). AIC included, and will continue to include, the website address in all public notices, if any, related to the Project. Further, Ms. Hyland explains, AIC established a Project hotline at 877-655-2349, a Project direct mailing address at Faraday-PPG Transmission Project, 5201 S. 6th St. Rd., Springfield, Illinois, 62703, a Project email address at FaradayTransmission@ameren.com, and used social media tools to inform, and solicit feedback from the public and other stakeholders regarding the Project.

Pursuant to 83 Ill. Adm. Code 200.150(h), and in accordance with past Commission directives, AIC also submitted as Petition Exhibit F with its application a list containing the names and addresses of each owner of record of privately-owned tracts of land, upon or across which AIC's proposed routes for the Project will be constructed, as disclosed by the records of the tax collector of Macon County within thirty days prior to the January 26, 2015 filing.

Staff witness Rockrohr concludes that AIC has complied with the informational and notice requirements of Sections 8-406.1(a)(1), (a)(2), (a)(3), (d), and (e) of the Act. He specifically found the tables that AIC provided with its application that demonstrate where the Section 8-406.1 information can be found in the filing to be helpful when confirming that AIC met the informational requirements of Section 8-406.1.

B. Criteria Necessary for Grant of Certificate

Subsection 8-406.1(f) provides that the Commission shall grant a certificate of public convenience and necessity if it finds that a project will promote the public convenience and necessity and that three criteria are satisfied: (1) the project is necessary to provide adequate, reliable, and efficient service and is the least-cost means of satisfying the utility customers' service needs or will promote the development of an effectively-competitive electricity market that operates efficiently, is equitable, and is the least-cost means of satisfying those objectives; (2) the utility is capable of, and has taken action to efficiently manage and supervise the construction process; and (3) the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. 220 ILCS 5/8-406.1(f)(1)-(3).

1. Necessary and Least-Cost Nature of the Project

a. AIC Position

AIC, through witness Kramer, explains that the Project is necessary to provide the electrical connection between ATXI's Illinois Rivers Project and the existing electrical system.

AIC notes that in Docket No. 12-0598, the Commission found that the Illinois Rivers Project is necessary to provide adequate, reliable, and efficient electric service to Ameren Illinois area customers and will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. The Commission further found that a Mt. Zion area substation is necessary to deliver the Illinois Rivers Project benefits to Ameren Illinois area customers, including resolution of a future risk of post contingency low voltages in the Decatur area.

AIC explains that, to deliver those benefits, the Mt. Zion area substation (now, the Faraday substation) must be electrically connected to the Decatur area. Once integrated into the existing grid, AIC explains, the Illinois Rivers Project will provide additional transmission capacity, increase local reliability, deliver renewable energy, and provide other economic and market efficiency benefits to Ameren Illinois area customers.

AIC explains that the Project makes that connection between ATXI's Illinois Rivers Project and the local Decatur area transmission system so that Ameren Illinois area customers can fully realize the benefits provided not only by the Illinois River Project, but also the broader portfolio of Midcontinent Independent System Operator ("MISO") Multi-Value Projects ("MVP") approved by the MISO Board of Directors in December 2011—a collection of 17 regional transmission system enhancement projects that, when integrated into the transmission system, provide multiple benefits under a variety of future scenarios, including enhanced reliability, reduced congestion, increased market efficiency, reduced real power losses, and the deferral of otherwise needed capital investments in transmission.

AIC explains that, in Docket No. 12-0598, AMS identified two North American Electric Reliability Corporation ("NERC") Category C events as resulting in low voltages that could lead to a voltage collapse in the Decatur area during 2021 summer peak load levels: Outage of Oreana 345/138 kV transformer #1 and Oreana 345/138 kV transformer #2; and Outage of Oreana-ADM N 138 kV line #1610 and Oreana-ADM N 138 kV line #1606. AMS' analyses showed post-contingency voltages below 95% for the Decatur area absent the Illinois Rivers Project. AIC explains that, in this case, AMS again performed an analysis of these two NERC Category C events using the same assumptions as in Docket No. 12-0598, but updated to include the approved Faraday substation location, an eight-mile length for the Faraday-PPG Transmission Project's individual 138 kV transmission lines, and the planned 138 kV transmission line conductor. The results of the updated analysis continue to show post contingency voltages above 95%. AIC explains that, as the Commission found in Docket No. 12-0598 and as its updated analysis shows, the Illinois Rivers Project, including the Mt. Zion area substation, will maintain acceptable voltages in the Decatur area for the identified contingencies, however, this resolution depends on a connection being made between the Faraday substation and the Decatur area.

AIC explains that the Project provides the needed connection between the Faraday substation and the Decatur area. The Faraday substation includes a 345/138 kV transformer. AIC explains that when the Project is completed, this will provide an additional source to serve load in Decatur, which will enhance reliability in the Decatur area by providing transmission support for the multiple contingency events mentioned above. This, in turn, will reduce the exposure to dropping large amounts of customer load due to potential future low voltage conditions.

AIC further explains that two, at most eight mile long, 138 kV connections between the PPG and the Faraday substations (as opposed to one connection or connections with a different voltage) are necessary to ensure the reliability benefits of the Illinois Rivers Project to the Decatur area. AIC explains that a single 138 kV line would not provide acceptable voltage support to address the future Decatur area post contingency voltage issues. AIC further explains that the 138 kV voltage level was selected for the Project because it is consistent with the existing 138 kV system that encircles the Decatur area. Finally, AIC explains, from a transmission planning perspective, the Project's two connections each should be at most eight miles long given the location selected by the Commission for the Faraday 345/138 kV substation to provide acceptable voltage support to the Decatur area. AIC explains that the impedance of lines using typical 138 kV conductors more than eight miles in length would be sufficiently great to jeopardize the ability of the Project to deliver acceptable voltage support to the Decatur area to address the future post contingency reliability issues.

AIC also points out that, because the Project is part of the MISO MVP portfolio, AIC is obligated to construct it, and to connect AIC's existing facilities to the Illinois Rivers Project. AIC explains that the MISO Transmission Owners Agreement obligates

transmission-owning members, like AIC, to construct projects approved by the MISO Board of Directors. AIC reiterates, however, that its system will receive a significant number of reliability and efficiency benefits from the Illinois Rivers Project that can only be realized by connecting the existing Decatur area transmission system to the ATXI Illinois Rivers Project.

AIC explains that the Project is not only necessary for the reasons explained above, but also, as designed, is the least cost means of connecting the PPG and Faraday substations. As AIC witness Gerhardt explains, the total estimated cost to construct the Project, as proposed by AIC, is \$37.3 million to \$39.2 million, including construction of the proposed connections, modifications to the PPG substation necessary to accommodate the connections, and the cost of rights-of-way acquisition. The total estimated cost to construct the transmission line alone is \$32.5 million to \$34.4 million.

AIC explains that the PPG substation was selected as the termination point for the Project because that results in 138 kV lines of no more than eight miles in length, which provides acceptable voltage support to address the future reliability issues in the Decatur area for the reasons explained. Connections to other 138 kV transmission substations in the Decatur area would result in longer, and therefore more expensive, 138 kV transmission lines to the Faraday substation. Moreover, AIC explains, because connecting to other Decatur area transmission substations would result in longer 138 kV lines, it would increase the potential need for additional 138 kV lines in order to provide adequate voltage support to the Decatur area under certain post contingency conditions. In addition, the other Decatur area 138 kV transmission substations are more difficult to access due to subdivision location, airports, and other obstacles. AIC further explains that the Commission-approved location and configuration of the Faraday substation, with its strong 345 kV supply and 345/138 kV transformation, when combined with the Project, provides acceptable post contingency voltage support to the Decatur area for the least cost; no other system configurations would deliver the Illinois River Project benefits, including voltage support, to Decatur for a lower cost.

AIC further explains that, because it is part of the MISO MVP portfolio, the Faraday-PPG Transmission Project receives MVP cost allocation treatment. This means that the Project's costs are allocated across the entire MISO footprint. As a result, Ameren Illinois area customers will pay for approximately 9% of the total Project cost.

AIC believes that least cost does not just mean least dollar cost. Therefore, as AIC witness Hyland explains, in developing routes for the Project's two connections, AIC analyzed potential rights-of-way between the PPG and Faraday substations that minimize the Project's overall impact in addition to ensuring that the Project is least dollar cost. AIC identified primary and alternate routes for each connection—the West Primary, West Alternate, East Primary, and East Alternate Routes—as described by Ms. Hyland in her direct testimony (Ameren Ex. 6.0) and shown on the map provided as Petition Exhibit A and Ameren Exhibit 6.1. AIC explains that it comprehensively

analyzed route siting in the Project area, and determined that these routes represent the best combination of engineering feasibility, cost, efficiency, and mitigation of impacts on surrounding areas, and will permit construction of the Project that is overall least cost, with the West and East Primary Routes being most optimal and therefore AIC's preferred routes. AIC explains that it will continue to assess the Project's impact on known environmental and historical or cultural resources, and it will work with the relevant state and federal regulatory agencies to minimize or avoid any impact on those resources.

b. Staff Position

Staff witness Rockrohr reviewed AIC's filing and testifies that AIC has adequately demonstrated the need for the Project. He testifies that in Docket No. 12-0598, ATXI demonstrated that without the additional 138 kV supply to the Decatur area that the Faraday substation would provide, a simultaneous outage of two specific existing transmission elements during summer peak could result in unacceptably low voltage. He further testifies that, in this docket, AIC uses nearly identical load flow analyses to demonstrate that its proposed 138 kV transmission lines that connect ATXI's Faraday substation to AIC's PPG substation are necessary. Mr. Rockrohr concludes, based on this and his assumption that ATXI's Illinois Rivers Project 345 kV transmission line and Faraday substation will be completed and available to supply the Project's two 138 kV transmission lines, that AIC has successfully demonstrated that there is a need for the Faraday-PPG Transmission Project under Section 8-406.1. He therefore recommends that the Commission grant AIC's request for a Section 8-406.1 certificate of public convenience and necessity for the Project. He recommends, however, that the Commission direct AIC to construct one double-circuit 138 kV line on one route corridor connecting the Faraday and PPG substations. The routing of the Project, and Mr. Rockrohr's recommendation in this regard, are discussed separately below.

c. Fuyao Position

Fuyao witness Burkett testifies that Fuyao understands that the Project will improve local reliability in and around Decatur, to mitigate the risk of voltage collapse, and therefore Fuyao is not opposed to the Project in general.

2. AIC's Construction Managerial Ability

a. AIC Position

AIC witness Gerhardt testifies that AIC is capable of efficiently managing and supervising the construction process for the Project. AIC will use AMS to construct the Project. AMS, on behalf of AIC and ATXI, has constructed hundreds of miles of transmission line in Illinois. The Commission most recently found AIC, through AMS, capable of constructing transmission line projects in Docket Nos. 12-0080, 12-0154, and 13-0115. AIC explains that, consistent with past practice, AMS, on behalf of AIC, will use outside contractors, including union contractors, to construct the Project.

AIC further explains that AMS has documented corporate project oversight policies and procedures consistent with American National Standards Institute standards that will govern all phases of construction of the Project and will ensure that the construction, and AMS' supervision of it, is adequate and efficient. AIC explains that AMS will also construct the Project in accordance with all applicable federal and state regulations and orders of the Commission, including 83 Illinois Administrative Code Part 305 and the National Electrical Safety Code.

b. Staff Position

Staff witness Rockrohr testifies that AMS and its predecessors have been constructing transmission lines for decades, and he has no reason to question AIC's capability to manage and supervise the construction of this Project through the use of AMS.

3. AIC's Financial Ability

a. AIC Position

AIC explains that it is capable of financing construction of the Project without adverse consequences to AIC or its customers.

Through AIC witness Hughes, AIC explains that it will finance immediate construction capital requirements with short-term debt. Permanent financing will be done through two primary sources, long-term debt and equity. AIC explains that its short-term credit facility provides AIC direct borrowing capability up to \$800 million, within a credit facility of \$1,100 million. This facility is in place through 2019, beyond the expected completion of construction of the Project. AIC's current investment grade credit ratings permit it access to the long-term credit markets at competitive rates and on competitive terms relative to similarly rated companies. AIC further maintains that continued operation of its regulated business provides AIC on-going cash in the form of retained earnings, which are a source of equity that builds on the balance sheet and will provide a source of financing for the Project. Periodic infusions of equity from Ameren could also be a source of equity. AIC explains that these sources of capital are sufficient to finance construction of the Project.

AIC concludes that construction of the Faraday-PPG Transmission Project will not adversely impact AIC's financial health. AIC reiterates that the Project's modest construction needs through 2016 can be supported by AIC's existing lines of credit. AIC says any interest incurred until then will be minimal.

b. Staff Position

Staff witness Phipps reviewed AIC's financial information. Ms. Phipps explains that, relative to AIC's net utility plant and operating revenue, the total cost of the Project

is diminutive. Therefore, she agrees that AIC is capable of financing the Project without significant adverse financial consequences for AIC or its customers. Further, Ms. Phipps concludes that AIC's application meets the requirements of Section 8-406.1(f)(3) of the Act, and she recommends that the Commission find that AIC is capable of financing the proposed construction without significant adverse financial consequences for AIC or its customers.

C. Transmission Line Routing

Section 8-406.1(a)(1)(B)(viii) of the Act requires that a utility filing an application thereunder identify both a primary right-of-way and one or more alternate rights-of-way for its proposed transmission line project. 220 ILCS 5/8-406.1(a)(1)(B)(viii).

1. AIC Position

As explained, consistent with Section 8-406.1(a)(1)(B)(viii), AIC proposes both a primary and an alternate route for each of the Project's two connections—the West Primary, West Alternate, East Primary, and East Alternate Routes. These routes are shown on Petition Exhibit A and Ameren Exhibit 6.1.

AIC witness Hyland explains that these routes were selected as a result of a comprehensive Routing Study process that included public and stakeholder meetings and consultation with local governmental representatives and state regulatory bodies to minimize the impact of the Project on stakeholders. As Ms. Hyland further explains, AIC's routing team used an integrated route selection and stakeholder outreach process to identify route segments for each of the Project's two connections. The route segments were analyzed using the routing criteria and through outreach to, and solicitation of information and feedback from, stakeholders. Further, Ms. Hyland explains, the Routing Study used the latest technology for its analysis. It incorporated numerous data sources including Internet data repositories, information available from public agencies, field reviews, and information from meetings with stakeholders and the public. Ms. Hyland also drove all accessible roads within the Project Area in order to view the location of the routes. Ms. Hyland explains that the routing criteria and the process used to determine AIC's proposed routes for each connection are consistent with industry best practices and methodology for siting an electric transmission line. Based on this process and as shown in the Routing Study (Ameren Ex. 6.2), AIC maintains that its proposed routes are cost effective while best meeting the routing criteria, including incorporating feedback received from landowners and other stakeholders, and are, therefore, the optimum locations for the Project's connections.

AIC explains that its preferred routes for each connection are the West Primary and East Primary Routes, respectively, although it does not oppose approval of the Alternate Routes it proposes.

AIC explains the West Primary Route is its preferred route for the west connection (shown in solid orange on Petition Exhibit A, Ameren Exhibit 6.1) because

that route best adheres to the routing criteria. Specifically, as Ms. Hyland explains, compared to the West Alternate Route, the West Primary Route is shorter and costs less. It requires less acreage of new right-of-way; requires fewer angle structures; crosses fewer landowners; has two fewer residences within 500 feet of centerline and 8 fewer homes within 500-1,000 feet of the centerline; crosses fewer streams; and crosses less Illinois Historic Preservation Agency ("IHPA") High Probability Area.

AIC explains that the East Primary Route is its preferred route for the east connection (shown in solid blue on Petition Exhibit A, Ameren Exhibit 6.1) because it best adheres to the routing criteria. Specifically, as Ms. Hyland explains, compared to the East Alternate Route, the East Primary Route requires fewer angle structures; crosses steep slopes for a shorter distance; requires one less road crossing; crosses fewer landowners and parcels; parallels more Opportunities; impacts less forested land; impacts less forested wetlands; crosses fewer streams; and crosses less IHPA High Probability Area. The East Primary Route also was preferred by the Village of Mount Zion, minimized harvest operations for the Christmas Tree Farm on Traughber Road, minimized impacts to the heron rookery, and allowed for a narrower crossing of Finley Creek.

AIC witness Johnson testifies that a 100-foot-wide right-of-way is required for each circuit to provide adequate clearance from the transmission line conductors to the edge of the right-of-way. AIC initially proposed to route each of the Project's connections along two separate, nonadjacent 100-foot-wide rights-of-way, such that there was approximately 0.75 miles of separation between the West Primary and the East Primary Routes for the majority of the routes as they travel between the Faraday and PPG substations, and approximately 1.25 miles to 1.33 miles between the West Alternate and the East Alternate Routes as they travel between the substations (as shown on Petition Exhibit A, Ameren Exhibit 6.1). The separation between the east and west connections naturally narrows as the circuits approach the terminations at the substations.

As explained by AIC witness Seidler, AIC proposed this separation between the Project's two connections, rather than double-circuiting the Project's transmission line or constructing the circuits on immediately adjacent rights-of-way, for operational reliability and maintenance reasons.

AIC explains that double-circuiting poses operational and maintenance challenges. Two circuits on a common structure can decrease the reliability of the circuits because a single pole failure can create an outage for both lines. Common-mode failures resulting from an event on the structure or related hardware, AIC maintains, are mitigated or eliminated by using separate structures on separate, non-adjacent easements. AIC further explains, for normal maintenance on common structures, for safety concerns, outages may be required for both lines even if only one line requires maintenance. AIC explains that taking two circuits out for maintenance, especially parallel circuits that provide power flows to the same area(s), can pose significant reliability risks, for the reasons explained. Reduction of this reliability risk

often requires short maintenance windows overnight or on weekends, increasing the operation and maintenance costs by utilizing crews on overtime.

AIC explains that a common-mode failure is a failure that results from one or more events that cause coincident failures in two or more systems (in this case, transmission lines), leading to failures in the multiple systems (lines). The event(s) responsible for the common-mode failure can be either internal or external to the systems (lines) that are affected. By way of examples, AIC explains if a structure of circuit #1 collapses due to a defect or an external event like a storm, and it falls on the wires or structures of circuit #2, that is a common-mode failure. Likewise, if a wind event blows limbs or other debris into the adjoining wires of both circuits #1 and #2 that would be a common-mode failure. AIC maintains that if two circuits are supposed to supply a community (either directly or as supplies to a substation that serves multiple communities) like the Faraday-PPG Transmission Project's Connections, putting both on the same structure or the same right-of-way means that when a common-mode failure occurs, the community (here, the Decatur area) has a greater risk of operating without those supplies.

AIC acknowledges that it has double-circuited transmission lines in the past when the operation and maintenance impacts of double-circuiting can be accommodated and design factors support it as an economical decision. AIC states that double-circuiting is an option to consider in the overall system design of the transmission system. But, AIC explains, other factors, including reliability, cost, maintenance, and operation, must also be considered. For example, double-circuiting may be feasible if the two circuits do not supply the same area, since a common-mode failure would not cause a failure of two circuits to the same area. AIC believes that in the case of the Faraday-PPG Transmission Project, double-circuiting does not present the optimal configuration for operational reliability and maintenance reasons because both circuits supply the same community, the Decatur area. AIC believes that placing the Project's two circuits on separate, non-adjacent easements is in the best interest of Decatur/Mt. Zion area consumers as it will yield superior reliability by reducing their exposure to certain common-mode failures.

AIC further explains that AIC's study in which the post-contingent voltage resulted in just at or below 95%, explained above, was studied under peak load conditions and given a certain system configuration (topography). In the peak load case, two circuits would be required to maintain adequate post-contingent voltage in the Decatur area. However, AIC explains, the transmission system is seldom at peak load conditions, and there are numerous combinations of system loads and topographies that could occur where having one Faraday-PPG connection that remains in service (that would have otherwise been interrupted due to a common mode failure due to double-circuit construction) would provide increased operational reliability that the Decatur area would need to prevent reliability issues. AIC maintains that real-time operations of a transmission system involves the system operator dealing with any and all contingencies and system variables such as load growth, system bias, planned and forced outages, etc., that occur. In many cases, AIC explains, those contingencies can

exceed minimum NERC standards and Ameren Transmission Planning Criteria. It is also reasonable to conclude that one Faraday-PPG connection remaining in service will provide additional benefit over having zero connections in service under numerous scenarios. AIC summarizes that the Decatur area will realize increased reliability under various system load and configurations by constructing the Project's two connections on separate, non-adjacent rights of way versus constructing a double-circuit line.

AIC also explains that constructing the Project's two connections on immediately adjacent 100-foot-wide rights-of-way results in minimal separation between them and is physically similar to double-circuiting, so, it poses similar operational reliability and maintenance challenges. Therefore, AIC maintains, it is not desirable. AIC continues, when circuits are adjacent, there is an operational reliability reduction because close structures constitute a real and immediate threat to each other, should either fail. Again, having two lines down at any given point reduces the reliability of the transmission system at large. In other words, AIC explains, the closer circuits are to one another, the greater the probability that, if one line fails, it will cause the adjacent line to fail. Likewise, weather events, either directly or from debris, can cause both lines to fail if they are close together. AIC concludes that, simply put, separation between the lines increases their operational reliability.

AIC notes, for example, that Illinois experienced horrific tornadoes in November 2013, and both double-circuited and adjacent transmission lines were downed as a result. In the Peoria area, a double-circuit tower line with a 138 kV circuit and a 69 kV circuit was knocked over by the high winds. The wires for each circuit spread to the edge of the downed transmission lines' rights-of-way. In another instance, AIC explains, a 138 kV circuit structure was blown over and fell on a distribution circuit. In contrast, AIC continues, in the Kansas area, a 345 kV circuit experienced the destruction of five structures and damage to the conductors as a result of the November 2013 storms. Notably, this circuit exactly physically paralleled a 138 kV circuit, but with rights-of-way offset more than a mile. AIC explains that the 138 kV circuit suffered no damage and was able to continue to supply the area. AIC concludes that, while no one can predict with certainty that a particular separation between circuits will prevent weather related outages such as those described, the likelihood of having an outage of both lines due to common events decreases as the distance between the circuit's increases.

AIC acknowledges that it has constructed immediately adjacent transmission lines in the past. However, like double-circuiting, whether to place a transmission line in parallel with another line must be viewed holistically, and environmental and land use impacts must be weighed in addition to engineering, reliability, and cost considerations. AIC explains that if the Project's circuits were constructed on separate but adjoining rights-of-way, their operational reliability would be slightly increased as compared to a double-circuit construction, but it would be decreased as compared to utilizing non-adjoining rights-of-way, for the reasons explained. And, AIC continues, Project material (structures, foundations, wire, hardware, etc.) costs and land acquisition costs would be relatively the same whether the Project utilized separate structures on adjacent rights-

of-way or on non-adjacent rights-of-way. AIC reiterates that, for the Project, it is better not to use adjoining rights-of-way because both proposed 138 kV lines supply the Decatur/Mt. Zion area. AIC explains that the customers in those cities should not be exposed to a reduction in operational reliability that could be avoided by constructing the Project's circuits on separate, non-adjacent rights-of-way.

AIC explains that the optimal minimum separation between the Project's circuits is one mile for all of the reliability, operation, and maintenance reasons explained above. However, AIC reiterates that transmission line routing must be viewed holistically, and environmental and land use impacts must be weighed in addition to engineering, reliability, and cost considerations. AIC explains that the area for this particular Project (shown outlined in black on Ameren Exhibit 6.1) is constrained not only by the location of the PPG and Faraday substations and the eight-mile line length planning constraint explained above, but also by the locations of the Village of Mt. Zion, the Silver Leaf Estates subdivision, the Federal Aviation Administration Omni-Directional Radio Range and tactical air navigation system beacon (VORTAC), and a Christmas tree farm to the east of the Project Area. AIC explains that balancing those constraints against the potential environmental and land use impacts of the Project within the Project Area that were raised during the routing and public processes supports the 0.75-mile separation between AIC's proposed West Primary and East Primary Routes.

On rebuttal, in response to Staff witness Rockrohr's recommendation regarding double-circuiting the Project's transmission line, AIC reiterates that it is preferable to route the connections on separate, non-adjacent rights-of-way to reduce potential operation and maintenance issues and to increase the operational reliability of the lines, which, in turn, increases the benefits of the Project to the Decatur area. AIC witness Seider opines that this is a logical approach, and notes that he and Mr. Rockrohr simply have differing engineering opinions on the value of the increased operational reliability and reduced operational and maintenance issues of separate corridors, compared to the increased initial cost and potential impact to additional landowners of separate corridors.

However, AIC explains, for the purposes of this proceeding, in the interest of compromise, and—given the required in-service date of the Project—an expeditious resolution, AIC does not object to Mr. Rockrohr's recommendation to construct both connections within the same corridor (the West Primary Route) on the same structures, making it a double-circuit transmission line. AIC points out, however, that in the future, it might consider the need for another line on an east route between the Faraday and PPG substations, but that is not a matter for the Commission's consideration at this time.

In response to Mr. Rockrohr's proposed modification to the West Primary Route near the Faraday substation, AIC explains that it originally proposed three 90-degree turns to adhere to its technical criteria of increasing separation between the Connections, for the reasons explained above. However, as explained, AIC does not

object to Mr. Rockrohr's recommendation to construct the Project as a double-circuit transmission line along AIC's proposed West Primary Route. This removes the need for increased separation between the connections at the Faraday substation, and AIC does not oppose the route modification that Mr. Rockrohr recommends there.

Mr. Johnson further explains in his rebuttal testimony that use of a double-circuit route, as Mr. Rockrohr recommends, requires adjustments to the transmission line route where it enters the Faraday and PPG substations. So AIC proposes two additional, short route modifications at the Faraday and PPG substation sites (shown on Ameren Exhibits 9.1 and 9.2, respectively). Mr. Johnson maintains that these modifications allow for the transition of the double-circuit structures to single circuit structures as the circuits enter their respective positions inside the substations. He explains that, at the Faraday substation site, two separate single circuit routes are required to allow for future expansion of the substation; this allows for future lines to exit in between the two proposed circuits. At the PPG (Fuyao) substation site, two single circuit lines are required to transition one of the circuits from the west side of the substation to its connecting point on the east side of the substation. Mr. Johnson explains that Fuyao agreed to this arrangement by virtue of a letter AIC received explaining Fuyao's support.

Mr. Johnson also explains on rebuttal that, although Fuyao's proposed modification to the east connection route is acceptable to AIC, because AIC does not object to Staff witness Rockrohr's recommendation to construct both circuits on the same support structures along AIC's proposed West Primary Route, Fuyao's proposed east connection route modification is no longer required. The Village of Mt. Zion's support for AIC's proposed East Primary Route is likewise mooted by AIC's lack of objection to Mr. Rockrohr's proposal.

2. Staff Position

Staff witness Rockrohr disagrees with AIC that there is a need for two separate corridors for the Project's two 138 kV lines. He recommends that, given the source, function, and length of these lines, AIC should instead install both 138 kV lines on a single set of poles on one route corridor. He opines that a new double-circuited 138 kV line between the Faraday and PPG substations will adequately resolve all projected NERC reliability concerns, result in lower Project costs, reduce impacts to landowners, and eliminate roughly half the required easement area.

While Mr. Rockrohr agrees that, in some situations, separation of transmission lines is logical and necessary to satisfy NERC reliability and planning standards, he does not believe the Project presents such a case. He states that the reason AIC proposes two lines is that both of the proposed 138 kV lines are necessary to maintain proper voltage in the Decatur area during a NERC Category C event during 2021 peak loading conditions. He testifies that the need for the two new 138 kV lines is for a very limited set of circumstances and exists only for a very limited period – during peak loading. He further testifies that, since both of the proposed lines are to be supplied by

the same 345/138 transformer at the Faraday substation, a failure of that transformer would eliminate the usefulness of both 138 kV lines, regardless of whether they are constructed on one or two corridors. He explains that while he fully supports AIC's construction of a connection between the Faraday and PPG substations, he does not believe use of separate corridors is the least cost means of satisfying AIC's customers needs.

Mr. Rockrohr recommends that the Commission approve AIC's West Primary corridor, with a slight modification to the route near the Faraday substation, as the route for the connections between the Faraday and PPG substations. The modification that Mr. Rockrohr proposes is to replace three 90-degree turns near the Faraday substation with one 90-degree turn, to reduce costs, as the dead-end structures used to make 90-degrees turns are costly. Mr. Rockrohr concludes that, overall, using this modified West Primary Route for the double-circuit 138 kV line would be the least cost means to meet customer needs because it minimizes heavy angles, close proximity to residences, and tree clearings, and has no railroad crossings. He recommends that the Commission grant AIC's request for a certificate of public convenience and necessity, directing AIC to construct one double-circuit 138 kV line on this single route corridor.

3. Fuyao Position

Fuyao witness Burkett explains that AIC has certain electric distribution and transmission facilities in and around the Fuyao property, including the PPG (Fuyao) substation. He explains that, in general, Fuyao does not oppose the Project; again, Fuyao understands that the Project will improve local reliability in and around Decatur, in order to mitigate the risk of voltage collapse. However, Fuyao opposes the location of AIC's east connection as it enters the PPG substation near and on Fuyao's property. Fuyao proposes a slight modification to that route. Mr. Burkett explains that the modification would better align with Fuyao's construction plans. The proposed modification is shown on Fuyao Glass Exhibit 1.1, attached to Mr. Burkett's testimony.

4. Mt. Zion Position

Mt. Zion indicates in its Verified Petition to Intervene that AIC's proposed east connection would be constructed near and within Mt. Zion's corporate limits. Mt. Zion further states that, by its filing, it is indicating its support for AIC's proposed East Primary Route, however, Mt. Zion did not file testimony in this proceeding.

D. Commission Analysis and Conclusion

In this proceeding, AIC requests that the Commission grant it a certificate of public convenience and necessity under Section 8-406.1 of the Act authorizing AIC to construct, operate, and maintain two new 138 kV transmission lines in Macon County connecting the existing AIC PPG substation with the Faraday substation that ATXI will construct south of Mt. Zion pursuant to the Commission's orders in Docket No. 12-0598. AIC also requests an order under Section 8-503 of the Act authorizing or

directing the Faraday-PPG Transmission Project, or Project, to be constructed, including certain modifications required at the PPG substation. Because AIC does not object to Staff's proposal to construct both lines upon a single set of structures along AIC's proposed West Primary Route, as slightly modified and agreed to by all parties, there now appear to be no contested issues among the parties.

Subsections 8-406.1 (a), (d), and (e) contain specific informational and notice requirements of an applicant under Section 8-406.1, including generally the provision of a complete description of the Project, engineering data, an application fee, primary and alternative routes, three pre-filing public meetings, establishment of a dedicated website, and publication of notice of filing of the application. AIC asserts, and Staff agrees, that it has complied with these requirements. The Commission finds that AIC has met the requirements set forth in subsections (a), (d), and (e) of Section 8-406.1.

The Commission concludes that the record demonstrates that the Project is necessary to provide adequate, reliable, and efficient service to customers, including Decatur area customers, and is the least-cost means of satisfying the service needs of customers and mitigating the risk of voltage collapse in the Decatur area.

The Commission further notes that for the purpose of this proceeding for the reasons explained by AIC, AIC does not object to Staff's proposal to construct the Project's transmission line as one double-circuit 138 kV line along AIC's proposed West Primary Route, as slightly modified by Staff and AIC near the PPG and Faraday substations and agreed to by Fuyao. The Commission therefore finds that this is the overall best route for the Project's connections, and it approves the Project constructed as a double-circuit 138 kV line along AIC's proposed West Primary Route, slightly modified by Staff and AIC near the PPG and Faraday substations and agreed to by Fuyao, as shown on and legally described in the Appendix to this Order. The Commission further finds the minimum right-of-way width for the transmission line shall be 100 feet, and that construction easements may also be required.

The Commission also finds that the record demonstrates that AIC is capable of efficiently managing and supervising the construction process for the Project, and has taken sufficient action to ensure adequate and efficient construction and supervision thereof.

The Commission also finds that AIC is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

Based on the above and the evidence presented, the Commission concludes that AIC has satisfied the requirements of Section 8-406.1(f) of the Act. The Commission finds that the Faraday-PPG Transmission Project, constructed as one double-circuit 138 kV transmission line along AIC's proposed West Primary Route, as modified by Staff and AIC near the PPG and Faraday substations and agreed to by

Fuyao, will promote the public convenience and necessity, is in the public interest, and is approved.

VI. SECTION 8-503 ORDER

AIC also seeks a Commission order authorizing that the Project be built pursuant to Section 8-503 of the Act, 220 ILCS 5/8-503. Section 8-503 of the Act provides that, whenever the Commission finds that additions to existing plant are necessary and ought reasonably to be made, or that a new structure or structures ought to be erected, the Commission "shall make and serve an order authorizing or directing that such additions . . . be made, or structure or structures be erected" 220 ILCS 5/8-503. Further, Section 8-406.1(i) provides that "a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order." 220 ILCS 5/8-406.1(i).

No party opposes a grant of authority under Section 8-503. Staff witness Rockrohr specifically testifies that he does not object to the Commission issuing a Section 8-503 order covering modifications to AIC's existing PPG substation, and recommends that the Commission grant AIC's request for a Section 8-503 order, consistent with his routing recommendation, explained above.

In compliance with Section 8-406.1(i), the Commission authorizes AIC under Section 8-503 of the Act to construct the Project as set forth in this Order.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) AIC is an Illinois corporation engaged in the retail sale and delivery of electricity and power to the public in Illinois, and is a "public utility" as defined in Section 3-105 of the Act;
- (2) the Commission has jurisdiction over AIC and the subject matter of this petition;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the facts recited and conclusions of law reached in the Commission Analysis and Conclusion are hereby adopted as findings herein;
- (5) pursuant to Section 8-406.1(f)(2) of the Act, the Commission finds that AIC 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;

- (6) pursuant to Section 8-406.1(f)(3) of the Act, the Commission finds that AIC is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;
- (7) the West Primary Route, as modified near the PPG and Faraday substations and shown and legally described in the Appendix hereto, is the least-cost route for the Project, is reasonable, and should be approved;
- (8) the easements for the Project's transmission line as approved herein are reasonable and appropriate and should be approved;
- (9) the Project as approved herein, including modifications to the PPG substation, and the construction of the transmission line as described in this Order, is necessary and ought reasonably to be made to promote the security or the convenience of the public and to secure adequate electric service or facilities to Ameren Illinois area customers;
- (10) pursuant to Section 8-406.1(h), the Commission finds that AIC shall pay a one time construction fee to each county in which the project is constructed within 30 days after the completion of construction; the construction fee shall be \$20,000 per mile of high voltage electric service line constructed in that county, or a proportionate fraction of that fee; the fee shall be in lieu of any permitting fees that otherwise would be imposed by a county;
- (11) pursuant to Section 8-406.1(i) of the Act, AIC is authorized, pursuant to Section 8-503 of the Act, to construct the high voltage electric service line at the locations and in the manner specified herein on, over, along, across, and through the parcels of land along the route described in and shown on the Appendix hereto, as well as modify an existing substation, and related facilities as approved by the Commission in the prefatory portion of this Order; and
- (12) 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 a Certificate of Public Convenience and Necessity is hereby issued to Ameren Illinois Company d/b/a Ameren Illinois pursuant to Section 8-406.1 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 Ameren Illinois Company d/b/a Ameren Illinois of two new 138 kilovolt electrical transmission lines within Macon County, Illinois, connecting the existing PPG substation to the new Faraday substation, constructed as a double-circuit along the route shown on and legally described the Appendix attached hereto, and (2) the transaction of an electric public utility business in connection therewith, all as herein before set forth.

IT IS FURTHER ORDERED that pursuant to Section 8-503 of the Act, Ameren Illinois Company d/b/a Ameren Illinois is authorized to construct the Project described herein, including modifications to the PPG substation, and construction of the transmission lines on, over, along, across, and through the parcels of land along the route described in and shown on the Appendix attached hereto.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the 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.

By order of the Commission this 16th day of June, 2015.

(SIGNED) BRIEN SHEAHAN

Chairman

Ameren Exhibit 7.0

ILLINOIS COMMERCE COMMISSION

DOCKET No. 15-_____

DIRECT TESTIMONY

OF

DARRELL E. HUGHES

Submitted on Behalf

Of

AMEREN ILLINOIS COMPANY

d/b/a Ameren Illinois

January, 2015

Ameren Exhibit 7.0

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1 **ILLINOIS COMMERCE COMMISSION**2 **DOCKET No. 15-_____**3 **DIRECT TESTIMONY OF**4 **DARRELL E. HUGHES**5 **Submitted on Behalf of**6 **Ameren Illinois**7 **I. INTRODUCTION AND WITNESS QUALIFICATIONS**8 **Q. Please state your name, business address, and present position.**

9 **A.** My name is Darrell E. Hughes, and my business address is 1901 Chouteau Avenue, St.
10 Louis, Missouri 63103. I am employed by Ameren Services Company (Ameren Services) as a
11 Supervisor Valuation and Cost of Capital – Corporate Finance for Ameren Corporation
12 (Ameren) and its affiliates, including Ameren Illinois Company d/b/a Ameren Illinois (Ameren
13 Illinois).

14 **Q. Please summarize your educational background and professional experience.**

15 **A.** A summary of my educational background and professional experience is attached as an
16 Appendix to this testimony.

17 **Q. What are your duties and responsibilities in your present position?**

18 **A.** In my current position, I am responsible for supporting the development of financial
19 projections provided to the credit rating agencies, long-term cash forecasting, asset valuations
20 and financial due diligence related to proposed capital projects and related financing activities.

22 **II. PURPOSE AND SCOPE**

23 **Q. Are you familiar with the Project that Ameren Illinois proposes in its Petition in this**
24 **proceeding?**

25 **A.** Yes. Ameren Illinois requests authorization to construct, operate, and maintain two new
26 138 kilovolt (kV) transmission lines in Macon County (the West Connection and the East
27 Connection, collectively, the Connections). Each line connects the existing Ameren Illinois
28 substation at the Pittsburgh Plate Glass Industries glass plant near Mt. Zion (the PPG substation)
29 to the new substation that will be constructed by Ameren Transmission Company of Illinois
30 (ATXI) south of Mt. Zion (the Faraday substation) as part of the Illinois Rivers Project, pursuant
31 to the Illinois Commerce Commission's (Commission) orders in Docket 12-0598. The
32 Connections and related PPG substation work are referred to as the Faraday-PPG Transmission
33 Project (the Project).

34 **Q. What is the purpose of your direct testimony?**

35 **A.** The purpose of my testimony is to support Ameren Illinois' request. I explain how
36 Ameren Illinois will finance construction of the Project, and why Ameren Illinois is capable of
37 financing the construction without adverse consequences to Ameren Illinois or its customers.

38 **Q. Are you sponsoring any exhibits with your testimony?**

39 **A.** Yes. I am sponsoring:

- 40 • Ameren Exhibit 7.1 – June 13, 2014 Moody's Investors Service Credit Opinion
41 Report; and
- 42 • Ameren Exhibit 7.2 – December 4, 2013 Standard and Poor's Rating Services
43 Research Update.

44

45 **III. HOW CONSTRUCTION OF THE PROJECT WILL BE FINANCED**46 **Q. What is the total estimated cost to construct the Project?**

47 **A.** As explained by Ameren Illinois witness, Mr. Kevin J. Gerhardt (Ameren Ex. 1.0), the
 48 total estimated cost to construct the Project is \$37.3 to \$39.2 million, depending on the route
 49 approved by the Commission for each Connection. This estimated cost range accounts for
 50 construction contingencies.

51 **Q. When is construction of the Project expected to begin and end?**

52 **A.** As explained by Mr. Gerhardt, the Project is scheduled to begin in December 2014 and
 53 to be completed by November 2016 to meet an expected in-service date at the end of 2016.

54 **Q. What cash flow is needed to finance construction of the Project during that period?**55 **A.** The following table details the construction costs by year:

Year	Construction Cost
2015	\$9.8 million
2016	\$29.4 million

56 Accordingly, that is the cash flow that Ameren Illinois will require to finance construction of the
 57 Project each year.

58 **Q. How will Ameren Illinois finance the necessary cash flow?**

59 **A.** Ameren Illinois will finance immediate construction capital requirements with short-term
 60 debt; it will finance permanent requirements with long-term debt and equity.

61 **Q. Is this consistent with how Ameren Illinois typically finances its capital needs?**

62 **A.** Yes. Generally, Ameren Illinois finances roughly 50% of its capital needs through long-
 63 term debt and 50% through equity. Long-term debt issuances are staged based on the overall

lending requirements of Ameren Illinois. Equity can be funded at any time through retained earnings, preferred stock, or equity infusions from Ameren Illinois' parent company, Ameren.

IV. AMEREN ILLINOIS' ABILITY TO FINANCE THE CONSTRUCTION

Q. Does Ameren Illinois presently have access to short-term capital?

A. Yes. On December 11, 2014, Ameren Illinois renewed its short-term credit facility, which provides it direct borrowing capability up to \$800 million within a credit facility of \$1,100 million. This facility is in place through 2019, beyond the expected completion of construction of the Project. Ameren Illinois also can draw from an Ameren corporate regulated money pool, and Ameren can provide additional immediate liquidity if needed.

Q. Does Ameren Illinois presently have access to long-term capital?

A. Yes. AIC holds a corporate rating of 'BBB+' with a Stable outlook from Standard & Poor's Ratings Service (S&P); a 'Baa1' (Stable outlook) issuer rating from Moody's Investors Service (Moody's); and a 'BBB' rating from Fitch with a Stable outlook. Ameren Illinois also has senior secured credit ratings of 'A2' from Moody's and "A" from S&P with Stable outlooks. These ratings are called "investment grade" ratings by the ratings agencies because they provide Ameren Illinois access to the long-term credit markets at competitive rates and on competitive terms relative to similarly-rated companies.

Q. Does Ameren Illinois presently have sources of equity to finance construction of the Project?

A. Yes. Continued operation of its regulated business provides Ameren Illinois on-going cash in the form of retained earnings. Retained earnings are a source of equity that builds on the balance sheet and will provide a source of financing for the Project. In addition, periodic

infusions of equity from Ameren, which I previously noted, could also be a source of equity.

These infusions appear as paid-in capital on Ameren Illinois' balance sheet.

Q. Are these sources of capital sufficient to finance construction of the Project?

A. Yes. Ameren Illinois' immediate access to \$800 million of short-term debt coupled with its ability to acquire long-term debt at favorable rates and on favorable terms ensure that it not only can finance construction of the Project, but also can finance it at competitive rates. I expect Ameren Illinois to continuously maintain a balanced capital structure that utilizes both debt and equity funding for construction projects, including the Project.

Q. Will the projected construction cost for the Project impact Ameren Illinois' access to the capital needed to finance that construction?

A. No. The estimated cost to construct the Project is modest relative to Ameren Illinois' total projected capital expenditures of \$1,600 million 2015 to 2016, and to Ameren Illinois' financing capability. The incremental amount of debt and interest to support this Project is small in comparison to Ameren Illinois' total borrowing capacity and interest expense. Ameren Illinois has \$800 million of short-term borrowing capability to support this Project's cost of \$39.2 million. Ameren Illinois will have almost \$145 million of interest expense in 2016, and this Project would only add about \$784,000 (at a 2% short term rate) to that amount, or about ½%. Ameren Illinois will continue to have the same access to long-term sources of external debt, retained earnings, deferred taxes, and other sources of capital as well. Thus, this Project will not affect Ameren Illinois' ability to finance its on-going needs.

Q. Will the projected construction schedule for the Project impact Ameren Illinois' access to the capital needed to finance that construction?

A. No. The schedule for this Project has been included in an overall financing forecast that was shared with Commission Staff in November, 2014. In summary, this plan shows that Ameren Illinois is capable of providing all necessary financings without degradation to key financial metrics that are used by the credit agencies to assess ratings. Ameren Illinois expects to complete construction by November 2016. Part of this financing plan includes use of the current short-term credit facility through 2019. Additionally, the plan includes periodic issuances of long-term debt in 2015 and 2016. This plan shows Ameren Illinois maintains strong credit metrics.

Further, the current outlook by both Moody's and S&P is stable, and ensures that AIC should have sufficient access to capital to finance all its construction needs during this period. Moody's comments in their June 13, 2014 Credit Opinion (attached as Ameren Ex. 7.1) that "In the near-term, we expect credit metrics to remain strong. The stable outlook reflects our expectation that the constructive regulatory framework in Illinois will continue to be credit supportive and that Ameren Illinois' financial metrics will be maintained with the appropriate range for its rating." S&P comments that their December 4, 2013 credit upgrade (see Research Update attached as Ameren Ex. 7.2) "reflects management's commitment to credit quality and the high certainty regarding the company's strategic direction. . . . Management of regulatory risk continues to gradually improve in Illinois."

Q. What about after the Project is in-service?

A. The Project will enhance Ameren Illinois' credit metrics. This in turn helps the long-term outlook that both rating agencies see as a credit positive factor in their reports. Increased

130 transmission revenue resulting from the Project, once in-service, will provide a return on the
131 amount of debt and equity necessary to finance its construction. Other costs, specifically
132 depreciation and maintenance, will also be recovered through transmission rates. This revenue
133 would have a beneficial sustaining effect on Ameren Illinois' credit metrics and ratings.

134 **Q. Will any individual customer or customer group reimburse Ameren Illinois for the**
135 **cost of the Project?**

136 **A.** No, no individual customer or any other group will reimburse Ameren Illinois.

137 **Q. Will Ameren Illinois recover the cost of the Project through rates applicable to**
138 **Ameren Illinois' service territory alone or to the entire MISO region?**

139 **A.** The recovery of these costs will come from the MISO interconnected region, not just the
140 Ameren Illinois (AMIL) transmission pricing zone. The MISO allocation process spreads the
141 cost across multiple areas and multiple jurisdictions, which creates a diversification of recovery.
142 Diversification of overall business operations has a credit positive benefit when reviewed by all
143 the rating agencies.

144 **V. CONCLUSION**

145 **Q. Does this conclude your direct testimony?**

146 **A.** Yes, it does.

APPENDIX**STATEMENT OF QUALIFICATIONS
DARRELL E. HUGHES**

I graduated with a Bachelor of Science degree in electrical engineering from Washington University in St. Louis, Missouri in 1975. Upon graduation, I was employed by Union Electric Company in the engineering services division of the information technology group. I held a variety of positions providing specialized support for transmission and distribution system analysis and design. I was promoted to Staff Assistant, Computer Services in 1982. I subsequently earned a Masters of Business Administration from Webster University in St. Louis, Missouri in 1991. After several promotions, I accepted the position of Senior Corporate Development Specialist in Corporate Finance for Ameren Services in 2000. I provided financial review and guidance to senior management regarding business initiatives proposed by all Ameren business lines. I completed financial projections and due diligence for Ameren's subsidiaries in the acquisition of new long-term debt in 2002. In 2003, I assumed additional responsibilities as Supervisor Valuation and Cost-of-Capital. In this role, I support Ameren's capital budgeting and project evaluation activities.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Transmission Company of Illinois	:	
	:	
Petition for a Certificate of Public	:	
Convenience and Necessity, pursuant to	:	15-0278
Section 8-406.1 of the Illinois Public Utilities	:	
Act, and an Order pursuant to Section 8-503	:	
of the Public Utilities Act, to Construct,	:	
Operate and Maintain a New High Voltage	:	
Electric Service Line in Adams County,	:	
Illinois.	:	

ORDER

DATED: November 12, 2015

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ORDER

By the Commission:

I. PROCEDURAL HISTORY

On April 10, 2015, Ameren Transmission Company of Illinois (“ATXI”) filed a Petition with the Illinois Commerce Commission (the “Commission”) seeking a Certificate of Public Convenience and Necessity pursuant to Sections 8-406.1 and 8-503 of the Public Utilities Act (the “Act”), 220 ILCS 5/8-406.1 and 8-503, authorizing ATXI to construct, operate, and maintain a new three-mile 345 kilovolt (kV) electrical transmission line in Adams County, Illinois.

ATXI failed to publish notice of its petition in the official state newspaper within 10 days of its filing. ATXI subsequently filed proof of publication so that the Petition was deemed completely filed on June 15, 2015. Pursuant to the 150-day deadline for a Commission action under Section 8-406.1(g), the Commission must render a decision by November 12, 2015.

The transmission line connects portions of ATXI’s Illinois Rivers Project between Quincy and Meredosia, Illinois. Previously, the Commission had issued a Certificate to ATXI authorizing construction of the Illinois Rivers Project in Docket 12-0598, *Ameren Transmission Co. of Ill.* After the Certificate issued, ATXI received a Notice of Presumed Hazard from the Federal Aviation Administration, (the “FAA”) in which, the FAA found that 16 transmission line poles on the approved route between Quincy and Meredosia may interfere with air navigation equipment, and therefore could not be constructed in their planned locations. This created a gap in the Quincy to Meredosia segment of the Illinois Rivers Project. The transmission line that ATXI proposes in this proceeding resolves that gap. ATXI seeks an order directing it to build that portion of the Illinois Rivers transmission line.

The Staff of the Commission ("Staff") participated in the proceeding. Greg Rockrohr, an engineer in the Commission's Safety and Reliability Division, testified on behalf of Staff. He submitted direct testimony on June 2, 2015, and rebuttal testimony on July 27, 2015 (Staff Exs. 1.0 and 2.0). The following parties filed Petitions for Leave to Intervene, which were granted: Timothy J. and Susan Schoenekase, (Schoenekase Exs. 1.0 and 2.0); Fredrick Loos and Loos Farm Supply, Inc., (Loos Exs. 1.0, 1.1 and 1.02); Thomas Arnsman, (AHP Exs. 1.0); James Hoskins, (AHP Ex. 2.0); and John Peters, (AHP Ex. 3.0) (collectively, AHPF"). The Schoenekase and Loos Intervenor were landowners that were possibly affected by ATXI's Primary Route or its Alternate Route. The remaining Intervenor was a landowner that was possibly affected by Staff's Blue Route. Each of these Intervenor submitted direct testimony on June 5, 2015 and July 9, 2015. Ms. Schoenekase filed rebuttal testimony on July 27, 2015.

ATXI submitted direct testimony on April 10, 2015 and rebuttal testimony on August 6, 2015, and August 11, 2015. ATXI's witnesses were as follows: Kevin Gerhardt, a Project Manager at Ameren Service Company, (ATXI Exs. 1.0 and 8.0); Dennis Kramer, Senior Director of Transmission Policy at Ameren Service Company, (ATXI Exs. 2.0 and 9.0); Jerry Murbarger, a Transmission Design Specialist at Ameren Services Company, (ATXI Exs. 3.0 and 10.0); Rick Trelz, the Real Estate Manager for Ameren Service Company, (ATXI Exs. 4.0 and 11.0); Emily Hyland, the Public Involvement Manager with HDR Engineering Inc., (ATXI Exs. 5.0 and 12.0); Darrell Hughes, a Supervisor of Valuation and Cost of Capital for Ameren Corporation, (ATXI Ex. 6.0); and Dave Wedell, a Senior Project Manager for POWER Engineers, Inc., (ATXI Ex. 7.0 and 13.0).

ATXI originally proposed two routes for the transmission line, a Primary Route and an Alternate Route. On June 5, 2015, in her testimony, Intervenor Susan Schoenekase proposed a modification to ATXI's Primary Route (the Schoenekase Route). Staff also proposed an alternate route (the Staff Blue Route).

An evidentiary hearing convened on August 12, 2015. Also on August 12, 2015, ATXI and all of the Intervenor in this proceeding, Timothy J. and Susan Schoenekase, Fredrick Loos and Loos Farm Supply, Inc., Thomas Arnsman, James Hoskins, and John Peters, (collectively, the "Stipulating Parties") filed a motion stating they had entered into a Stipulation supporting the Commission's approval of the "Schoenekase Route."

Staff, ATXI and the Intervenor submitted post trial briefs on September 1, 2015. ATXI and the Intervenor submitted a joint post trial brief, which was divided into two parts. The first part, sponsored solely by ATXI, set forth its position that the transmission line proposed in this case is necessary, and that ATXI met the statutory requirements for issuance of a certificate of Public convenience and necessity. The second part was sponsored jointly by ATXI and the other stipulating parties (the "landowners"). Staff filed a Reply Brief on September 15, 2015. On that same day, ATXI and the landowners jointly filed a Reply Brief.

An Administrative Law Judge's Proposed Order (an "ALJPO") was filed and served on September 29, 2015. Staff filed a Brief on Exceptions on October 7, 2015. The parties

agreed that, due to the time constraints, they would not file any Reply Briefs on Exceptions.

II. STATUTORY CRITERIA

Section 8-406.1 of the Act provides, in pertinent part:

The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied: (1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers . . . (2) That the public utility 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 (3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. ... Notwithstanding any other provisions of this Act, a decision granting a certificate under this section shall include an order pursuant to Section 8-503 of this Act authorizing and directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

220 ILCS 5/8-406.1.

Section 8-503 of the Act provides, in pertinent 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.

220 ILCS 5/8-503.

III. REQUIREMENTS FOR A SECTION 8-406.1 CERTIFICATE

A. Need for the Project

1. ATXI Position

ATXI states that the transmission line that is proposed here is necessary to resolve an electrical gap in the Illinois Rivers Project and is therefore necessary to fully realize the benefits of that Project. ATXI notes that no party disputes that there is a need to ensure a complete 345 kV electrical connection between Quincy and Meredosia, which is a segment of the Illinois Rivers Project. Stipulating Parties Initial Brief at 7.

ATXI avers that, in Docket 12-0598, it applied for and received a Certificate to construct the Illinois Rivers Project, a new 345 kV electric transmission line running over 375 miles across central Illinois, citing *Ameren Transmission Co. of Ill.*, Docket 12-0598, (Order of Aug. 20, 2013); (Second Order on Rehearing of Feb. 20, 2014). In that case, the Commission found that the Illinois Rivers Project was necessary to provide adequate, reliable, and efficient electric service, including the reliable delivery of renewable energy, citing *Ameren Transmission Co. of Ill.*, Docket 12-0598, (Order of August 20, 2013) at 14. ATXI contends that in that proceeding, the Commission found that the Illinois Rivers Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers; that it will provide reliability benefits in Illinois; and that it is the least-cost means of satisfying those objectives. ATXI asserts that the Commission-approved routes for the Project included a route for the portion of the Illinois Rivers Project connecting substations in Quincy and Meredosia, Illinois, citing *Id.* at 40-41. Stipulating Parties Initial Brief at 8.

ATXI states that, following Commission approval of that project, it began the final design of the Quincy to Meredosia route segment of that project. It also sought the necessary permits from government agencies, including the FAA. ATXI further states that the FAA reviews the location of every power line structure that is in proximity to an airport or air navigation system to determine whether the structure will interfere with an airport or navigation system. After ATXI determined the coordinates of each pole on the Quincy to Meredosia segment of the Illinois Rivers Project, ATXI states that it submitted those coordinates to the FAA for review. Initially, ATXI continues, the FAA indicated that the poles would not cause any interference. ATXI Ex. 7.0 at 2-3; Stipulating Parties Initial Brief at 8.

However, on January 24, 2014, the FAA issued a Notice of Presumed Hazard finding that 16 transmission line poles between Quincy and Meredosia would have an adverse physical, or electromagnetic, interference on navigation equipment. According to ATXI, the FAA then conducted a more detailed study, which was completed in April of 2014, and it found that those 16 structures could not be constructed in their planned locations because they would interfere with air navigation equipment at a nearby FAA air navigation facility referred to in ATXI's evidence as the VORTAC. ATXI explains that "VORTAC" is an acronym encompassing several navigational systems for aircraft, including short-range radio navigation systems, military air navigation systems,

communications equipment, and hazardous weather advisory systems. See, ATXI Ex. 7.0 at 2-3, 5-6.

ATXI presented evidence describing its discussions with the FAA regarding several possible methods of mitigating the impact of the transmission line on the air navigation facilities, so that the transmission line could be constructed on the route approved by the Commission in Docket 12-0598. It also provided correspondence with the FAA in this regard. *Id.* at 7; see also Stipulating Parties Initial Brief at 9.

ATXI states that the parties discussed alternative designs for a transmission line on the original route, including wooden poles and underground construction. ATXI contends that these options were not feasible because that route encroaches on an exclusion zone set forth in FAA regulations, and because placing the transmission line underground is not cost-effective. Stipulating Parties Initial Brief at 9. The parties also discussed rebuilding the air navigation facilities in a different location. ATXI states that this alternative was also determined to be infeasible because it would cost between \$10.3 and \$21.2 million to relocate the air navigation equipment. It would also take between four and six years to complete. In addition, this option would require approval from the military, and the time required for this approval is unknown. ATXI Ex. 7 at 6.

ATXI then determined that replacing the air navigation equipment with upgraded equipment was not feasible because, while upgrades might mitigate interference with certain equipment, upgrades would not entirely eliminate interference with this equipment. ATXI continues to state that, even if an upgrade could completely address the interference between the transmission line and the air navigation facilities, upgrades would take at least four years, and ATXI cannot begin construction of the transmission line near the navigation facility until all of those upgrades are complete. As a result, ATXI asserts, the Quincy to Meredosia segment of the transmission line could not be placed in service in 2016, as planned; instead it would be delayed until at least 2020. Stipulating Parties Initial Brief at 9. ATXI maintains that, because no feasible mitigation measures are available, the FAA will not approve an overhead transmission line along approximately two miles of the route that the Commission approved in Docket 12-0598. *Id.* at 10.

ATXI points out that Staff agrees with it that the Quincy to Meredosia connection remains necessary in order to complete the Illinois Rivers project. Also, no party to this proceeding disputes that conclusion. In order to realize the benefits of the Illinois Rivers Project generally, and the Quincy to Meredosia segment of the Illinois Rivers Project specifically, ATXI contends there must be a continuous 345 kV transmission line circuit across the state that interconnects with the existing electrical system. *Id.* at 10.

ATXI asserts that the transmission line it has proposed in this proceeding resolves the electrical gap in the least-cost manner. It avers that its proposed transmission line is approximately three miles in length; it minimizes the deviation from the previously approved route segment; it has been extensively studied; it incorporates the public's input; and it avoids interference with the air navigation facility. ATXI reasons that the

transmission line it proposes will allow it to deliver the benefits of the Illinois Rivers Project to its customers, which the Commission found to be necessary in Docket 12-0598. It concludes that thus, this transmission line is necessary to provide adequate, reliable, and efficient service to its customers. Also, according to ATXI, its proposed transmission 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, in satisfaction of the standard set forth in 220 ILCS 5/8-406.1(f)(1). Stipulating Parties Initial Brief at 10.

2. Staff and the Landowner/Intervenors Position

Staff and the Intervening landowners agree with ATXI that the 345 kV transmission line must connect Quincy to Meredosia, and that route approved in Docket 12-0598 must be rerouted to avoid possible interference with the VORTAC navigational facilities.

3. Commission Analysis and Conclusion

The Commission concludes that a proposed deviation to the original Quincy to Meredosia portion of the Illinois Rivers Project is necessary to complete the 345 kV connection between Quincy and Meredosia that was found to be necessary in Docket 12-0598. In Docket 12-0598, the Commission found that, as part of the Illinois Rivers Project, a 345 kV connection between Quincy and Meredosia was necessary to provide adequate, reliable, and efficient electric service, including the reliable delivery of renewable energy, which would promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. In Docket 12-0598, the Commission approved a route for a transmission line between Quincy and Meredosia.

However, ATXI has demonstrated in this proceeding that it cannot construct a two-mile portion of the route between Quincy and Meredosia, as approved in Docket 12-0598, because that route interferes with air navigational equipment regulated by the FAA. ATXI has provided evidence establishing that it considered alternative measures that would have allowed it to construct the route as approved, but, each alternative was prohibitively costly, or would result in long delays in completion of the Quincy to Meredosia segment, or both. Thus, the only feasible method to avoid conflict with the navigational equipment is to use a route that differs from the originally-approved Docket 12-0598 route with respect to the Quincy to Meredosia segment.

ATXI's inability to construct the transmission line on the route that the Commission approved in Docket 12-0598 does not alter the Commission's conclusion that a 345 kV transmission line connecting Quincy and Meredosia is necessary to provide adequate, reliable and efficient service and promote the development of a competitive electricity market. Because the transmission line approved here will complete the connection between Quincy and Meredosia, the Commission concludes that ATXI has demonstrated that a new route for the Quincy to Meredosia segment of the Illinois Rivers Project is necessary.

B. Managerial and Technical Ability

1. ATXI Position

ATXI asserts that the record establishes that it is capable of efficiently managing and supervising the construction of the transmission line, and ensuring adequate and efficient construction. Ameren Services Company, (“Ameren Services”) on behalf of ATXI, will manage and supervise construction of the transmission line. It states that Ameren Services and its personnel have many years of experience successfully overseeing the construction of transmission lines; it also has managed construction of hundreds of miles of transmission line, including the 375-mile Illinois Rivers Project. Stipulating Parties Initial Brief at 11.

ATXI witness Kevin Gerhardt testified that ATXI is able to efficiently manage and supervise the construction of the transmission line. ATXI Ex. 1.0 at 10. ATXI notes that Staff witness Mr. Rockrohr stated that he had no reason to question that ATXI is able to efficiently manage and supervise the construction of the transmission line. *See, Id.*

2. Staff and the Landowner/Intervenors Position

Staff and the Intervening Landowners do not dispute ATXI’s assertion that it has the necessary experience to efficiently manage and supervise the design, operation and construction of the transmission line.

3. Commission Analysis and Conclusion

The Commission concludes that ATXI is capable of efficiently managing and supervising the construction process and it has taken sufficient action to ensure adequate and efficient construction and supervision thereof.

C. Financial Ability

1. ATXI Position

ATXI asserts that the record establishes that it is capable of financing the transmission line without adverse financial consequences for itself or its customers, and no party has argued otherwise. ATXI estimates that the total cost of the transmission line in question here will range between \$9.8 and \$10.0 million, if ATXI’s Primary or Alternate Route is approved. ATXI Ex. 6.0 at 3. The funds required for construction will be available to ATXI, at least initially, primarily from Ameren Corporation (“Ameren”). ATXI states that Ameren is well-capitalized and it has more than adequate financial resources to fund the cost of the transmission line. ATXI notes that, as of December 31, 2014, Ameren had \$22.7 billion of assets and \$17.4 billion of property and plant, as well as long-term capitalization of \$1.1 billion and retained earnings of \$1.103 million. In addition, ATXI continues, Ameren has strong investment-grade credit ratings, which will provide ATXI with access to debt capital at competitive rates. Stipulating Parties Initial Brief at 11.

ATXI states that it has access to Ameren's funds via intercompany loans and equity infusions. It notes that the Commission has already approved two inter-company borrowing arrangements, which provide for up to \$475 million of direct lending from Ameren to ATXI. Eventually, ATXI continues, it will be able to arrange its own long-term debt financings with unaffiliated lenders. ATXI maintains that it will also have access to funds through periodic equity infusions and ATXI's retained earnings. ATXI currently has retained earnings and it will continue to receive earnings based on the transmission facilities that it currently owns, in addition to the Illinois Rivers Transmission Line. ATXI Ex. 6.0 at 5.

ATXI notes that its transmission tariffs allow it to recover the interest expense that is associated with construction debt in the year it is incurred, and also to earn a rate of return on the equity portion of its capitalization. It asserts that these provisions significantly reduce the financial risk that is associated with construction of the transmission line, therefore, the proposed construction will not impose financial stress on ATXI or Ameren. ATXI Ex 6.0 at 7. ATXI witness Mr. Hughes testified that ATXI has the ability to finance the transmission line without adverse financial consequences to the utility. Staff witness Mr. Rockrohr stated that he had no reason to question this claim. ATXI Ex. 6.0 at 7, Stipulating Parties Initial Brief at 12.

2. Staff Position

Staff does not dispute ATXI's assertion that it is capable of financing construction of the transmission line. Staff Ex. 1.0 at 17.

3. Landowners/Intervenors Position

The Intervening landowners took no position on this issue.

4. Commission Analysis and Conclusion

The Commission concludes that ATXI is capable of financing construction of the transmission line without adverse financial consequences to itself or to its customers.

D. Least Cost Route Selection

The only material controversy in this proceeding concerns how to complete the connection between Quincy and Meredosia. As shall be discussed below, the dispute on this point is limited to the question of whether the Schoenekase Route or the Staff Blue Route is the least cost route.

1. Schoenekase Route

a. Stipulating Parties Position

ATXI and all of the intervening landowners in this proceeding entered into a Stipulation supporting the Schoenekase Route. The stipulating parties are of the opinion

that the Schoenekase Route should be approved because it minimizes deviation from the route that was approved in Docket 12-0598. Also, they continue, this route avoids stranded costs and delay in completion of the Quincy to Meredosia segment. Further, the stipulating parties state, the Schoenekase Route has been the subject of both routing analysis and public input, while the Staff Blue Route has not. Stipulating Parties Initial Brief at 14.

For purposes of the Commission's least cost analysis, the stipulating parties aver that the Schoenekase Route is essentially the same as ATXI's proposed Primary Route. They assert that the Schoenekase routing proposal modifies ATXI's Primary Route slightly, but, it does not add to the cost or length of the Primary Route or otherwise materially change that route's impacts, other than to reduce by one the number of affected residences. They maintain that therefore, the Schoenekase Route is comparable to ATXI's Primary Route, and any benefit or advantage of the ATXI Primary Route is also a benefit or advantage of the Schoenekase Route. *Id.*

They also argue that overall, the Schoenekase Route is the least-cost route. At only three miles in length, it minimizes the deviation from the route approved in Docket 12-0598. They conclude that therefore, the Schoenekase Route minimizes cost and impacts fewer new, unaffected landowners. Also, according to the stipulating parties, compared to ATXI's Alternate Route, the Schoenekase Route has a lower dollar cost and fewer impacts upon the environment. *Id.* at 14-15.

The stipulating parties point to their Stipulation, which was filed on August 12, 2015, as evidence that the Schoenekase Route has garnered community acceptance. They further note that the Schoenekase Route was supported by a large number of landowners during the two series of public forum-open houses. They contend that it is preferred by all of the intervening landowners in this case. Also, it resolves specific concerns expressed by affected landowners Loos and Schoenekase. The stipulating parties assert that the Commission "is mindful of the benefits of the parties involved being able to come to an agreement" and has found that "weight should be given to that agreement when weighing routing options," citing *Ameren Transmission Co. of Ill.*, Docket 12-0598, (Order of August 20, 2013) at 23. They also attest that the Commission has been persuaded to adopt a routing option as the "best option" because it was cost-effective and it "eliminate[d] concerns raised by almost all the intervenors," citing that same Order at 41.

ATXI states that it ceased design, engineering, land acquisition and construction work in the Project Area in April of 2014, when it learned that the transmission line would conflict with the FAA air navigation facilities in that area. However, at that point in time, ATXI had made significant progress on the design of the original Docket 12-0598 route to the east and west of the Project Area here. It also had procured materials to construct the route as designed. ATXI also had begun construction of access roads and gates. It also removed vegetation in preparation for the installation of structures to the east and west of the Project Area here. ATXI continues to state that it has been negotiating easements with landowners along the Quincy to Meredosia segment for over 23 months.

It has been successful in acquiring 124 of the 157 easements that are necessary to construct the segment that is at issue here. ATXI further avers that all of these activities have resulted in time and resources expended and costs incurred, and that use of the Schoenekase Route minimizes deviation from the route approved in Docket 12-0598. Therefore, it minimizes ATXI's stranded costs. Stipulating Parties Initial Brief at 16.

In response to Staff's argument questioning the timing of the costs incurred (see below) ATXI states that, while it is true that it learned of the conflict with the FAA in January of 2014, it did not know that it could not build along the Commission-approved route until April of 2014. ATXI further states that during the 15 months between January of 2014 and the time when it filed the instant petition, (April 10, 2015) the FAA conducted a more detailed study to identify poles that may interfere with the VORTAC; ATXI met with the FAA to determine whether mitigation measures existed to avoid interference; ATXI conducted an extensive routing study; it conducted public meetings to evaluate the proposed routes; and, it incorporated the public input and adjusted its proposed routes based upon that input. In essence, ATXI contends that the delay in bringing the action here was due to its actions in preparation for the instant proceeding. Stipulating Parties Reply Brief at 8-9.

ATXI also asserts that it developed its proposed Primary and Alternate Routes in a comprehensive and efficient process that considered impacts to land uses, landowners, the environment, and cultural and historical resources, as well as costs, engineering requirements, and regulatory considerations. As a minor deviation from ATXI's Primary Route within ATXI's Project Area which is similar to options suggested during the public process, ATXI states that the Schoenekase Route was fully a part of this process. *Id.*

ATXI avers that, during the route selection process in this proceeding, it sought to connect the electrical gap in the transmission line in a manner that is consistent with FAA requirements, but with as little deviation from the route that was approved in Docket 12-0598 as possible. ATXI Ex. 1.0 at 8. According to ATXI, this approach is consistent with the approach taken in Docket 15-0269, citing *Ameren Transmission Co. of Ill.*, Docket 15-0269, (Order of July 8, 2015) at 5. In that case, ATXI maintains that it resolved an "electrical gap" which resulted from its inability to obtain an easement from the Macon County Conservation District (the "MCCD") by analyzing the area in immediate proximity to the MCCD and selecting a route that avoided the MCCD, minimizing the deviation from the route approved. In that case, ATXI continues, Staff agreed that the route proposal in Docket 15-0269 should be approved and Staff did not suggest a more substantial deviation. Also in that case, the Commission approved ATXI's route. *Id.* at 17.

Here, ATXI continues, after ATXI learned in April of 2014 that it would not be possible to construct a transmission line on two miles of the route that the Commission approved in Docket 12-0598, it began a routing study and line design process that lasted six months, involving significant input from landowners, stakeholders, and regulatory agencies. It developed three preliminary routes that satisfied the FAA requirements. It then presented these routes to stakeholders at three public open houses that took place over the course of two months in Adams County, where the transmission line is located.

ATXI asserts that it undertook significant efforts to notify stakeholders of the public meetings, and solicit feedback at the meetings. *Id.*

ATXI avers that it offered stakeholders the option to meet with ATXI representatives in individual appointments. At these initial meetings, ATXI continues, stakeholders expressed two primary concerns regarding the transmission line, which were its proximity to residences, and its impacts upon agriculture. ATXI then incorporated these concerns into its routing analysis by shifting the placement of the route to increase the route's distance from residences and to accommodate agricultural equipment. See, ATXI Ex. 5.0 at 10-14.

ATXI's Primary and Alternate Routes emerged from this public process as the optimum locations for the transmission line. ATXI argues that these routes are cost-effective, meet the routing criteria, minimize environmental impacts and proximity to residences, and comply with FAA requirements. Also, according to ATXI, neither of its proposed routes will have an impact on nature preserves, wetlands, waterways, or endangered or protected species. It contends that use of the Schoenekase Route, which is similar to the Primary Route, does not change this conclusion. ATXI Ex. 5.0 at 19-23; Stipulating Parties Initial Brief at 18.

ATXI states that, after it identified its two alternative routes, it discussed them with the Staff and the FAA. It then selected the Primary Route as its preferred route because the Primary Route requires fewer structures placed in agricultural lands. It also requires fewer costly structures that are angular. ATXI maintains that this route is located across a road from the only two residences that are within 300 feet of the line. In addition, according to ATXI, the Primary Route will overlap with County Road 550, which will reduce impacts during survey, construction, and maintenance operations. Stipulating Parties Initial Brief at 18.

In direct testimony, Intervenor Ms. Susan Schoenekase proposed a modification to ATXI's Primary Route (the Schoenekase Route). The stipulating parties explain that this route is within ATXI's Project Area and it is a minor deviation from ATXI's Primary Route. They conclude that the Schoenekase Route therefore has been subject to a more thorough review than Staff's Blue Route. Compared to ATXI's Primary Route, the Schoenekase Route has one fewer home within 150-300 feet of the transmission line; otherwise, the stipulating parties assert, the routes are similar in their impacts to land use and environmental considerations. The stipulating parties note that no party other than Staff is opposed to the Schoenekase Route. *Id.* at 19.

The stipulating parties further argue the Schoenekase Route is superior when considering the various other routing criteria that the Commission applies in similar situations. They state that the Schoenekase Route impacts fewer residences than ATXI's Alternate Route and it impacts significantly fewer properties than Staff's Blue Route. ATXI Ex. 12.0 at 9-10, 14. Also, the Schoenekase Route can use standard single pole steel structures with a typical span of 850 feet, which is consistent with structural designs of the Illinois Rivers Project. ATXI Ex. 3.0 at 5; Stipulating Parties Initial Brief at 19.

b. Staff Position

Staff witness Mr. Rockrohr finds Ms. Schoenekase's proposal to be superior to either of the earlier proposals made by ATXI. However, he is of the opinion that Mrs. Schoenekase's proposal is not the least-cost proposal. Staff Ex. 2 at 5-6.

Staff posits that each route modification that ATXI proposed increases the cost of constructing the entire Quincy to Meredosia segment of the project by approximately \$3 million over and above the cost of constructing the transmission along the route that was previously approved by this Commission in Docket 12-0598. Staff Ex. 1.0 at 3-4.

According to Staff, rather than considering the re-routing as part of the overall approved route for the 45-mile Quincy to Meredosia segment, ATXI narrows its focus to a mere two mile stretch around the perimeter of the VORTAC. Staff opines that reducing the Project Area to a mere fraction of the approved route has the corresponding effect of drastically limiting the possible ways that the approved route can be rerouted because generally, all else being equal, the route that uses the fewest number of costly, angled structures will be the least expensive way to construct a transmission line. Staff maintains that nevertheless, ATXI does not suggest a straight route as an alternative to the approved route and, in fact, ATXI opposes the straight route proposed by Staff. Instead, Staff continues, ATXI's Primary and Alternative Routes within the Project Area have multiple turns around the VORTAC. Staff points out that both of ATXI's original proposals would route the transmission line south around the VORTAC and then back north to rejoin the original route that was approved by the Commission. Staff Ex. 1.0 at 3-4, 9-10, Staff Initial Brief at 8-9.

In response to ATXI's argument regarding its sunk costs, Staff states that this is a problem of ATXI's own making. According to Staff, ATXI waited 15 months and spent almost \$5 million on the Quincy to Meredosia segment for transmission line design and easement acquisition after learning of the conflict with the VORTAC before filing its Petition. Staff opines that ATXI should not be permitted to use its own delay in seeking revised routing to justify expenditures that significantly increase the cost of the proposed route. According to Staff, the expenditures that were outside the ATXI "Project Area" were incurred when ATXI knew there was a conflict with the route that was approved in Docket 12-0598. Staff Initial Brief at 9-10.

Staff contends, essentially, that ATXI's previously-made expenditures should not be considered as sunk costs, because those expenditures create the impression that Staff's proposal is not the least cost alternative to avoid the VORTAC. Staff states that its review and recommendation are not limited to the project area as defined by ATXI. Instead, Staff's review looks at the entire segment as a whole, which Staff believes is the correct way to evaluate rerouting options. *Id.*

Staff avers that ATXI's cost estimates for all of the four routing proposals are for constructing a 345 kV transmission line from the point where Staff's proposal diverges from the approved route to the point where Staff's proposal rejoins it, citing ATXI Ex. 8.0

Rev. at 7-8. However, Staff continues, this represents only 25% of the total Quincy to Meredosia segment, citing Tr. 71. Staff Initial Brief at 10-11.

2. Blue Route

a. Stipulating Parties Position

The stipulating parties state that Staff is the only party supporting the Staff Blue Route, and that the only basis for this conclusion is that the Blue Route is the shortest and therefore least costly, route. The stipulating parties note that Mr. Rockrohr stated in testimony that:

All else equal, primarily two characteristics affect the relative cost of transmission lines that cross similar terrain: (a) route length, and (b) the number of angles/turns in the route. A shorter line will require fewer structures (poles), less wire, less design/construction labor, less easement area, and is therefore, less costly. Fewer turns and angles in a route allows use of less-costly tangent structures versus far more costly dead-end and angle structures that also typically require larger and more costly concrete foundations. Simply put, a shorter and straighter route will result in a less costly transmission line. The challenge utilities face is finding the shortest, straightest route that minimizes impacts on the land it crosses.

Stipulating Parties Initial Brief at 20, citing Staff Ex. 2.0 at 9-10.

The stipulating parties argue that this strict focus on the length of the route in relation to the dollar costs of construction—e.g., that “a shorter and straighter route will result in a less costly transmission line”—is an incomplete analysis, and, as applied by Staff, is the wrong standard. They acknowledge that the cost to construct a transmission line is part of a least cost analysis, but they state that it is not the only criterion. They argue that the Commission has repeatedly recognized that the analysis of “least cost means” is not limited to a determination of the alternative that imposes the lowest dollar cost. Rather, the stipulating parties contend, the proper determination of least cost involves a comprehensive consideration and balancing of the overall costs and externalities against the benefits of the route proposals, citing *Ill. Power Co.*, Docket 06-0706, (Order of March 11, 2009) at 52 and also *Ill. Power Co.*, Docket 06-0179, (Order of May 16, 2007) at 16-17, approving a route for a transmission line that costed approximately \$3.5 million more than proposed alternatives in order to avoid locating the line near residences; and *Ameren Transmission Co. of Ill.*, Docket 12-0598, (Order of August 20, 2013) at 76-78, approving a longer route in order to avoid placing transmission lines parallel to each other. Stipulating Parties Initial Brief at 20-21.

The stipulating parties state that the Commission’s practice has been to evaluate transmission lines using a variety of criteria, including not only route length and cost, but also the difficulty and cost of operation and maintenance; the environmental impacts; the land use impacts; the number of affected landowners; the proximity to residences; the

proximity to existing and planned development; community acceptance; and presence of existing corridors, citing *Ill. Power Co.*, Docket 06-0706, (Order on Reopening) at 6-7; *Ameren Transmission Co. of Ill.*, Docket 12-0598, (Order of August 20, 2013) at 14-15. *Id.* at 21.

They assert that Staff's proposal, which they view as limited, is on the length and cost to construct the route. This, the stipulating parties contend, ignores the effect of cost sharing of MISO MVP projects such as the Illinois Rivers Project. The stipulating parties aver that the cost of an MVP project like Illinois Rivers is shared across the MISO footprint, such that only about 9% of the cost is borne by customers in the Ameren Illinois area. The stipulating parties state that the difference between the Staff Blue Route and the Schoenekase Route on a cost-shared basis would be approximately \$400,000, which, they view as minimal. *Id.* at 21-22.

They further state that the Staff Blue Route is approximately 12 miles long, and it would replace approximately 12 miles of the route that the Commission approved in Docket 12-0598. They conclude that Staff's Blue Route is a far more significant deviation from the route approved in Docket 12-0598 than either of ATXI's proposed routes. *Id.* at 22.

The stipulating parties aver that the Staff Blue Route is opposed by the affected landowning Intervenor. They add that the Staff Blue Route would require 12 miles of new line which is a 25% change in the originally-approved transmission line route from Quincy to Meredosia. As compared to the Staff Blue Route, the stipulating parties argue, the Schoenekase Route costs less and it has been more thoroughly studied, while the Staff Blue Route allegedly presents unresolved engineering obstacles. Additionally, the stipulating parties contend that the Staff Blue Route suffers from a lack of public comment, input, and awareness, since most of the landowners affected by the Staff Blue Route were not even given notice of the potential for a transmission line affecting their properties in the underlying Docket 12-0598 proceeding. This is because, they continue, no route was proposed at that time that would have affected their properties.¹ Stipulating Parties Initial Brief at 12.

If Staff's Blue Route is adopted, the stipulating parties assert, ATXI would have to essentially abandon work that was already performed on 12 miles of the original approved route, including engineering, design, and materials costs. ATXI will be unable to use 21 of the easements that it has already acquired on the original Docket 12-0598 route, and four easements that it is currently negotiating. In total, they state that ATXI would be forced to abandon \$6.8 million in materials, easement costs, and work that it has conducted when preparing to construct the Quincy to Meredosia segment, if Staff's Blue Route is adopted. ATXI attests that at least \$2.4 million of this \$6.8 million was incurred before ATXI knew about the air navigation facility conflict. The stipulating parties argue

¹ The landowners affected by Staff's proposed alternate route were notified by the Administrative Law Judges on June 2, 2015, that they were owners of property rights that ATXI could seek to acquire through eminent domain in the instant proceeding.

that all of these stranded or sunk costs must be recognized as costs that will be involved with adopting the Staff Blue Route. Stipulating Parties Initial Brief at 16.

The stipulating parties state that Staff's Blue Route will cost more than any other route proposed in this proceeding, Staff's Blue Route will result in significant and detrimental delay, and Staff's Blue Route will have greater negative impacts on many of the criteria the Commission considers in analyzing least-cost routing options. They conclude that the Staff Blue Route is not a viable alternative to the Schoenekase Route. *Id.*

The stipulating parties maintain that the estimate of the cost to construct the Staff Blue Route does not include the cost of tree clearing, or the cost of pole adjustments to accommodate landowners. They argue that the cost to clear trees is likely to be significant, since the Staff Blue Route will require approximately 67 acres of tree clearing, while ATXI's routes require only 37 or 38 acres of tree clearing. Thus, the stipulating parties argue, even at the lowest possible cost estimate, Staff's Blue Route is the most expensive option.² ATXI Ex. 12.0 at 9. They aver that, in prior proceedings, the Commission has considered the removal of 40 acres of trees sufficient to support selection of a different route, citing *Ameren Transmission Co. of Ill.*, Docket 12-0598 (Order of August 20, 2013), at 41. They conclude that the Staff Blue Route will require at least 29 acres of tree clearing more than the tree clearing that is necessary for the Schoenekase Route. Stipulating Parties Initial Brief at 23, 28-29.

ATXI estimates that real estate acquisition on the Staff Blue Route could take up to 25 months. The stipulating parties state that these delays would prevent ATXI from meeting the November 2016 in-service date that MISO planned for the Quincy to Meredosia segment of the Illinois Rivers Project. *Id.* at 24.

The stipulating parties assert that delay in completion of the Quincy to Meredosia segment of the Illinois Rivers Project could disrupt the sequencing of construction of this project. Disruption of the sequencing of this construction could result in unnecessary system congestion during the construction process, which would delay the delivery of the full benefits of the Project. The Illinois Rivers Project, the stipulating parties continue, is part of the portfolio of Multi-Value Projects ("MVP"). The MVP portfolio was developed to deliver renewable wind energy from the west, where it is generated, to the east, where it is consumed. They argue that it is vitally important to coordinate the sequence of in-service dates for a portfolio of projects that is as significant as the MVP portfolio. This coordination ensures that each segment is connected to the grid in a manner that does not adversely affect the performance and operation of the existing grid. If the in-service

² On Exceptions, Staff objects to this sentence in the ALJPO because, according to Staff, this statement is based upon a factually unsupported statement made by the stipulating parties in their posttrial brief that ATXI's estimate of the cost to construct the Staff Blue Route is "aggressively low." Staff Brief on Exceptions at 10. This statement, however, ignores the fact that the argument presented concerned only clearing trees, not the total cost estimate made by ATXI as to Staff's Blue Route. In any case, the assertion that ATXI's estimate of the total cost of Staff's Proposed Blue Route is "aggressively low" is a factually unsupported conclusion of fact and it was not considered in the ALJPO.

dates are not properly sequenced, and a gap remains in the Quincy to Meredosia segment, the stipulating parties conclude that energy flowing across the Illinois Rivers Project will be forced onto the existing grid, which may result in congestion and higher energy costs for customers. Stipulating Parties Initial Brief at 24.

The stipulating parties aver that segments of the Illinois Rivers Project to the west of Quincy are expected to be completed in 2016. Therefore, the continued existence of an electrical gap in the Quincy to Meredosia segment will limit the flow of low-cost wind energy to customers located to the east of Quincy. In addition, they maintain, a delay in the in-service date for the Quincy to Meredosia segment could require changes in the in-service dates for other segments of the Illinois Rivers Project, which may exacerbate congestion and further increase energy costs. *Id.* at 24-25.

ATXI states that it has extensively analyzed its Primary and Alternate Routes, and the Project Area in which the Schoenekase Route is located. It retained a consultant to conduct a routing study and coordinate a process for outreach to, and communication with, stakeholders. The routing study, it maintains, considered a wide range of sensitivities and opportunities within the project area, in an effort to determine the optimal route for the transmission line. *Id.* at 25-26.

ATXI further maintains that it has engaged in discussions with governmental agencies regarding its Primary and Alternate Routes. It is in the process of obtaining permits or confirming that no permits are necessary to construct those routes. However, according to ATXI, it does not appear that any governmental agencies have reviewed the Staff Blue Route. ATXI opines that such approval would take several months. *Id.* at 26.

Section 8-406.1 of the Act provides for an expedited schedule and requires the utility to engage the public and affected landowners, before the utility initiates an expedited proceeding. In developing its routes, ATXI states that it initiated this public process and specifically invited landowners within the Project Area to attend open houses, affording those landowners an opportunity to suggest alterations and voice their concerns regarding ATXI's routes. ATXI avers that it used this information to make adjustments to its proposed routes to address several concerns expressed by the affected landowners. *Id.* at 26.

The stipulating parties also argue that the Staff Blue Route was introduced after the proceeding already began, some four and one-half months after ATXI held its final public meeting. The Staff Blue Route, they continue, affects 76 new parcels owned by 45 different landowners, 30 of whom had not previously received notice from the Commission that their land might be impacted by a transmission line. Only four landowners on the Staff Blue Route, including two Intervenor in this proceeding, Mr. Arnsman and Mr. Hoskins, were sent invitation letters to the public open houses as part of this proceeding (because they also own property in the Project Area), and two landowners attended those public meetings. They state that the rest of the landowners on the Staff Blue Route were not invited to participate in its process. This is because

Staff's Blue Route lies predominately outside the Project Area. Stipulating Parties Initial Brief at 27.

The stipulating parties contend that this route is vehemently opposed by two Intervenor who participated in the public process, but who did not receive notice of Staff's proposal until June of 2015. Also, allegedly, Staff made no effort to accommodate these landowners, instead stating that their opposition to Staff's route does not affect Staff's support of it. At the public meetings before this proceeding, ATXI informed all landowners that ATXI's routes would not affect any land located outside the Project Area unless it is along the route approved in Docket 12-0598 to the east and west of ATXI's proposed routes. However, because the Staff Blue Route is outside the Project Area, the stipulating parties state, it has an impact upon 45 landowners who were not invited to participate in the pre-filing public process. *Id.* at 28.

The stipulating parties additionally argue that Staff's Blue Route impacts more landowners and more parcels of land than the Schoenekase Route. Staff's Blue Route, they continue, impacts 47 landowners and 69 parcels of land, which is significantly more than the Schoenekase Route. Stipulating Parties Initial Brief at 29.

The stipulating parties further contend that Staff's Blue Route will be more difficult to construct, operate and maintain than the Schoenekase Route. According to the stipulating parties, if the Staff Blue Route is placed on the north side of an existing 138 kV transmission line, it would need to be modified, or have the pole locations materially adjusted, to avoid a machine shed, three barns and four grain bins. They posit that Staff's Blue Route parallels an existing transmission line for 1.3 miles more than the route that the Commission approved in Docket 12-0598. However, ATXI prefers not to place transmission lines parallel to each other, because events such as storms may take both lines out of service simultaneously, which could exacerbate disruptions to the transmission system. *Id.*

They also state that Staff's Blue Route interferes with existing land use and existing development. According to the stipulating parties, Staff's Blue Route may interfere with a private airstrip which is located one-half mile south of the Route. In order to avoid interference with that airstrip, ATXI states that it may be necessary to construct the transmission line using shorter structures for a distance of approximately 1.6 miles. *Id.*

They note that Staff's Blue Route has not garnered community acceptance. All landowning Intervenor support the Schoenekase Route. Each of the Intervenor whose property is affected by the Staff Blue Route (Arnsman, Hoskins and Peters) opposes the Staff Blue Route and prefers the Schoenekase Route. *Id.* at 20.

In response to Staff's argument that there would be the same amount of delay for each route, the stipulating parties state that adoption of the Staff Blue Route would require land acquisition along 12 miles of new right-of-way. On the other hand, they continue, adoption of the Schoenekase Route would require about three miles of new right-of-way. They posit that beginning negotiations with approximately 45 new landowners that own

the land along Staff's Blue Route will involve significantly more time and resources. Stipulating Parties Reply Brief at 10.

Responding to Staff's argument regarding the burden of proof, (see below) the stipulating parties cite *City of Chicago v. Illinois Commerce Comm.*, (1st Dist. 1985), 133 Ill. App. 3d 435, 442-43. They state that requiring Staff to provide evidentiary support for its route is not improper burden-shifting. Rather, according to the stipulating parties, Staff has the burden of furnishing evidence supporting the propositions its sets forth. *Id.* at 12-13.

With regard to Staff's argument pertaining to the burden of proof, the stipulating parties further state that Staff cites only a portion of the actual language in *Ambrose v. Thornton Township School Trustees*, (1st Dist. 1995), 247 Ill. App. 3d at 680, which Staff cited in support of its burden of proof argument. The burden of production was also mentioned in *Ambrose*, the stipulating parties continue, which requires a party to present evidence supporting each element of his or her case. They continue to state that therefore, Staff had the burden to prove that its proposed Blue Route is the better route. *Id.* at 14.

b. Staff Position

Staff witness Mr. Rockrohr reviewed the proposals presented by ATXI and Intervenor. He identified transmission line route modifications that would eliminate ATXI's conflict with the VORTAC, while resulting in a lower cost transmission line than either of ATXI's proposals or the Schoenekase adjustment. See, Staff Exs. 1.0 at 11-12; 2.0 at 3, 5. Staff states that he relied upon maps provided by ATXI in its filing in this proceeding, as well as maps provided by ATXI in Docket 12-0598, maps provided by Adams County, and maps provided by Google. Staff continues to state that when developing the route proposal, Mr. Rockrohr considered environmental, social, and land use impacts. Staff Ex. 1.0 at 12.

Staff avers that generally, its route modification parallels the Commission-approved route from Docket 12-0598 by following property lines. See, Staff Ex. 1.0, 10-11. Staff states that, rather than creating a dip or loop in the 345 kV transmission line to route around the VORTAC, as the other routing proposals do, Mr. Rockrohr proposed an alternative route for ATXI's 345 kV transmission line that would extend the transmission line 1.3 miles further southeast along Interstate 172 before turning east for 10.6 miles, where the route would rejoin the route that the Commission approved in Docket 12-0598. Staff Initial Brief at 13-14.

Staff further states that all else being equal, there are two primary considerations which affect the relative cost of transmission lines that cross similar terrain: (a) route length, and (b) the number of angles/turns in the route. A shorter, straighter line will require fewer structures (poles); less wire; less design/construction labor; less easement area, and is therefore less costly than a longer line with more turns or angles. Staff Ex.

1.0 at 9. The route that Mr. Rockrohr proposes, Staff maintains, would result in a shorter and straighter transmission line that requires fewer structures and less easement acreage than any of the other route proposals. Staff Ex. 2.0 at 5.

Staff maintains that ATXI estimates its cost for constructing the 11.9 mile of 345 kV transmission line resulting from using Mr. Rockrohr's proposal would be \$27.3 million, citing ATXI Ex. 8.0 Rev. at 8. However, ATXI's estimated \$31.9 million cost for constructing the comparable transmission line using either ATXI's Primary Route or the Schoenekase Route is 16.8% higher than the cost of using Mr. Rockrohr's route proposal. Staff Initial Brief at 13.

According to Staff, ATXI learned of its conflict with the VORTAC on January 24, 2014. Despite this, Staff continues, ATXI continued expending resources to design its transmission line and acquire easements along the Quincy to Meredosia segment of the Project for a route that ATXI knew, or should have known, that it may never use, citing Staff Cross Ex. 2.0. Staff contends that ATXI witness Mr. Gerhardt testified in his rebuttal testimony and confirmed under cross examination that "ATXI stopped design, engineering, land acquisition, and construction work in the area around the VORTAC on the originally approved route in the Project Area in April of 2014," citing ATXI Ex. 8.0 Rev. at 7; Tr. 66. However, Staff continues, between April of 2014 and April of 2015, the time when the petition in this case was filed, the Company incurred \$4.4 million of the \$6.8 million it claims as sunk costs, citing ATXI Ex. 8.0 Rev. at 6. Staff Initial Brief at 13-14.

Staff opines that, before the time when ATXI learned of the conflict with the approved route, it could be reasonable for it to move forward with building the transmission line and incurring related expenses. However, Staff asserts, ATXI continued expending resources for easement acquisitions and line design for 15 months after learning there was a conflict between the approved route and the VORTAC, without learning what route it would actually use, which cannot be considered to be prudent. Staff Ex. 2.0 at 4.

Staff contends that only by adding the entire alleged \$6.8 million in "sunk cost" for land acquisition, line design, and materials to the cost of Staff's proposal can ATXI increase the estimated cost of Staff's proposal to the point where it would exceed the cost of the other route modifications presented, citing ATXI Ex. 8.0 Rev. at 6-8. According to Staff, ATXI "gambled" with \$4.9 million between January of 2014 and May of 2015, betting that the Commission would approve a route similar to one of the routes that it proposed in this docket. Staff asserts that ATXI is now in the unfortunate position of having to prove that the route to which it prematurely committed itself is the least cost alternative, despite clear evidence that neither of the routes presented in its Petition represent the least-cost route. Staff Initial Brief at 16.

Staff further states that only \$1.9 million of the \$6.8 million sunk costs, which are those that were incurred prior to the time when ATXI learned of its conflict with VORTAC, can appropriately be added to the cost of Staff's proposed route modification. Staff further states that even when this \$1.9 million is added to ATXI's \$27.3 million cost estimate for

constructing Staff's proposal, the result is \$29.2 million, which is well-below ATXI's \$31.9 million estimate for constructing its Primary Route or the Schoenekase Adjustment, citing ATXI Ex. 8.0 Rev. at 8. *Id.*

Staff maintains that no ATXI witness presented any evidence to suggest that ATXI cannot construct its transmission line along the route that Staff proposes. Instead, ATXI identified five engineering obstacles associated with the route modification that Mr. Rockrohr proposes, citing ATXI Ex. 10.0, 2-3; Staff Cross Ex. 2.0. While Staff agrees with the location of the sheds, barns, and landing strip that ATXI identified as obstacles, the evidence that Staff presented, especially Attachment B to Staff Ex. 1.0, clearly demonstrates that Staff's proposal already identified and adequately addressed each of these engineering obstacles. Staff Initial Brief at 16-17.

The first obstacle that ATXI witness Murbarger identified is a machine shed along County Road 2050 E, citing ATXI Ex. 10.0, 2; Staff Cross Ex. 2.0. Staff states, essentially, that this obstacle does not exist because the dashed blue line on page 5 of Attachment B to Staff Ex. 1.0 clearly shows Staff's route passing to the north of this machine shed. *Id.* at 17.

Staff further states that the second obstacle that Mr. Murbarger identified is a barn along E. 1900th St. Mr. Murbarger pointed out that the route should be north of the east-west property line to avoid removal of a barn. However, according to Staff, the dashed blue line on page 5 of Attachment B to Staff Ex. 1.0 already placed the route to the north of the east-west property line at the location of the barn. Therefore, Staff is of the opinion that the referenced barn would not be impacted by Staff's proposed route. *Id.*

The third obstacle that Mr. Murbarger identified is another barn. However, Staff continues, the dashed blue line on page 5 of Attachment B to Staff Ex. 1.0 passes to the south of this barn, then angles to the northeast after passing the barn, so that this barn, too, would not be impacted by Staff's route. *Id.* at 17.

The fourth obstacle that Mr. Murbarger identified is another barn and four grain bins where three angle structures will be required. Staff states that Mr. Rockrohr's route proposal already addresses the barn and grain bins by placing three angle structures (poles) on or near property lines as shown on Attachment B to Staff Ex. 1.0 and Attachment A to Staff Ex. 2.0. Staff Ex. 2.0 at 3-4; Staff Initial Brief at 17.

The fifth and final obstacle that Mr. Murbarger identified is the existence of a landing strip approximately 0.5 miles south of Staff's proposed route. Staff states that Mr. Rockrohr previously identified this landing strip when developing the route he proposed. He even included the name and address of its owner as the last entry on Attachment C to Staff Ex. 1.0. According to ATXI witness Mr. Murbarger, as a result of the relative location of Staff's proposed route and the landing strip, ATXI may need to use shorter poles at some locations, poles as low as 93 feet, as oppose to the average structure height range of 115-120 feet.

However, Staff continues, Mr. Murbarger also stated that ATXI's Primary Route would use poles that range from 90-130 feet in height above ground. Staff concludes that Mr. Murbarger's testimony indicates that the height of the poles used north of the landing strip would be within the range of heights that Mr. Murbarger identifies as "typical design" and these poles would be at least 23-feet taller than the poles required to construct ATXI's own Alternate Route proposal. Staff concludes that there are no obstacles identified that would prevent ATXI from using the route modification that Mr. Rockrohr proposes, citing ATXI Exs.10.0 at 2-3, 3.0 at 3-4. Staff Initial Brief at 18.

Staff also argues that ATXI's response to its proposal does not consider that the Blue Route would result in fewer residences within 1000 feet of the transmission line (15 residences), and that there are no residences closer than 300 feet to this route. The other alternatives, Staff avers, have at least 19 residences within 1000 feet, and at least three residences within 300 feet of the proposed route. *Id.* at 18-19.

With regard to the argument that Staff's proposal will cause delay, Staff states that even if the Quincy to Meredosia segment were to be completed in 2016 as ATXI initially planned, other segments of the Project will not be completed until 2018 and 2019, as ATXI explained in Docket 12-0598, citing Staff Cross Ex. 1.0. Staff points out that until the entire Illinois Rivers Project is complete, the Quincy to Meredosia segment will not be connected electrically across the state. Staff concludes that, given ATXI's schedule for completing the entire Illinois Rivers Project, ATXI has not demonstrated that a two-year delay in completing the Quincy to Meredosia segment would have a detrimental effect on Ameren Illinois' area customers. *Id.* at 19.

Staff also contends that ATXI is assuming that the 3-mile route modifications proposed by ATXI and Intervenor Schoenekase would result in zero delay, whereas Staff's proposed modification would result in a 24-month delay. Citing ATXI Ex. 11.0 at 3-4, Staff states that ATXI witness Trelz explained that the time for each step that Mr. Trelz identified would be the same, regardless of the number of parcels of land affected, or which route modification is approved in this docket. *Id.* at 19-20.

In reference to the Intervenor's AHPF's objection to Staff's proposed route, Staff recognizes that most landowners would prefer that ATXI's transmission line cross parcels that they do not own, but it remains clear that construction of the transmission line along the route that Staff presents would result in the least-cost transmission line for the Quincy to Meredosia segment of the Project. Staff contends that the Act requires that the Commission grant a Certificate of Public Convenience and Necessity where it "is the least-cost means" of satisfying the objectives of a project, and therefore, AHPF's arguments must be rejected. See, AHPF Exs. 1.0, 2.0 and 3.0; Staff Initial Brief at 20.

Citing *Scott v. Dept. of Commerce and Community Affairs*, (1981), 84 Ill. 2d 42, 51, Staff further contends that ATXI has attempted to shift the burden of proof regarding identification of the least cost route onto Staff. Staff states that ATXI bears the burden of proof here, as Section 8-406.1 of the Act requires that the Commission grant a Certificate

of Public Convenience and Necessity upon, among other things, a showing that a route is least cost, citing 220 ILCS 5/8-406.1 and *Ambrose v. Thornton Twp. School Trustees*, (1st Dist. 1995), 275 Ill. App. 3d 676, 680. Staff maintains that to require Staff or an intervenor to provide the same level of extensive environmental and detailed routing analysis for a less-costly route, when ATXI should already have that information available, shifts the burden of proof onto a party that proposes an alternative route. Staff Reply Brief at 4.

Also, according to Staff, ATXI's own conduct belies its argument in this regard. Staff states that ATXI supported the Schoenekase Route, even though it was proposed by a landowning intervenor. Staff states that ATXI had no problem with fully evaluating that route and ultimately adopting it. Staff argues that its proposal should get the same treatment. *Id.* at 5.

Staff further posits that the stipulating parties are not correct in stating that Staff did not analyze the environmental, social or land use impacts of the Staff Blue Route. It avers that Mr. Rockrohr recognized and considered the fact that Staff's proposed route would require more tree clearing, citing Staff Ex. 1.0 at 11. He also, Staff continues, testified regarding land use impacts of Staff's proposed route, stating that the route parallels the I-172 corridor, as well as section and property lines, citing Staff Ex. 1.0 at 12. Staff also states that its proposed route is in proximity to fewer residences than any of the other alternatives. Staff Reply Brief at 6-7.

3. Commission Analysis and Conclusion

The criteria that the Commission has used in the past when evaluating a proposed route in the context of the type of certificate of public convenience and necessity that ATXI seeks are: the length of the line; difficulty and cost of construction; the difficulty and cost of operation and maintenance; environmental impacts; impacts on historical resources; social and land use impacts; the number of affected landowners and other stakeholders; proximity to homes and other structures; proximity to existing and planned development; community acceptance; visual impact; and the presence of existing corridors. See, e.g., *Ameren Transmission Co. of Ill.*, Docket 12-0598, (Order of August 20, 2013) at 15. Of course, not all of these criteria will be relevant in every proceeding.

The Commission agrees with ATXI and Intervenors (the stipulating parties) that the Schoenekase Route should be adopted over the Staff Blue Route. It is to be noted at the outset that all of the landowners that participated in this proceeding prefer the Schoenekase Route.

Staff's analysis was primarily focused on what constitutes the shortest and straightest route. While it is true that the length of line and cost to construct a transmission line are part of a least cost analysis, they are not the only criteria. The Commission has recognized that the analysis of "least cost means" is not limited to a determination of the alternative that imposes the lowest dollar cost. Rather, the proper determination of least cost involves a comprehensive consideration and balancing of the overall costs and externalities against the benefits of the route proposals. See *Ameren Transmission Co. of Ill.*, Docket 12-0598, (Order of August 20, 2013), at 76-78, approving a longer route in

order to avoid placing transmission lines parallel to each other; *Gernand v. Ill. Commerce Commission*, (4th Dist. 1997), 286 Ill. App. 3d 934, 945, 676 N.E.2d 1384.

In addition, the Commission finds that the cost differential cited by Staff between its route (including the sunk costs which Staff finds reasonable) at \$29.3 million, and the ATXI route at \$31.9, million is not so significant as to be a determinative factor. In fact, according to ATXI, this project is a MISO MVP project and only about 9% of the cost is born by customers in the Ameren Illinois area, thus reducing the difference between the Staff Blue Route and the Schoenekase Route to approximately \$400,000.

Three determinative factors support adoption of the Schoenekase Route as the least cost route. First and foremost, the Schoenekase Route has the acceptance of the community. As is evidenced by the Stipulation filed on August 12, 2015, the Schoenekase Route is supported by ATXI and all of the landowner/Intervenors. It also resolves specific concerns of affected landowners Loos and Schoenekase. The Commission is mindful of the benefits of the parties involved being able to come to an agreement. In the past, it has found that "weight should be given to that agreement when weighing routing options." See, *Ameren Transmission Co. of Ill.*, Docket 12-0598, (Order of August 20) at 24.

Additionally, the Commission agrees with ATXI that the stranded costs here are appropriate to consider in a least cost analysis. Staff accuses ATXI of spending money to continue work on the Quincy to Meredosia segment when it knew that there was a potential conflict with the FAA equipment. However, there is not enough evidence in this record to establish that this was an act of imprudence. Additionally, according to ATXI, in April of 2014, it had made progress on the Illinois Rivers Project to the east and west of the Quincy to Meredosia segment.

Staff also criticizes ATXI for waiting for at least a year to file its petition after the conflict with FAA requirements was confirmed. Given the need to study routes and the pre-filing meeting and information requirements in Section 8-406.1 of the Act, the Commission does not consider the time frame for ATXI's filing to be unreasonable.

Also, Staff proposes a route that would impact many landowners who were not noticed in Docket 12-0598 or invited to open houses in this proceeding. It crosses 12 miles of new area and Staff's Blue Route involves cutting down more trees than would have to be performed on the Schoenekase Route.

Further, adoption of the Staff Blue Route could cause delay in completion of the Quincy to Meredosia segment beyond its in-service date of 2016, as ATXI would be "starting from scratch" in obtaining easements from the landowners affected by that route, and the many other tasks involved in construction of a transmission line.

Regarding Staff's argument that ATXI's selected project area was arbitrary, here, the transmission line route had been approved, but it had to be modified to avoid an obstacle. Hence, minimizing deviation from the approved route is a valid and important consideration. By minimizing deviation from the originally approved route, ATXI is

minimizing the area impacted by a proposed deviation from the approved route, the number of new landowners who may be affected by the transmission line, and it greatly reduces, or even eliminates, any stranded costs that would arise as a result of abandoning the original route for a longer deviation. Additionally, Staff's route is more of a significant deviation from the original Illinois Rivers Project that the Commission previously approved in docket 12-0598. The Commission therefore disagrees with Staff's assertion that most of ATXI's sunk costs were not prudently incurred. ATXI's methodology here just differs from the approach that Staff would take. However, the evidence does not establish that this methodology should not have been used.

With respect to Staff's burden of proof argument, it is true, as Staff states, that there should be a great deal of information at ATXI's disposal. However, there is no evidence or argument here that Staff requested information in discovery and it was denied by ATXI. Staff still bears the burden to persuade the Commission that its proposed route fits within the statutory requirements. See, e.g., *O'Keefe v. Greenwald*, (1st Dist. 1991), 214 Ill. App. 3d 926, 934-35, 574 N.E.2d 136. ATXI does not have the burden to present evidence on Staff's behalf.

Staff also argued that, essentially, ATXI should afford Staff's Blue Route the same treatment as that which ATXI afforded the Schoenekase Route. However, the two are simply not comparable. The Schoenekase Route is a three-mile deviation from ATXI's Primary Route which merely circumvents the Schoenekase farm. Staff's Blue Route is 12 miles of entirely new land. Merely because ATXI fully evaluated the Schoenekase Route does not mean that it is required to present evidence supporting Staff's Blue Route in this proceeding, or that ATXI has discriminated against Staff. This argument lacks merit.

On Exceptions, Staff criticizes the language above which notes that the landowners on Staff's Proposed Route were not notified in Docket 12-0598 of that proceeding. Staff points out that the landowners that would be affected by its Proposed Route were notified of this proceeding by the Chief Clerk's Office. Staff Brief on Exceptions at 6. Staff contends that legally, for a Certificate of Public Convenience and Necessity, lack of public notification is not determinative, citing *Adams County Property Owners and Tenant Farmers v. Illinois Commerce Commission*, 2015 IL App (4th) 130907. Staff Brief on Exceptions at 5-6, 8.

Staff additionally takes issue with the conclusion in the ALJPO that Staff's Proposed Route would delay completion of the Quincy to Meredosia segment to a greater extent than the Schoenekase Route proposal. Staff states that ATXI would need to take the exact same steps to construct its proposed transmission route as it would to construct the Schoenekase Route. Staff Brief on Exceptions at 13.

These criticisms, however, ignore the fact that it takes time to negotiate the necessary permanent and construction easements, not to mention to determine if the landowners affected can be accommodated and if so, how to do that. Indeed, in the case at bar, the Schoenekase Route accommodates landowners. In this vein, the ALJPO

noted that ATXI would be “starting from scratch” with Staff’s Proposed Route. This argument does not aid Staff. While Staff criticizes ATXI for negotiating with landowners and doing other work along the Quincy to Meredosia segment of the Illinois Rivers project after it was notified that the VORTAC would be problematic, the fact is that ATXI is further along in the process with regard to the Schoenekase Route than it would be with Staff’s Proposed Blue Route.

This is not to state that in all instances, work that was performed on a route after a serious problem with a route like the VORTAC becomes evident will be considered to be prudently-incurred. Rather, it is only to state that given the facts here, ATXI’s actions are not imprudent.

In this context, Staff states that not all of its 12-mile route is new because the landowners affected by 1.3 miles of Staff’s Proposed Route were, in fact, given notice in Docket 12-0598. Staff Brief on Exceptions at 6. This argument ignores the fact that the landowners on the overwhelming majority of Staff’s Proposed Route, 10.7 miles, are, in fact, new. This argument lacks merit.

Staff further takes issue with the language above that all of the landowners that participated in the instant proceeding prefer the Schoenekase Route. Staff Brief on Exceptions at 7. Staff reasons that the number of landowners who availed themselves of the opportunity to participate in the instant proceeding does not represent all of the affected landowners. Staff concludes that consideration of the opinion of one property owner should not be afforded any deference simply because one chooses to “get involved” and another does not. *Id.*

This argument circumvents the nature of litigation. There would be no purpose in allowing landowners to intervene in and participate in proceedings like the instant matter, if this Commission did not take the intervening landowners’ needs and positions into account. Staff cites no law supporting this position and indeed, there is none.

Staff also disagrees with the statement above averring that, because the Illinois Rivers Project is a MISO MVP project, only about 9% of the cost is born by customers in the Ameren Illinois area, reducing the difference between the Staff Blue Route and the Shoenekase Route to be \$400,000. Staff reasons that a project does not cost less depending on who bears the cost. Staff Brief on Exceptions at 7.

However, this statement was made only to determine whether the cost differential between the two proposed routes was minimal. In that context, it was found to be minimal. It is minimal, given the size of the project at issue, even if a person were to consider the dollar differential between the two projects, which, according to Staff, is \$29.3 million for its Proposed Route and the ATXI Proposed Route at \$31.9 million. This argument lacks merit. It also ignores the conclusions above which analyze the term “least cost” to mean more than just a matter of dollars and cents.

Staff further states that the ALJPO is erroneous because, according to Staff, ATXI's stranded costs would not be eliminated, if the Schoenekase Route were to be used. Staff Brief on Exceptions at 13. According to Staff, ATXI's stranded costs, if the Schoenekase Route were to be used, would be approximately \$300,000. Staff Brief on Exceptions at 13.

This argument does not correctly characterize the stranded costs at issue here. The reference to the Schoenekase Route stranded costs of \$300,000 is for adjusting ATXI's Primary Route to the Schoenekase Route, which accommodates landowners along that route. (See, ATXI Ex. 8.0 Rev. at 8). The stranded costs at issue here concern the work that was already performed along the original Quincy to Meredosia segment of the Illinois Rivers project, not the adjustment made in the Schoenekase Route for landowners along that route. According to ATXI, the stranded costs for work along the Quincy to Meredosia Route that was already performed is approximately \$6.8 million. This argument does not aid Staff.

For these reasons, the Commission finds the Schoenekase Route is the "least cost" route and it should be approved.

E. Other Section 8-406.1 Requirements

1. ATXI Position

Subsections 8-406.1(a), (d), and (e) of the Act also contain requirements regarding information, including engineering data, that a utility must include in its application or otherwise fulfill. ATXI maintains that it has met these requirements.

ATXI held public open houses in Adams County, where the transmission line is located, on December 17 and 18, 2014, and on January 13, 2015. ATXI published notice of the meetings in local newspapers for three consecutive weeks before the meetings were held, and mailed invitations directly to individuals it identified as landowners in the Project Area. ATXI also mailed invitations to local, state and federal agencies and officials, as well as non-governmental entities. In addition, ATXI established a dedicated website for the Project, and telephone hotline. ATXI submitted the required fee, and all of the required detailed engineering and design information with its Petition. See, Stipulating Parties Initial Brief at 6-7.

ATXI contends that approximately two months after its Petition was filed, it became aware that notice of the application had not been published in the official state newspaper. ATXI states that it acted immediately to publish the notice, and moved to deem the Petition completely filed as of the date of publication. This motion was granted on July 2, 2015, and the procedural schedule was reset. Thus, ATXI states, it has complied with all of the requirements of Section 8-406.1.

2. Staff Position

Mr. Rockrohr determined that ATXI satisfied the requirements of Section 8-406.1(a), (d), and (e) of the Act.

3. Landowner/Intervenors Position

The Landowner/Intervenors took no position on this issue.

4. Commission Analysis and Conclusion

The Commission concludes that ATXI has complied with the requirements in Section 8-406.1 regarding the information provided to the Commission and communicated to the public.

IV. SECTION 8-503 ORDER

A. ATXI Position

ATXI also seeks a Commission order authorizing the transmission line to be built pursuant to Section 8-503 of the Act. ATXI states that Section 8-406.1(i) of the Act provides, “a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order,” citing 220 ILCS 5/8-406.1(i). Section 8-503 of the Act permits the Commission to issue an order authorizing or directing utility construction “[w]henever the Commission, after a hearing, shall find . . . that a new structure or structures is or are necessary and should be erected, to promote the security and convenience of . . . the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities,” citing 220 ILCS 5/8- 503.

ATXI notes that no party opposes the issuance of a Section 8-503 Order. ATXI contends that it has demonstrated the need for the Project that is the subject of the instant proceeding. It contends that the proposed construction of the transmission line is necessary to provide adequate, reliable, and efficient service and is the least-cost means of satisfying the service needs of its customers, thereby being in the public interest. It concludes that an order under Section 8-503 is warranted. Stipulating Parties Initial Brief at 12-13.

B. Landowner/Intervenors Position

The Landowner/Intervenors took no position on this issue.

C. Staff Position

Staff notes that the Act requires the Commission to issue an order pursuant to Section 8-503 with any Certificate granted under Section 8-406.1.

D. Commission Analysis and Conclusion

Pursuant to Section 8-406.1(i) of the Act, “a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.” 220 ILCS 5/8-406.1(i).

The Commission finds that the Project that is the subject of the instant proceeding is necessary and thus authorizes its construction pursuant to Sections 8-503 and 8-406.1(i) of the Act. ATXI has demonstrated that the proposed construction of the transmission line will provide adequate, reliable, and efficient service and is the least-cost means of satisfying the service needs of its customers, and is therefore in the public interest and should be approved.

V. FINDING AND ORDERING PARAGRAPHS

The Commission having examined the entire record herein, and being fully advised in the premise, is of the opinion and finds that:

- (1) Ameren Transmission Company of Illinois is a “public utility” pursuant to the statutory definition in the Public Utilities Act;
- (2) the Commission has subject-matter jurisdiction and jurisdiction over Ameren Transmission Company of Illinois;
- (3) the recitals of fact and conclusion of law are supported by the record;
- (4) Ameren Transmission Company of Illinois has demonstrated that the proposed transmission line is necessary to provide adequate, reliable, and efficient service to the public utility's customers;
- (5) Ameren Transmission Company of Illinois has demonstrated that the proposed transmission line represents the best and least-cost means of satisfying the service needs of the public utility's customers;
- (6) Ameren Transmission Company of Illinois has 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;

- (7) Ameren Transmission Company of Illinois has demonstrated that it is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers and it has therefore demonstrated that the proposed transmission line meets the requirements of Section 8-406.1 of the Act;
- (8) Ameren Transmission Company of Illinois has demonstrated that the "Schoenekase Route" as is depicted on the map attached as Appendix A hereto, and legally described in Appendix B hereto, is the least-cost route, is reasonable, and should be approved;
- (9) Ameren Transmission Company of Illinois should be authorized, pursuant to Section 8-503 of the Act, to construct the high voltage electric service line at the locations and in the manner specified herein, on and along the route as is depicted on the map attached hereto as Appendix A, and legally described in Appendix B hereto;
- (10) the easement widths for the 345 kV line as proposed by Ameren Transmission Company of Illinois are reasonable and appropriate and should be approved; and
- (11) 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 Ameren Illinois Company's Petition seeking a Certificate of Public Convenience and Necessity be and is hereby granted. Said certificate shall read as:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

IT IS HEREBY CERTIFIED that the public convenience and necessity require: (1) construction, operation and maintenance by Ameren Transmission Company of Illinois of a transmission line as shown on the map attached as Appendix A, and legally described in Appendix B to this Order, together with such related facilities, land rights, ties to adjacent transmission lines, or repairs, as are, or may become, reasonably necessary to promote the public convenience and necessity and to secure adequate service; and (2) the transaction of an electric public utility business in connection therewith, all as herein before set forth.

IT IS FURTHER ORDERED that Ameren Transmission Company of Illinois is authorized, pursuant to Section 8-503 of the Act, to construct the transmission line that is proposed in this proceeding, at the locations and in the manner described in this Order.

IT IS FURTHER ORDERED that, subject to Section 10-113 of the Act and 83 Illinois Administrative Code 200.880, this Order is final and is not subject to the Administrative Review Law.

By the Commission this 12th day of November, 2015.

(SIGNED) BRIEN SHEAHAN

Chairman

ATXI Exhibit 6.0 (Public)

ILLINOIS COMMERCE COMMISSION

DOCKET No. 15-_____

DIRECT TESTIMONY

OF

DARRELL E. HUGHES

Submitted On Behalf

Of

AMEREN TRANSMISSION COMPANY OF ILLINOIS

*****Denotes Confidential and Proprietary Information*****

April 10, 2015

ATXI Exhibit 6.0 (Public)

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ILLINOIS COMMERCE COMMISSION**DOCKET No. 15-_____****DIRECT TESTIMONY OF****DARRELL E. HUGHES****Submitted On Behalf Of****Ameren Transmission Company of Illinois****I. INTRODUCTION AND WITNESS QUALIFICATIONS****Q. Please state your name, business address and present position.**

A. My name is Darrell E. Hughes, and my business address is 1901 Chouteau Avenue, St. Louis, Missouri 63103. I am employed by Ameren Services Company (Ameren Services) as a Supervisor Valuation and Cost of Capital – Corporate Finance for Ameren Corporation (Ameren) and its affiliates, including Ameren Transmission Company of Illinois (ATXI).

Q. Please summarize your educational background and professional experience.

A. A summary of my educational background and professional experience is attached as an Appendix to this testimony.

Q. What are your duties and responsibilities in your present position?

A. In my current position, I am responsible for supporting the development of financial projections provided to the credit rating agencies, long-term cash forecasting, asset valuations and financial due diligence related to proposed capital projects and related financing activities.

20 **II. PURPOSE AND SCOPE**

21 **Q. Are you familiar with the Transmission Line that ATXI proposes in its Petition in**
22 **this proceeding?**

23 A. Yes. ATXI requests a Certificate of Public Convenience and Necessity under Section 8-
24 406.1 of the Public Utilities Act (Act) authorizing it to construct, operate, and maintain a new
25 345 kilovolt (kV) transmission line in Adams County, Illinois, of approximately three miles in
26 length (the Transmission Line).

27 **Q. What is the purpose of your direct testimony?**

28 A. The purpose of my testimony is to explain how ATXI will finance construction of the
29 Transmission Line, and why ATXI is capable of financing the construction without adverse
30 consequences to ATXI or its customers.

31 **Q. Are you sponsoring any exhibits in support of your direct testimony?**

32 A. Yes. In addition to this direct testimony, I am sponsoring the following exhibits:

- 33 • ATXI Exhibit 6.1 - ATXI Balance Sheet 2014 (Confidential and Proprietary)
- 34 • ATXI Exhibit 6.2 - ATXI Income Statement 2014 (Confidential and Proprietary)

35 **III. FINANCING OF THE TRANSMISSION LINE**

36 **Q. Please summarize ATXI's financing plan for the Transmission Line.**

37 A. ATXI will primarily rely on debt and equity received from non-ATXI sources to fund the
38 Transmission Line. Debt capital will be obtained from Ameren and external sources (as external
39 financing becomes available). Ameren will provide equity capital through periodic equity

40 infusions, with intent to maintain ATXI's long-term capital structure that includes 56% equity
41 and 44% debt.

42 **Q. What is the total estimated cost to construct the Transmission Line?**

43 A. As explained by ATXI witness Mr. Kevin Gerhardt, the total estimated cost to construct
44 the Transmission Line is between \$9.8 and \$10.0 million, depending on the route approved by
45 the Commission. This estimated cost range accounts for construction contingencies.

46 **Q. How will the Transmission Line be financed during construction?**

47 A. Ameren will lend funds to ATXI under two intercompany borrowing arrangements. The
48 first is a short-term Unilateral Borrowing Agreement, which was approved by the Commission in
49 May 2008 as part of Docket 08-0174. This agreement provides for up to \$125 million of short-
50 term lending by Ameren to ATXI. The second source of debt funding comes from a Long-Term
51 Borrowing Agreement, first approved in December 2012 in Docket 12-0017. This agreement
52 was modified and approved by the Commission in February 2015. The amended Long-Term
53 Borrowing Agreement now permits Ameren to lend to ATXI funds not to exceed \$ 350 million
54 over a term not to exceed ten years. Together, these agreements provide for up to \$475 million
55 of direct lending from Ameren to ATXI, as needed. ATXI intends to periodically replace short-
56 term borrowing from the Unilateral Borrowing Agreement with borrowings under the Long-
57 Term Agreement.

58 **Q. Is this consistent with how ATXI typically finances its capital needs?**

59 A. Yes. ATXI is funding construction of the Illinois Rivers Project in the same manner
60 described above.

61 **Q. How will the Transmission Line be financed after construction is completed?**

62 A. Eventually, the incremental debt incurred during construction of the Transmission Line
63 will be included in other long-term debt financings by ATXI with unaffiliated lenders. These
64 refinancings will allow ATXI to pay off debt incurred during construction with external debt
65 financings in a similar manner to other utilities regulated in Illinois.

66 **Q. Please describe how the expenditures would affect the capital structure of ATXI.**

67 A. Due to the small size of this Transmission Line, there will be minimal impact on the
68 capital structure of ATXI. ATXI anticipates maintaining a long-term target capital structure that
69 includes 56% equity and 44% debt. The Federal Energy Regulatory Commission (FERC)
70 approved this capital structure in response to Ameren Services' Petition for Declaratory Order on
71 Incentive Rate Treatments as part of Docket EL10-80-000.

72 **Q. In Docket 12-0598, the Commission found that ATXI had the financial ability to**
73 **construct the Illinois Rivers Project as a whole. Does the need to finance the Transmission**
74 **Line change that finding?**

75 A. No. ATXI's financing requirements and ability to finance the construction of the Illinois
76 Rivers Project have not materially changed, and the cost of the Transmission Line is not
77 significant relative to the cost of the Project. ATXI remains capable of financing the Project, and
78 at the same time the Transmission Line, without significant adverse financial consequences for
79 itself or its customers.

80 **Q. Please describe ATXI's current financial situation.**

81 A. *****
82 *****
83 *****
84 *****
85 *****
86 *****
87 *****

88 **Q. Since Ameren is providing financial support to ATXI, please describe Ameren's**
89 **current financial situation.**

90 A. As of December 31, 2014, Ameren had \$22.7 billion of assets and \$17.4 billion of
91 property and plant. For the twelve months ending December 31, 2014, Ameren had \$1,254
92 million of operating income and \$592 million of overall net income attributable to Ameren.
93 Total long-term capitalization as of December 31, 2014 was \$13.1 billion, and retained earnings
94 were \$1,103 million. Ameren has issuer credit ratings of BBB+ with a stable outlook from
95 Standard & Poor's, Baa2 with stable outlook from Moody's, and BBB+ with a stable outlook
96 from Fitch.

97 **Q. Does Ameren's financial support provide an advantage to ATXI?**

98 A. Yes, Ameren enjoys competitive debt costs, and these will be passed to ATXI during
99 construction. ATXI pays Ameren an interest rate equal to the rate of current or future debt
100 issued at the corporate level. ATXI will enjoy during the early years of construction the benefit
101 of Ameren's strong investment-grade credit ratings, which will provide ATXI with access to debt
102 capital at competitive rates.

103 **Q. How might access to capital change as the Transmission Line is completed?**

104 A. It will be comparable, and possibly improve. While ATXI does not have a standalone
105 credit rating from the rating agencies, we estimate that this will be achieved within the next few
106 years. Once ATXI acquires its own credit rating, ATXI will have direct access to external
107 markets in a comparable manner as other utilities in Illinois. While we cannot predict the
108 ultimate credit rating of ATXI, it could be stronger than Ameren's. In that case, debt rates could
109 be less than what Ameren could obtain on its own.

110 **Q. How will ATXI service the debt incurred during construction and establish a stand-**
111 **alone debt rating?**

112 A. The approved MISO tariffs will provide ATXI a source of revenue to meet its interest
113 obligations as the Transmission Line is constructed. ATXI's MISO tariffs allow it to recover the
114 interest expense associated with the construction debt in the year in which the interest expense is
115 incurred. This allows ATXI to service the debt on an ongoing basis, and it will produce a lower
116 overall construction cost. In addition, ATXI will earn an equity return on the equity portion of
117 its capitalization. This equity return allows for the generation of retained earnings at ATXI,
118 which provides a partial source of funds for on-going construction, and improves cash flow to
119 interest rate comparisons that are reviewed by the rating agencies.

120 **Q. Please explain any impact on ATXI's financial condition after the Transmission**
121 **Line goes in-service.**

122 A. ATXI will start to recover depreciation of the Transmission Line assets as soon as the
123 Transmission Line is in service. This cash flow provides additional support to credit metrics,

124 and these factors, as well as those mentioned above, could facilitate ATXI's ability to obtain its
125 own credit rating.

126 **Q. Will any individual customer or customer group reimburse ATXI for the cost of the**
127 **Transmission Line?**

128 A. No. The Transmission Line will not receive any funding in whole or in part from
129 individuals or customers.

130 **IV. CONCLUSION**

131 **Q. What is your conclusion regarding ATXI's ability to finance the Transmission Line?**

132 A. For the reasons stated above, I conclude that ATXI can finance the Transmission Line
133 without adverse financial consequences to the utility.

134 **Q. Does this conclude your direct testimony?**

135 A. Yes, it does.

APPENDIX**STATEMENT OF QUALIFICATIONS
DARRELL E. HUGHES**

I graduated with a Bachelor of Science degree in electrical engineering from Washington University in St. Louis, Missouri in 1975. Upon graduation, I was employed by Union Electric Company in the engineering services division of the information technology group. I held a variety of positions providing specialized support for transmission and distribution system analysis and design. I was promoted to Staff Assistant, Computer Services in 1982. I subsequently earned a Masters of Business Administration from Webster University in St. Louis, Missouri in 1991. After several promotions, I accepted the position of Senior Corporate Development Specialist in Corporate Finance for Ameren Services in 2000. I provided financial review and guidance to senior management regarding business initiatives proposed by all Ameren business lines. I completed financial projections and due diligence for Ameren's subsidiaries in the acquisition of new long-term debt in 2002. In 2003, I assumed additional responsibilities as Supervisor Valuation and Cost-of-Capital. In this role, I support Ameren's capital budgeting and project evaluation activities.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

American Transmission Company LLC :

:

Application for a Certificate of Public :

Convenience and Necessity, pursuant to : **16-0412**

Section 8-406.1 of the Illinois Public :

Utilities Act, to construct, operate, and :

maintain a new 345,000 volt electric :

transmission line and substation in Lake :

County, Illinois. :

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On August 30, 2016, American Transmission Company LLC (“Petitioner” or “ATC”) filed a verified application (“Application”) with the Illinois Commerce Commission (“Commission”) seeking, pursuant to Section 8-406.1 of the Public Utilities Act (“Act”), a Certificate of Public Convenience and Necessity (“Certificate”) for a new 345 kilovolt (“kV”) electric transmission line and substation in Lake County, Illinois.

The following additional parties were given leave to intervene in this docket: Kreuger Circle, LLC, Commonwealth Edison Company (“ComEd”), Ramon Hernandez, Michael Kelly, and Christina Michael.

Pursuant to notice given in accordance with the rules and regulations of the Commission, a duly authorized Administrative Law Judge held pre-hearing conferences on September 22, 2016, and November 3, 2016, at the Commission’s offices in Chicago, Illinois. An evidentiary hearing was held on November 9, 2016. At the evidentiary hearing, Petitioner, Commission Staff (“Staff”) and all Intervenors appeared.

Petitioner presented the testimony of three witnesses: Thomas Dagenais, Manager of Strategic Projects in ATC’s Planning Department (ATC Exs. 1.0, 1.1 and Affidavit of Thomas Dagenais); Jim Zhong, Senior Transmission Engineer for ATC’s East Portfolio (ATC Ex. 2.0 and Affidavit of Jim Zhong); and Kevin T. Lynch, Senior Real Estate Representative in ATC’s Real Estate Department (ATC Ex. 3.0 Revised and Affidavit of Kevin T. Lynch).

Staff presented the testimony of Greg Rockrohr, Senior Electrical Engineer in the Safety and Reliability Division (Staff Exs. 1.0 and 1.1).

At the conclusion of the evidentiary hearing, the record was closed. On November 15, 2016, ATC filed a Draft Proposed Order.

II. BACKGROUND & DESCRIPTION OF PROJECT

ATC is a Wisconsin limited liability company that is authorized to conduct business in the State of Illinois. ATC is a public utility within the meaning of Section 3-105 of the Act, as determined in Docket No. 01-0142. ATC owns and operates transmission facilities in parts of Illinois, Michigan, Minnesota and Wisconsin.

Pursuant to its Application, ATC seeks a Certificate to construct, operate and maintain approximately two to four miles of new 345 kV electric transmission line in Illinois as part of a longer transmission line located in Wisconsin. The proposed line will begin approximately $\frac{3}{4}$ mile north of the Wisconsin/Illinois border in the Village of Pleasant Prairie, Wisconsin and proceed south along an existing corridor of rights-of-way on which there is currently 345 kV and 138 kV transmission lines owned by Commonwealth Edison Company and railroad tracks owned by the Union Pacific Railroad. The proposed transmission line will terminate in the south at a newly constructed substation to be known as the Rosecrans Substation, located in the Village of Wadsworth in Lake County, Illinois. ATC's Application included both primary and alternate routes for the proposed transmission line.

III. STATUTORY AUTHORITY

Section 8-406.1 of the Act sets forth in detail the information required to be filed in support of the application. The statute further provides, in part:

- (f) The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will promote the public convenience and necessity and that all of the following criteria are satisfied:
 - (1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.
 - (2) That the public utility 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.
 - (3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

Section 8-406.1(g) states:

- (g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than

150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before the 30th day after the filing of the application, the Commission finds that good cause exists to extend the 150-day period.

In addition, the statute provides that a decision granting a certificate under Section 8-406.1 shall include an order pursuant to Section 8-503 of the Act:

- (i) Notwithstanding any other provisions of this act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

Section 8-503 of the Act concerns, among other things, additions to or extensions of public utility facilities. This section provides, in part, as follows:

Whenever the Commission, after a hearing, shall find that additions ... 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 ...

IV. ATC'S POSITION

ATC witness Mr. Dagenais described the necessity of the proposed transmission line. He testified that the purpose of the proposed project is to address system reliability concerns related to the critical transmission facilities that connect ATC's system to that of ComEd's in Southeastern Wisconsin and Northeastern Illinois. The reliability concerns are specific to high transfers from north to south across this transmission interface, and could result in uncontrolled loss of a large amount of load. Presently, the threat of cascading outage is mitigated by an operating guide that depends on human operators taking actions within a short timeframe, but with increased use of the existing lines, the timeframe for the human operators to implement the operating guide is becoming ever shorter. Also, the conditions under which the risk occurs exist for more hours of the year as time goes on.

Mr. Dagenais also discussed the alternative solutions that ATC examined. These included low voltage alternatives, other 345kV alternatives, and non-transmission alternatives. The proposed project was selected based on its effectiveness and cost.

Mr. Dagenais described the cooperation of ATC, ComEd, and the two relevant regional transmission organizations, Midcontinent Independent System Operator ("MISO") and PJM Interconnection, on the analysis of the reliability concern and potential

solutions. Mr. Dagenais noted that the project has been approved by MISO in its most recent transmission expansion plan, obligating ATC to move forward with it.

Mr. Dagenais testified that the total estimated cost of the project is \$55,841,000 to \$66,048,000 in 2020 dollars, depending upon the route that is ultimately ordered in both states. This capital expenditure is not unusually large for ATC, which annually spends from \$200-\$400 million on capital projects. ATC will finance the line using a mixture of debt and internal earnings.

ATC witness Mr. Zhong described Exhibit A to the Application, a map to scale showing the route of the proposed project and other nearby features. Mr. Zhong testified that ATC was proposing to build the double-circuit line on steel poles appropriate for 345 kV transmission, with static wires above the conductors for lightning protection.

Mr. Zhong further described the proposed route. The line will connect to an existing circuit on ATC's system in Wisconsin to extend two new circuits into Illinois. The line would parallel the Union Pacific Railroad tracks and two existing ComEd transmission lines as it enters Illinois. The line would continue south, adjacent to the west side of an existing ComEd right-of-way, until it reaches a twenty-five acre parcel of land owned by ATC. A new transmission substation will be built on that parcel and would provide a point of interconnection to an adjacent ComEd 345kV circuit, which would be connected to the substation.

Mr. Zhong stated that ATC examined the area for possible alternative routes for the line, which will be about five miles in total length. The two most suitable corridors were the existing transmission/railroad corridor (the primary route described above), and the corridor along the Canadian Pacific Railroad roughly a mile to the west, connecting to the substation by extending the line alongside Rosecrans Road, State Highway 173.

Mr. Zhong testified that there is one restricted landing area in the vicinity that could be affected by the proposed line. According to Mr. Zhong, the landing strip appears overgrown with vegetation and not in current use, and the owner would need to take the new line into account if the landing strip returned to operation.

Mr. Zhong stated that the estimated cost of transmission line construction, not including right-of-way acquisition and substation work is \$17,278,000 for construction in Illinois, and another \$25,621,000 for the new Rosecrans Substation. Mr. Zhong said that ATC and ComEd have an agreement in place under which ATC will pay ComEd for the costs ComEd incurs to divert its existing line into the new Rosecrans Substation.

Mr. Zhong testified that the line would be constructed in accordance with 83 Ill. Adm. Code 305 of the Commission's rules and the National Electrical Safety Code as adopted in Illinois. A dedicated project management team for ATC's East Portfolio will manage the project. This group has successfully completed numerous transmission projects in the region. For this project ATC has engaged MJ Electric, a national engineering and construction firm with extensive experience in transmission line construction. Mr. Zhong estimated that actual line construction of the entire three miles of line would take about five months.

ATC witness Mr. Lynch described Exhibit B to the Application, which details the primary right-of-way also depicted on Exhibit A.

Mr. Lynch stated that the Illinois portions of the primary right-of-way are residential, commercial, and agricultural property. ATC has purchased land adjacent to ComEd's existing line suitable for construction of the Rosecrans Substation.

Mr. Lynch estimated the right-of-way acquisition costs in Illinois, including easement payments to landowners, other fees, and labor costs, to be \$833,500 if the primary route is used. This is based on a market study by an appraiser performed in 2016. ATC has not completed its easement negotiations, but is not seeking condemnation authority at this time. Mr. Lynch indicated that ATC was in the initial stages of reaching out to landowners to begin negotiations.

Mr. Lynch stated that ATC would need other permits, such as for road crossings and wetlands impacts, and would obtain them as needed before construction.

V. STAFF'S POSITION

Staff witness Mr. Rockrohr examined ATC's analysis and documentation supporting the line, and stated that he was convinced that the line was needed and would likely result in lower costs for Illinois ratepayers. Mr. Rockrohr also agreed with ATC's analysis of the alternative solutions which concluded that the proposed project was least cost. Mr. Rockrohr noted that the only Illinois customers served by ATC are in the South Beloit area, and 99.5% of the cost for the proposed project would be borne by ATC's customers in Wisconsin and Michigan.

Mr. Rockrohr found that the primary route proposed by ATC is straight and the shortest available route. He testified that he could not find any route in Illinois superior to ATC's proposed route. He noted that the alternate route is twice as long and would require forest preserve permission to cross some land.

Mr. Rockrohr noted that ATC is also seeking approval of the project in Wisconsin, and that the two approved routes must match up. Noting that ATC's connector segment between the two routes is in Wisconsin, it will be up to the Wisconsin Commission to link the two routes if needed.

Mr. Rockrohr opined that ATC is capable of managing and supervising the construction, as ATC is a transmission-only utility and has engaged an experienced contractor for construction. He noted that this project is not unusually large for ATC. Mr. Rockrohr also found that ATC had met the other technical requirements of the statute: providing technical details, establishing a website, holding three public meetings, paying a \$100,000 filing fee, and publishing notice of its Application.

Mr. Rockrohr noted that ATC did not seek condemnation authority in its Application. Mr. Rockrohr urged ATC to pursue voluntary easements to avoid condemnation.

Mr. Rockrohr recommended that the Commission grant ATC's Application for the issuance of a Certificate of Public Convenience and Necessity.

VI. COMMISSION ANALYSIS AND CONCLUSION

The Commission finds that ATC presented sufficient evidence in support of the requirements for a Certificate pursuant to Section 8-406.1 of the Act. Record evidence

establishes that the project is necessary to maintain the continued reliability of the electric grid. The project would safeguard the system against a potential cascading outage situation. Additionally, the proposed project is the least cost of the solutions identified by ATC.

ATC presented persuasive evidence that it is capable of efficiently managing and supervising the proposed construction. ATC has constructed many similar lines over the past fifteen years. ATC anticipates total project costs to be \$55,841,000 to \$66,048,000. ATC, which spends \$200-\$400 million annually on capital transmission projects, plans to finance the proposed project using a combination of debt and internal earnings. Accordingly, the Commission concludes that ATC can finance the proposed construction without significant risk.

ATC presented suitable evidence to approve the construction on its primary right-of-way, parallel to three existing transmission lines and a railroad. The record shows that construction on this right-of-way will be least cost, and will provide the least disruption to nearby land uses. Staff agrees that ATC's primary right-of-way is superior to the alternate route, and better routes were neither identified nor proposed.

Accordingly, the Commission approves the requested Certificate of Public Convenience and Necessity for a new 345 kV electric transmission line and substation in Lake County, Illinois. The Commission authorizes ATC under Section 8-503 of the Act to construct the new transmission line and related facilities along the route described in Exhibits A and B of the Application and the Appendix to this Order.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) American Transmission Company LLC is a public utility in the State of Illinois within the meaning of Section 3-105 of the Act, as established in Docket No. 01-0142;
- (2) the Commission has jurisdiction over American Transmission Company LLC and the subject matter of this proceeding;
- (3) the recitals of fact and conclusions set forth in the prefatory portion of this Order are supported by the evidence in the record and are hereby adopted as findings of fact;
- (4) American Transmission Company LLC held public meetings in Lake County on March 16, April 28, and May 2, 2016, which were held within six months prior to the filing of the Application;

- (5) American Transmission Company LLC established a website for the project on February 23, 2016, which was at least three weeks prior to the first public hearing;
- (6) American Transmission Company LLC submitted payment of the required application fee contemporaneously with its Application;
- (7) American Transmission Company LLC published notice of the filing of its Application in the state newspaper on August 31, 2016, within 10 days after the filing of the Application;
- (8) the proposed project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers;
- (9) American Transmission Company LLC 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 process;
- (10) American Transmission Company LLC is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;
- (11) American Transmission Company LLC has met the requirements of Section 8-406.1 of the Act for issuance of a Certificate of Public Convenience and Necessity; and
- (12) pursuant to Section 8-503 of the Act, American Transmission Company LLC is authorized to construct the proposed project as approved in the prefatory portion of this Order.

IT IS THEREFORE ORDERED that American Transmission Company LLC's Application seeking a Certificate of Public Convenience and Necessity be and hereby is granted.

IT IS FURTHER ORDERED that the Certificate shall be the following:

IT IS HEREBY CERTIFIED that public convenience and necessity require: (1) construction, operation, and maintenance by American Transmission Company LLC of a transmission line and substation as described in the Application herein along the route described in the Appendix attached hereto, from the border between the states of Illinois and Wisconsin to the new Rosecrans Substation, as shown on Exhibit A admitted into evidence in this proceeding, together with such related facilities or repairs as are or may become reasonably necessary to promote the public

convenience and necessity and to secure adequate service;
and (2) the transaction of public utility business in connection
therewith, all as herein before set forth.

IT IS FURTHER ORDERED that, pursuant to Section 8-503 of the Act, American Transmission Company LLC is hereby ordered and directed to construct, operate, and maintain a new 345 kV transmission line and related facilities at the locations and in the manner specified herein on, over, along, across, and through the parcels of land along the route described in Exhibits A and B of the Application.

IT IS FURTHER ORDERED that American Transmission Company LLC is authorized and directed to commence construction of the new 345 kV line specified herein within two years of the date of this order.

IT IS FURTHER ORDERED that all motions, petitions, objections and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities 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 20th day of December, 2016.

(SIGNED) BRIEN SHEAHAN

Chairman

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Aqua Illinois, Inc.	:	
	:	
Petition for a Certificate of Public	:	
Convenience and Necessity under	:	22-0336
Section 8-406 of the Public Utilities Act	:	
to Construct, Operate, and Maintain a	:	
Water Distribution System and a	:	
Wastewater Collection System in	:	
Will County, Illinois.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On May 6, 2022, Aqua Illinois, Inc. ("Aqua Illinois" or the "Company") filed with the Illinois Commerce Commission ("Commission") a petition pursuant to Section 8-406 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101, *et seq.*, seeking a Commission order approving both temporary and permanent certificates of public convenience and necessity authorizing Aqua Illinois to construct, operate, and maintain a water distribution system and a wastewater collection system and, in connection therewith, transact public utility business in areas of Will County Illinois.

Pursuant to due notice, a status hearing was held on June 28, 2022, before a duly authorized Administrative Law Judge via teleconference. Commission Staff ("Staff") participated in the proceedings. There were no petitions to intervene filed. An evidentiary hearing took place on September 15, 2022. The Company presented the testimony of Angela Serafini, Area Manager for Aqua Illinois. Staff presented the testimony of William H. Atwood, Jr., a Water Engineer in the Water Engineering Program of the Safety & Reliability Division, the testimony of Kenrick Au, an Accountant in the Accounting Department of the Financial Analysis Division and the Verified Statement of Phil A. Hardas, Senior Financial Analyst in the Financial Analysis Division of the Public Utilities Bureau. On September 15, 2022, the record was marked "Heard and Taken".

On October 27, 2022, Aqua Illinois submitted an agreed Draft Order, which had been reviewed by Staff.

II. BACKGROUND

Aqua Illinois provides water and sewer service to approximately 89,500 customers in certain areas of Kankakee, Vermilion, Will, Boone, Knox, Lake, Cook, DeKalb, Kane, Ogle, Winnebago, McHenry, and Champaign Counties in the State of Illinois. It is a public utility within the meaning of Section 3-105 of the Act. 220 ILCS 5/3-105.

Aqua Illinois states that it has provided water and wastewater service to customers in the University Park area for over thirty years, and since 1987, the Commission has granted multiple certificates of public convenience and necessity to provide water distribution and wastewater collection services to meet the needs of customers throughout Will County, including University Park, in Docket Nos. 87-0402, 88-0060, 94-0461, 06-0655, 11-0369, 13-0246, and 15-0253. The Company now seeks an additional certificate to serve a new commercial development in the Village of University Park proposed at 541 University Parkway which is contiguous to areas for which the Commission has previously granted Aqua Illinois certificates. Aqua Illinois also seeks a certificate to provide water distribution and wastewater collection services in certain limited areas of Will County surrounded by previously certificated areas to clarify the boundaries of the area for which it sought certification in Docket No. 87-0402.

Aqua Illinois asserts that the proposed certification is necessary to provide adequate, reliable, and efficient service to Aqua Illinois' customers. Specifically, Aqua Illinois asserts that the Acquisition is needed to address a request from the developer who is under contract for the proposed commercial development, and to clarify the area boundaries of its existing service territory.

III. STATUTORY AUTHORITY

Section 8-406 of the Act prohibits a public utility from transacting in Illinois public utility business not previously authorized by the Commission or under the Act. 220 ILCS 5/8-406(a). Section 8-406 permits the Commission to certificate new business and construction by a public utility when the public convenience and necessity require such business or construction. 220 ILCS 5/8-406(b). The Commission shall determine that proposed construction by a public utility will promote the public convenience and necessity 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 . . . ; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

220 ILCS 5/8-406(b)(1)-(3).

Section 8-406(e) of the Act provides that the Commission:

may issue a temporary certificate which shall remain in force not to exceed one year in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certification, and may by regulation exempt from the requirements of this Section

temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

220 ILCS 5/8-406(e).

IV. PARTIES' POSITIONS

A. Proposed Certificate

Aqua Illinois requests a certificate for a limited service area in order to serve a new commercial development in the Village of University Park, an area which is contiguous to areas for which the Commission has previously granted Aqua Illinois certificates. Aqua Illinois states that the Company is seeking a certificate for that area in order to provide service to a new commercial development, and also to clarify and provide clear linear boundaries to the area previously certificated in Docket No. 87-0402. A map of the proposed certificated area was provided as Aqua Exhibit 1.02, and a legal description for the proposed certificated area was provided as Aqua Exhibit 1.03.

In its verified Petition, Aqua Illinois sought a temporary certificate pursuant to Section 8-406(e) to serve the proposed commercial development that had received zoning and subdivision approval and was preparing for construction to begin. Aqua Illinois asserted that the provision of water and wastewater service to the proposed development was essential to development in the area, and further asserted that it received notice from the developer that time was of the essence and that the developer would be forced to abandon the project if Aqua Illinois was unable to secure the requisite approval. Aqua Illinois also requested a permanent certificate to serve the new development, as it would require water and wastewater service on a permanent basis, and to serve the limited areas of Will County surrounded by previously certificated areas.

Staff witness Atwood testified that the timing of Aqua's request, and the lack of contested issues related to its request for the permanent certificate rendered any recommendation on the temporary certificate unnecessary. The Company did not object to Mr. Atwood's position, and in light of Staff's testimony recommending approval of the permanent certificate to serve the area, Aqua Illinois withdrew its request for relief pursuant to Section 8-406(e) at the evidentiary hearing.

B. The Proposed Certificate Is Necessary to Provide Adequate, Reliable, and Efficient Service to Aqua Illinois' Customers.

Aqua Illinois asserts that there is a need to provide adequate, reliable, and efficient water and wastewater collection service to the proposed development. Aqua Illinois explains that the Village of University Park issued a zoning and subdivision approval for a commercial development, and existing sewer mains are installed on both sides of the proposed expansion and are adequate to provide service to the proposed commercial development. Aqua Illinois states that the proposed development will encompass approximately 3 acres and will only require the installation of individual service lines. The Company explains that it does not anticipate any construction needs to provide sewer service to the proposed commercial development; however, depending on site conditions and service needs for future development in the parcel, the Company may be required to install a sewer service extension to provide sewer service. Aqua Illinois further asserts

that the Company's proposal provides the least-cost means of satisfying the water and wastewater needs of its University Park customers.

Staff witness Atwood agrees with the Company's position that the certificate is necessary to promote the public convenience and is in the best interest of the customers. Due to the commercial development planned, the Proposed Area is in need of water and wastewater service, and the proposed certificate will promote the adequacy, reliability, efficiency, and safety of water and sewer service in the Proposed Area. Mr. Atwood recommends that the Commission find that Aqua Illinois has met the requirements of Sections 8-406(b)(1) and (2) of the Act and grant Aqua Illinois' petition for a certificate to provide water service and a certificate to provide sewer service in the Proposed Area.

Mr. Atwood further testifies that there are no other municipalities in or near the Proposed Area that are interested in or capable of providing water or sewer service. He notes that Aqua Illinois provided notice to the nearby municipalities of Crete and Park Forest, but no other municipalities or entities have intervened to argue against the Company receiving a certificate to serve the Proposed Area.

Mr. Atwood states that in his opinion, the Company proposes the least-cost means for providing safe and reliable water service to the Proposed Area. He notes that the Company has existing water and sewer mains immediately adjacent to the west side of the proposed area, and that connecting to the Company's existing water distribution system and sewer collection system is the least-cost means of providing water and sewer service to the customers in the Proposed Area. Therefore, Mr. Atwood recommends the Commission find that Aqua Illinois demonstrated there is a need to provide adequate, reliable and efficient water and sewer service to the customers within the Proposed Area, and that the extension of its water and sewer service is the least-cost means.

C. Aqua Illinois Is Capable of Efficiently Managing and Supervising the Construction Process.

Aqua Illinois asserts that it has the technical and managerial ability to efficiently manage and supervise any construction processes in the expanded area. Aqua Illinois states that it, and its predecessors, have been operating in Illinois since the late 1800s. Aqua Illinois explains that it is the second largest investor-owned water utility in the State and serves approximately 89,500 water and sewer customers. Aqua Illinois states that it has consistently demonstrated that its water and wastewater systems are properly operated and efficiently managed, and that its equipment is well maintained.

Mr. Atwood agrees that the Company is capable of efficiently managing and supervising the water and wastewater facilities. Mr. Atwood notes that the Company will incorporate the management and operation of the Proposed Area's water and wastewater systems into its existing University Park Division, and that the Company will be able to easily monitor and operate the Proposed Area's systems using the University Park Division's facilities and personnel. Therefore, he recommends the Commission find that Aqua Illinois is capable of efficiently managing and supervising the activities necessary to provide water and wastewater service to the Proposed Area.

D. Aqua Illinois Is Capable of Financing the Proposed Construction without Significant Adverse Financial Consequences.

Aqua Illinois asserts that the Company is capable of financing any construction without significant adverse financial consequences for Aqua and its customers. Aqua Illinois explains that in addition to the day-to-day working capital to operate the water and wastewater facilities in the proposed certificate, Aqua Illinois has bank lines of credit available to finance the capital needs of a public wastewater collection system. Further, Aqua Illinois states that existing University Park customers may experience the financial benefit of a broader customer base from service to the planned development.

Staff witness Hardas notes that in its supplemental response to a Staff data request, Aqua Illinois stated that the costs associated with the certificate are legal fees which to date were \$23,000, and the general expense of internal employee time which is not specifically allocated to this project. Mr. Hardas also notes that Aqua Illinois stated it does not anticipate any other expenses will be associated with this project. Mr. Hardas testifies that the estimated cost of the proposed certificate expansion to the Company is diminutive in relation to the Company's financial resources. He notes that Aqua Illinois' net utility plant was \$564,782,609 as of December 31, 2021, and its total operating revenues for the twelve months ending December 31, 2021, totaled \$83,177,287. The cost of the proposed certificate expansion represents 0.00% of Aqua Illinois' net utility plant and 0.03% of the Company's total utility operating revenue for the calendar year ending 2021. Mr. Hardas recommends the Commission find that Aqua Illinois is capable of financing the proposed construction without significant adverse financial consequences for the Company or its customers.

E. Proposed Rules, Rates, Accounting Entries, and Depreciation Rates

Aqua Illinois proposes that its existing Rules, Regulations, and Conditions of Service Tariffs (Water) under ILL. C. C. 49, and Rules, Regulations, and Conditions of Service Tariffs (Sewer) under ILL. C. C. No. 50, apply in the proposed certificate. The Company further proposes that the existing water service rate schedule under ILL. C. C. No. 49, Section 1, and its wastewater service rate schedule under ILL. C. C. No. 50, Section 6 apply in the proposed certificate.

Aqua Illinois further proposes to record the original cost of any new water and/or wastewater facilities in the proposed certificate in the applicable Utility Plant In Service Accounts. The specific accounts to which the entries will be recorded will depend on the type of infrastructure contributed to Aqua Illinois from the developer and will most likely be Account 333 – New Services Water, Account 331 – T&D Mains, Account 363 – New Services Sewer, Account 360.0 – Collection Sewers. Force and /or Account 361 – Collection Sewers – Gravity. Aqua Illinois further proposes to record any contributions or deposits for existing facilities as contributions to Account 271 – Contributions in Aid of Construction and Account 252 – Advances for Construction, if any developer refunds are owed.

Finally, Aqua Illinois proposes that the revised depreciation rates approved by the Commission in Docket No. 18-1467 apply to those facilities.

Staff witness Au states that he has no concerns with the Company's proposed accounting treatment for costs incurred to provide water and wastewater service to the proposed service area. Mr. Au recommends the Commission order Aqua Illinois to record any capital investment and expenses incurred related to the project consistent with the requirements of the Uniform System of Accounts for Water Utilities in 83 Ill. Adm. Code 605. Mr. Au also recommends the Commission order Aqua Illinois to depreciate and amortize the capital improvements using approved rates authorized by the Commission in Docket No. 18-1467 or other subsequent orders. Mr. Au further recommends the Commission order Aqua Illinois to file final accounting entries showing the actual dollar values of all involved accounts, as a filing on the Commission e-Docket system in this docket, with a copy to the Commission's Accounting Department at ICC.AccountingMgr@illinois.gov within sixty (60) days of the project's completion or 60 days from such information becoming available. Mr. Au recommends the final order in this proceeding state that the prudence and reasonableness of any capital investment cost incurred by Aqua Illinois related to the project will be determined by the Commission in a future rate case and based upon supporting documentation provided at the time.

V. COMMISSION ANALYSIS AND CONCLUSION

Aqua Illinois seeks an Order granting a certificate of public convenience and necessity to allow the utility to construct, operate and maintain utility services and to serve a new commercial development in the Village of University Park, as well as certain areas of Will County contiguous to areas for which the Commission has previously granted Aqua Illinois certification in Docket No. 87-0402 in order to clarify the boundaries.

The Commission has reviewed the record in this proceeding and finds that Aqua Illinois presented substantial evidence to support its requested relief pursuant to Section 8-406 of the Act. The record demonstrates that there is a need to provide adequate, reliable, and efficient service to the proposed new commercial development in the Village of University Park. As the public utility already providing water and wastewater service in University Park, Aqua Illinois' request is the least-cost means of providing such service, and that it is capable of managing and supervising any necessary construction. Aqua Illinois has also demonstrated that it has the technical, financial, and managerial ability to construct, operate and maintain its systems and that it is capable of financing any construction of wastewater infrastructure in the expanded University Park area, and of doing so without significant adverse financial consequences for Aqua Illinois or its customers. Finally, the rules, rates, accounting entries, and depreciation rates proposed by Aqua Illinois are reasonable.

In light of these findings and Staff's recommendation, the Commission grants the requested certificate and approves the application of the proposed rules, rates, accounting entries, and depreciation rates.

VI. FINDINGS AND ORDERINGS PARAGRAPHS

The Commission, having reviewed the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Aqua Illinois, Inc. is an Illinois corporation engaged in the provision of water and wastewater service in Illinois and, as such, is a public utility within the meaning of Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105;
- (2) the Commission has jurisdiction over Aqua Illinois, Inc. and the subject matter herein;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) Aqua Illinois, Inc. has demonstrated that there is a need to provide adequate, reliable, and efficient water and wastewater service within the proposed certificated service area and that its proposal is the least-cost means of providing such service, therefore it has met the requirements of Section 8-406(b)(1) of the Public Utilities Act;
- (5) Aqua Exhibit 1.02 should be attached to this Order as Appendix A;
- (6) Aqua Exhibit 1.03 should be attached to this Order as Appendix B;
- (7) Aqua Illinois, Inc. is capable of efficiently managing and supervising any water or wastewater collection system infrastructure construction in the area shown on Appendix A to this Order, and Aqua Illinois, Inc. has taken sufficient action to ensure adequate and efficient construction and supervision of any such construction and has therefore met the requirements of Section 8-406(b)(2) of the Public Utilities Act;
- (8) Aqua Illinois, Inc. is capable of financing any construction in the area shown on Appendix A to this Order without significant adverse financial consequences for Aqua Illinois, Inc. or its customers and therefore has met the requirements of Section 8-406(b)(3) of the Public Utilities Act;
- (9) Aqua Illinois, Inc. should be granted a certificate of public convenience and necessity to construct, operate, and maintain a wastewater collection system, and to conduct public utility business in connection therewith, in and near the Village of University Park in Will County, Illinois in the area depicted on Appendix A and legally described on Appendix B to this Order;
- (10) Aqua Illinois Inc.'s proposed use of the existing water service rate schedule under ILL. C. C. No. 49, Section 1, and its wastewater service rate schedule under ILL. C. C. No. 50, Section 6 should be approved;
- (11) Aqua Illinois, Inc.'s proposed use of the existing Rules, Regulations, and Conditions of Service Tariffs (Water) under ILL. C. C. 49, and Rules, Regulations, and Conditions of Service Tariffs (Sewer) under ILL. C. C. No. 50, should be approved;
- (12) Aqua Illinois, Inc.'s proposed depreciation rates as approved in Docket No. 18-1467 should be approved;
- (13) Aqua Illinois, Inc.'s proposed accounting for the original cost of wastewater facilities in the proposed certificated area should be approved; and

- (14) Aqua Illinois, Inc. is directed to file the final accounting entries for the transaction, showing the actual dollar values of all involved accounts for the recording of plant assets, including assets that have been contributed by the developer, as a filing on the Commission's e-Docket system in this docket, with an email copy to ICC.AccountingMgr@illinois.gov, within sixty (60) days of the date such assets are placed in service. If the assets have not been placed in service within six months of the Final Order in this proceeding, then Aqua Illinois, Inc. shall file a status report at six-month intervals until the journal entries are filed on the Commission's e-Docket system with an email copy to ICC.AccountingMgr@illinois.gov.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a certificate of public convenience and necessity is hereby issued to Aqua Illinois, Inc., pursuant to Section 8-406 of the Public Utilities Act, 220 ILCS 5/8-406, 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 the construction, operation, and maintenance of a wastewater collection system and, in connection therewith, transaction of public utility business by Aqua Illinois, Inc. in an area in and near the Village of University Park in Will County, Illinois, as shown on the map attached to this Order as Appendix A and described on Appendix B.

IT IS FURTHER ORDERED that Aqua Illinois, Inc. shall comply with findings set forth above in this Order.

IT IS FURTHER ORDERED that Aqua Illinois, Inc. is directed to depreciate and amortize the capital improvements using approved rates authorized by the Commission in Docket No. 18-1467 or other subsequent orders;

IT IS FURTHER ORDERED that Aqua Illinois, Inc. is directed to file with the Chief Clerk of the Commission to file final accounting entries showing the actual dollar values of all involved accounts, as a filing on the Commission e-Docket system in this docket, with a copy to the Commission's Accounting Department at ICC.AccountingMgr@illinois.gov within sixty (60) days of the project's completion or 60 days from such information becoming available.

IT IS FURTHER ORDERED that the prudence and reasonableness of any capital investment cost incurred by Aqua Illinois, Inc. related to the project will be determined by the Commission in a future rate case and based upon supporting documentation provided at the time;

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding that remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code Section 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the parties.

IT IS FURTHER ORDERED that subject to the provisions of 10-113 of the Public Utilities 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 15th day of December, 2022.

(SIGNED) CARRIE ZALEWSKI

Chairman

ILLINOIS COMMERCE COMMISSION

DOCKET NO. 22-XXXX

Direct Testimony of

ANGELA SERAFINI

Submitted on Behalf of
Aqua Illinois, Inc.

May 06, 2022

Aqua Exhibit 1.0

Aqua Exhibit 1.0

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ILLINOIS COMMERCE COMMISSION**DOCKET NO. 22-XXXX****DIRECT TESTIMONY OF****ANGELA SERAFINI****Submitted on Behalf of****AQUA ILLINOIS, INC.****1 I. INTRODUCTION****2 Q. Please state your name and business address.**

3 A. My name is Angela Serafini, and my business address is 1000 South Schuyler Ave,
4 Kankakee, IL 60901.

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

6 A. I am employed by Aqua Illinois, Inc. (Aqua Illinois or the Company) as Area Manager.

7 Q. Please describe your educational and professional background.

8 A. I obtained a Masters of Organizational Leadership and a Master of Business
9 Administration from Olivet Nazarene University, and have a Bachelors of Science and
10 an Associates of Applied Science. Prior to joining Aqua Illinois, I served as the Vice
11 President of Enrollment Services at Capital Education. In that role, I oversaw the
12 enrollment and marketing team and was responsible for driving growth strategies for
13 partner institutions. I have also served in several positions, including Executive Director
14 of Admissions at Olivet Nazarene University, in which I led forward-thinking recruiting
15 operations for universities.

16 **Q. Please describe Aqua Illinois.**

17 **A.** Aqua Illinois is a corporation incorporated under the laws of, and duly authorized to
18 transact business in, the State of Illinois. It is a subsidiary of Essential Utilities, Inc., and
19 provides water delivery and wastewater collection services to approximately 89,500
20 customers in certain areas of Kankakee, Vermilion, Will, Boone, Knox, Lake, Cook,
21 DeKalb, Kane, Ogle, Winnebago, McHenry, and Champaign Counties in the State of
22 Illinois. It is a public utility regulated by the Commission.

23 **Q. What are your responsibilities as Area Manager of Aqua Illinois?**

24 **A.** As Area Manager, I am responsible for the overall management and operations of water
25 and wastewater facilities within the Kankakee/Will County Division. In my role, I am
26 responsible for the administration of activities within the Central Division; I direct staff
27 in the area to ensure efficient operation of the Company, high quality customer and
28 community service, regulatory compliance, and positive employee and community
29 relationships.

30 **Q. Have you previously testified in regulatory matters?**

31 **A.** No.

32 **II. PURPOSE OF TESTIMONY**

33 **Q. What is the purpose of your direct testimony in this proceeding?**

34 **A.** The purpose of my testimony is to support Aqua Illinois' Verified Petition requesting a
35 Certificate of Public Convenience and Necessity ("CPCN") authorizing the Company to
36 construct, operate, and maintain a water distribution system and wastewater collection
37 system, and in connection therewith, to transact public utility business in portions of

Will County, Illinois. The Certificate sought by Aqua Illinois in this proceeding is contiguous to areas for which the Company was previously granted Certificates, and is intended to accommodate the provision of water and wastewater service to a new commercial development proposed at 541 University Parkway. My testimony explains in greater detail why the Company is requesting this Certificate, and explains why Aqua Illinois' request satisfies the requirements of Section 8-406 of the Act.

Q. Are you sponsoring any exhibits with your direct testimony?

A. Yes. I am sponsoring:

- Aqua Exhibit 1.01 – a map that shows Aqua Illinois' current and proposed water and wastewater certificated areas in and around Will County, Illinois;
- Aqua Exhibit 1.02 – a map that shows Aqua Illinois' proposed Certificate in this proceeding;
- Aqua Exhibit 1.03 – a legal description for the proposed certificated area;
- Aqua Exhibit 1.04 CONF – a copy of the new commercial development site plans;
- Aqua Exhibit 1.05 – the ALTA survey for the proposed area.

III. CERTIFICATE REQUEST

Q. Will you please describe the proposed Certificate that the Company is requesting in this proceeding?

A. Aqua Illinois is requesting a certificate for a limited area in order to provide service to a new commercial development in the Village of University Park. The proposed Certificate is contiguous to the Company's existing Certificate that was granted in Docket 87-0402, and is necessary to serve the proposed development that is currently

Aqua Exhibit 1.0
Page 4 of 8

undergoing site plan and building plan reviews. Aqua Illinois' request in this proceeding also includes a limited area contiguous to the Certificate granted in Docket 87-0402 and the Certificate requested herein, and is intended to clean up the certificated boundaries, correct and clarify the existing legal descriptions and the Company's maps, and provide clear, linear boundaries to the nearest one-fourth section. This proposal is limited in scope, intended to clarify imprecise boundaries, and will not negatively impact any customers, municipalities, or other entities. Specifically, Aqua Illinois proposes to expand that area eastward to the nearest section line to include and provide service to the proposed commercial development. Aqua Illinois also proposes to expand the area westward to clean up the boundaries of Aqua Illinois' existing certificated area. Aqua Exhibit 1.03 provides a legal description for the boundaries of this proposed expanded area. The total area of the proposed Certificate is 9.2 acres, all located in Will County.

Q. Does the Company have a history of providing service to customers in the area?

A. Yes. The Company has provided water distribution and wastewater collection service to customers in the Will County area for over thirty years. Aqua Illinois' existing Certificate in the University Park area was granted in Docket 87-0402, and the company currently serves parcels on both sides of the proposed expansion.

Q. Why is Aqua Illinois requesting certification of this area?

A. To address a recent request from the a developer under contract for the parcel in question to undertake the efforts necessary to provide water delivery and wastewater collection services there.

82 **Q. Please explain the Developer's recent request for water and wastewater services.**

83 **A.** The Village has recently issued zoning and subdivision approval for a commercial
84 development project located at 541 University Parkway in University Park, Illinois, and
85 that project is currently preparing for construction to begin. Aqua Exhibit 1.04 CONF
86 provides a copy of the new commercial development site plans. The proposed
87 commercial development will encompass approximately 3 acres, and will require the
88 installation of individual service lines for water service, and will receive sewer service
89 via an existing sanitary sewer main. Existing sewer mains are installed on both sides of
90 the proposed expansion, and are adequate to provide service to the proposed commercial
91 development. The area on the west side of the proposed certificate that will clean up the
92 area boundaries may require the installation of a sewer extension in the future, depending
93 on the service conditions and needs of any future projects in that portion of the parcel.
94 Water delivery and wastewater collection services are critical to the development of the
95 area, and therefore Aqua Illinois has been asked to undertake the steps necessary to
96 provide those necessary services there. Because water delivery and wastewater
97 collection services are critical to the development of the area, Aqua is requesting that
98 the Commission enter an order issuing a Temporary Certificate which authorizes Aqua
99 to provide immediate water and wastewater service to the proposed development.

100 **Q. Does Aqua Illinois anticipate any construction will be required to provide service in**
101 **the proposed Certificate?**

102 **A.** Yes. There is an existing water main along the south side of University Parkway; as
103 described above, this project will require only individual service lines to be installed in
104 order for Aqua Illinois to provide service in the proposed Certificated Area. At this time,

105 Aqua Illinois does not anticipate any construction needs to provide sewer service to the
106 proposed commercial development. However, depending on the site conditions and
107 service needs for future development in the parcel, the Company may be required to
108 install a sewer service extension to provide sewer service.

109 **Q. Is Aqua Illinois capable of efficiently managing and supervising the construction of**
110 **water and/or wastewater infrastructure in the proposed Certificated area?**

111 **A.** Yes. Aqua Illinois has the technical and managerial ability to efficiently manage and
112 supervise any construction processes in the expanded area. Aqua Illinois and its
113 predecessors have been operating in Illinois since the late 1800s. Aqua Illinois is the
114 second largest investor-owned water utility in the State and, again, currently serves
115 approximately 89,500 water and sewer customers. Aqua Illinois has consistently
116 demonstrated that its water and wastewater systems are properly operated and efficiently
117 managed, and that its equipment is well maintained.

118 **Q. Is Aqua Illinois capable of financing any such construction?**

119 **A.** Yes. Aqua Illinois is capable of financing any such construction, and of doing so without
120 significant adverse financial consequences for Aqua Illinois or its customers. In addition
121 to the day-to-day working capital to operate the water and wastewater facilities in the
122 proposed Certificate, Aqua Illinois has bank lines of credit available to finance the
123 capital needs of a public wastewater collection system. Further, existing University Park
124 customers may experience the financial benefits of a broader customer base from service
125 to the planned development.

IV. RULES, RATES, ACCOUNTING ENTRIES, AND DEPRECIATION RATES

Q. What rules will govern facilities in the expanded proposed Certificated area?

A. Aqua Illinois proposes that its existing Rules, Regulations, and Conditions of Service Tariffs (Water) under ILL. C. C. No. 49, and Rules, Regulations, and Conditions of Service Tariffs (Sewer under ILL. C. C. No. 50, apply in the proposed Certificate.

Q. What rates does Aqua Illinois propose to charge for water distribution and wastewater collection service in the proposed Certificate?

A. Aqua Illinois proposes that its existing water service rate schedule under ILL. C.C. No. 49, Section 1, and its wastewater service rate schedule under IL.C.C. No. 50, Section 6, apply in the proposed Certificate.

Q. Please explain the accounting entries for new construction and any contributed facilities in the proposed certificated area.

A. Per Commission policy and the Uniform System of Accounts for Water Utilities (83 Ill. Admin. Code Part 605) and the Uniform System of Accounts for Sewer Utilities (83 Ill. Admin. Code Part 650), Aqua Illinois proposes to record the original cost of any new water and/or wastewater facilities in the proposed Certificate in the applicable Utility Plant in Service accounts. The specific accounts to which the entries will be recorded will depend on the type of infrastructure contributed to Aqua Illinois from the developer, and will most likely be Account 333 – New Services Water, Account 331 - T&D Mains, Account 363 – New Services Sewer, Account 360.0 – Collection Sewers – Force and/or Account 361 – Collection Sewers – Gravity. Aqua Illinois proposes to record any contributions or deposits for existing facilities as contributions to Account 271 –

Aqua Exhibit 1.0
Page 8 of 8

148 Contributions in Aid of Construction and Account 252 – Advances for Construction, if
149 any developer refunds are owed.

150 **Q. What depreciation rates will be in effect for the proposed Certificated area?**

151 **A.** Aqua Illinois proposes to use the revised depreciation rates established in Docket 18-
152 1467 as approved by the Commission.

153 **V. CONCLUSION**

154 **Q. Does this conclude your direct testimony?**

155 **A.** Yes.

Docket No. 22-0336
ICC Staff Exhibit 3.0

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AQUA ILLINOIS, INC.	)	
	)	
Petition for a Certificate of Public Convenience	)	Docket 22-0336
and Necessity under Section 8-406 of the Public	)	
Utilities Act to Construct, Operate, and Maintain a	)	
Water Distribution System and a Wastewater	)	
Collection System in Will County, Illinois.	)	

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

VERIFIED STATEMENT OF PHIL A. HARDAS

My name is Phil A. Hardas. My business address is 527 E. Capitol Avenue, Springfield, Illinois 62701. I am employed by the Illinois Commerce Commission ("Commission") as a Senior Financial Analyst in the Financial Analysis Division of the Bureau of Public Utilities.

On May 6, 2022, Aqua Illinois, Inc. ("Aqua" or "Company") filed a petition for the issuance of a certificate of public convenience and necessity ("Certificate") authorizing Aqua to construct, operate, and maintain a water distribution system and a wastewater collection system and, in connection therewith, transact public utility business in areas of Will County, Illinois, pursuant to Section 8-406 of the Illinois Public Utilities Act ("Act"). 220 ILCS 5/8-406.

Section 8-406 of the Act states, in part, that, before issuing a Certificate the Commission shall determine that the proposed construction will promote the public convenience and necessity only if the utility demonstrates that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. 220 ILCS 5/8-406(b)(3).

I reviewed the Company's petition and testimony, as well as supplemental information provided by the Company in response to Staff Data Requests ("DR").

The Company states in its supplemental response to Staff DR PAH 1.01:

The costs associated with this Certificate expansion are: (1) legal fees, which to date are approximately \$23,000, and (2) the general expense of internal employee time, which is not allocated specifically to this project – the internal time is coded as general engineering, for example. Aqua Illinois does not anticipate any other expenses that will be associated with this

Docket No. 22-0336
ICC Staff Exhibit 3.0

project. The developer will pay out of pocket with no contributed funds from the Company to tap and install the service lines. The Company will send a representative to monitor and inspect that process, and ensure that the developer/their contractor has performed the work correctly. There is already infrastructure in place to serve the project, and there does not need to be any inspections performed.

The estimated cost of the proposed Certificate expansion to the Company is diminutive in relation to the Company's financial resources. Aqua's net utility plant was \$564,782,609 as of December 31, 2021; its utility operating revenues for the twelve months ended December 31, 2021, totaled \$83,177,287. (Aqua Illinois Form 22 ILCC Annual Report for the year ended December 31, 2021, 4f and 7f.) The total cost of the proposed certificate expansion represents 0.00% of Aqua's net utility plant and 0.03% of the Company's total utility operating revenue for the calendar year ending 2021.

In my judgment, the proposed transaction meets the requirement of Section 8-406(b)(3) of the Act. Therefore, I recommend the Commission find that Aqua is capable of financing the proposed construction without significant adverse financial consequences for the Company or its customers.

This concludes my Statement in this proceeding.


Phil A. Hardas

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.


Phil A. Hardas

9/14/22
Date

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	:	
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.	:	

ORDER

DATED: November 25, 2014

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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	:	
Section 8-406 of the Public Utilities Act as a	:	
Transmission Public Utility and to	:	12-0560
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.	:	

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" 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" 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. With respect to Rock Island's request for relief under Section 8-406, the Motions to Dismiss 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.

A Proposed Order was served. Briefs on exceptions (“BOEs”) were filed by Rock Island, ComEd, ILA, IAA, WOW, IBEW and Environmental Intervenors. Except as otherwise noted, suggested replacement language was provided in the BOEs or in separate filings referred to as “Exceptions.” Rock Island’s BOE and Exceptions also propose revisions to the summaries of its positions and to findings and ordering paragraphs, and Rock Island proposes that appendices be added to the order. The Commission Staff also filed a BOE in which it states that it takes no exception to the Proposed Order.

Reply briefs on exceptions (“RBOEs”) were filed by Rock Island, ComEd, ILA, IAA, WOW, IBEW, Environmental Intervenors and the Commission Staff.

The positions of the Parties on the issues are summarized below. The Commission observes that these summaries 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 alternating current (“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 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; ...

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; see also IAA BOE at 4)

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’).” (RI Response to Motions at 6; see also WOW Response to Motions at 2 and RI RBOE at 3-4)

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 refiling.

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)

In the post-hearing briefs, Section 8-406(a) issues were addressed by ComEd, ILL, IAA, Staff and Rock Island. It is noted that Staff did not file a BOE on Section 8-406(a) issues.

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 (“ATC Order”) 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. *Ill. Power Co. d/b/a AmerenIP & Ameren Ill. Transmission Co.*, Docket No. 06-0706, Order on Reopening June 23, 2010. 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; see also RI RBOE at 8)

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; see also RI RBOE at 14-17, responding to ILA, IAA and ComEd BOEs)

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 propose 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)

BOE and RBOE

In its BOE, Rock Island suggests that the Order should include additional discussion of its evidence and arguments regarding Section 8-406(a). (RI BOE at 30-32; Exceptions at I and II)

In its RBOE, in response to BOEs filed by IAA, ILA and ComEd, Rock Island argues, "The record shows that Rock Island satisfies the 'for public use' requirement to be a public utility...." (RI RBOE at III)

In support of that conclusion, Rock Island addresses "Customers to be Offered Transmission Service on the Project," "Finite Number of Customers," "Expanding the

Capacity of the Project if it is Over-Subscribed,” and “Other Arguments.” (RBOE at III. A, B, C and D)

B. Positions of Staff and Intervenor

Staff

Preliminarily, it is noted that Staff did not file a brief on exceptions on this issue or any issue. Prior to that, Staff addressed the issue in its briefs as discussed below.

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 RI 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 asserted 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 stated 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 maintained 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 stated that in this capacity, Rock Island would be acting as a provider of open access transmission services. The 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 stated, “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 stated 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 stated 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 this 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 RI Ex. 1.0 at 5)

Finally, Staff stated 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.” Docket No. 01-0142, 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.* 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 Corp. was not a public utility subject to regulation under the PUA because the record failed to support the conclusion that Mississippi River Fuel Corp. devoted its property to “public use.” (*Id.*, citing *Mississippi River* at 515-516; see also ComEd RB at 9; ComEd BOE at 7)

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; see also ComEd BOE at 11-12)

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; BOE at 11-12)

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; see also ComEd BOE at 7-9)

While RI claims that customers 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 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) According to ComEd, "Rock Island's commitment to adhere to the OATT is also insufficient to prove that the Project will be dedicated to the public use under the circumstances." (ComEd Exceptions at 27; BOE at 9-11)

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 Orders in Docket No. 01-0142, Docket No. 06-0179, Docket No. 06-0706, and Docket No. 12-0598)

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 Rock Island 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 Rock Island 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; see also IAA BOE at 5-7)

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

ILA’s arguments are set forth in its briefs and its BOE. (ILA BOE at 14-17)

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

No public utility shall begin the construction of any new plant, equipment, property or facility in Illinois unless and until it has obtained from the Commission a certificate that public convenience and necessity require such construction. 220 ILCS 5/8-406. As was stated in Section IV of this Order, we concur that the PUA allows non-utility applicants to both become public utilities and to subsequently operate, for public use, plant and equipment that transmit electricity. Under Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105, “Public Utility” means and includes, among other things:

... every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers and appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, or permit or right to engage in: a. the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communication purposes...

Id.

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) To constitute a “public use,” under Section 3-105, “all persons must have an equal right to use the utility, and it must be in common, upon the same terms, however few the number who avail themselves of it. (Staff IB at 11, citing *Palmyra Tel. Co. v. Modesto Tel. Co.*, (336 Ill. 158 (1929); *State Public Utilities Commission v. Bethany Mut. Tel. Ass’n*, 270 Ill. 183 (1915))

In its initial and reply brief, Staff states that it “has concerns with any finding that Rock Island would be an Illinois ‘public utility’...” due to its opinion 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.” In particular Staff voices concern regarding the condemnation of private property through eminent domain for what it considers to be private purposes. (Staff IB at 15) 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.

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 has concerns regarding the pre-subscription of 75 percent of the line to contract anchor tenants in the Resource Area and asserts that such an arrangement leaves “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)

Rock Island represents that it will comply with this FERC requirement; will offer all eligible customers the opportunity to purchase transmission service on the Project; will not deny any eligible customer the opportunity to purchase transmission service; and will not unduly discriminate against any transmission customer in favor of another eligible customer. (RI RB at 48) Rock Island also notes 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 directives 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 argued 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 cited 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 and thus this determination is premature. If Rock Island is required to file a FERC tariff which complies with that pronouncement, Rock Island has stated in this proceeding that it would not object to that obligation and that an increase in capacity could be implemented through various means, such as construction of a separate project, installation of additional facilities within the existing or an expanded Right of Way (“ROW”), or an engineering solution that increases the capacity of the Project using the existing facilities. (RI RB at 52) This type of expansion, which would necessarily deviate from the project under review in the present case, would require further review, and 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%. Rock Island 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 requirements 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 Rock Island, 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. (RI 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. (RI 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 witness 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 Rock Island, 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, which reduces the overall variability of wind power and increases the economic advantage of locating wind generation in the Resource Area. (RI 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. Rock Island 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 Rock Island, 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 and Dr. McDermott 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 ("PVRR") of the Project and alternatives. (RI IB at 54)

In Rock Island'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 in contrast, the Staff methodology 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)

Rock Island 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. (RI 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, Rock Island 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. (RI 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 Rock Island, 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 Ex. 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)

BOE and RBOE

In its BOE, Rock Island suggests that the Commission include additional discussion of the evidence with respect to the conclusion that the Project will promote the development of an effectively competitive electricity market. (RI BOE at 20-22; Exceptions at 8-11)

In its RBOE, in response to arguments in the BOEs filed by ILA, IAA and ComEd, Rock Island argues that “specific economic study inputs and projections criticized by ILA, IAA and ComEd are reasonable and well-supported in the record.” (RI RBOE at IV.A.2) In that context, Rock Island addresses “generators to be connected to the project and their characteristics,” “potential operating restrictions and network upgrade costs,” and “other criticisms of study inputs.” (*Id.* at IV.A.2.a,b,c)

Rock Island also argues that the four concerns of ILA Witness Dr. Gray, cited by IAA, were fully addressed in the record and do not warrant changing the conclusion in the Proposed Order. (RI RBOE at IV.A.3)

Rock Island next argues that the conclusions in the Proposed Order do not “over-rely” on the Staff financing condition. Rock Island contends that “sophisticated lenders and investors, such as those who have focused on transmission projects (see Rock Island

Ex. 10.0 at 33-34), are not in the habit of lending or investing their capital to projects unless they have concluded that the project has a strong likelihood of financial and operational success.” (RI RBOE at IV.A.4)

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; BOE at 12-20)

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 (RI 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. (RI BOE at 15-16)

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. (RI Ex. 6.7 Rev. at 2-5; IB at 61-62; BOE at 16-17)

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; BOE at 16-17)

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; BOE at 17-18)

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 capacity 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 capacity 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; BOE at 18)

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; BOE at 18)

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; BOE at 19)

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. (RI IB at 66; BOE at 19-20)

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 notes 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. (RI 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.” (RI 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 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. (RI 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 Rock Island's initial brief is titled, "The Project Satisfies the 'Least Cost' Requirement of §8-406(b)(1)." (RI 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 RI 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 RI 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 RI 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, <u>±</u> 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 Rock Island'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 RI Exs. Ex. 7.0 Rev. at 36; 9.0 Rev. at 9 and 7.30 at 38)

Specifically, Rock Island 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 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)

In its BOE, Rock Island argues that the Order should include additional discussion of the evidence and arguments showing that the project satisfies the "least-cost" requirement of Section 8-406(b)(1). (RI BOE at 24-25; Exceptions at 11-12)

4. Proposed Condition Regarding Cost Allocation

Rock Island states that because the Project is a "merchant" transmission project, 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. 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 Rock Island'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 (RI IB at 76-77, citing RI Ex. 10.26 at 21-22) is 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. (RI 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)

In its BOE, Rock Island argues that in the paragraph on page 116 of the Proposed Order which begins with the words "As a condition of this Order," the last sentence should be revised to read as follows, "Absent such approval, Rock Island shall not be entitled or permitted to recover any such costs from Illinois retail ratepayers through PJM or MISO regional cost allocation." (RI BOE at 24)

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; see also RI Exceptions at V)

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) Rock Island states that 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 RI 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 RI 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 contends 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 Rock Island, 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 RI 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 RI 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.

In its BOE, Rock Island proposes a revision to the following language that appears on pages 111-112 of the Proposed Order, "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." Rock Island argues that the words "and the other conditions in this Order" should be deleted because many of the other conditions are unrelated to the interconnection. (RI BOE at 22-23)

In its BOE, ComEd proposed "alternative exceptions language" that would revise this condition to read as follows, "As a condition of this Order, Rock Island shall not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction and interconnection of the subject line in Illinois, until it has fully complied with the applicable requirements of PJM and the other conditions in this Order, and has signed all interconnection agreements." (ComEd BOE at 20; Exceptions at 113)

In its RBOE, Rock Island opposes the condition proposed by ComEd. Rock Island contends that the condition is unclear and could arguably and improperly prevent such activities as conducting surveys, negotiating with landowners and engaging in design work, which would unduly delay the Project. (RI RBOE at 56-58) 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 Rock Island, 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 Rock Island, 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; Other Factors

Response to IAA

Rock Island responded to the IAA's argument that Rock Island has not 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; see also RI Exceptions at 13-14)

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 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. (RI 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.” (RI 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 Rock Island, 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. Rock Island 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 Rock Island, 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 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) Rock Island 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. (RI RB at 75-76; see also RI Exceptions at 14)

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's 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; see also RI Exceptions at 14-15)

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; RI 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. Rock Island 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 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 redispatch 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; see also RI Exceptions at 15)

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 RI Ex. 3.0 at 3, 5-6, 9; Ex. 2.18; see also RI Exceptions at 16)

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. (RI RB at 89, citing RI Ex. 2.11 Rev. at 12, 15-18 see also RI Exceptions at 16)

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 §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." (RI RB at 93, citing Staff IB at 60)

Rock Island 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. (RI 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. Rock Island 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; see also RI Exceptions at 18)

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 RI 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. (RI 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 the 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.” (RI 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)

Other Factors Relating to Public Convenience and Necessity

Although not discussed in its BOE, Rock Island's Exceptions contain "proposed text" relating to "other factors bearing on public convenience and necessity." (RI Exceptions at 18-21)

Among other things, Rock Island states that the Project will be "a significant employment driver in Illinois during its construction." (*Id.* at 20, citing RI Exs. 5.0 at 1-2, 4, 6 and 5.2)

Rock Island further states that it will build the Project in Illinois under project labor agreements with labor unions including the IBEW, the International Union of Operating Engineers and the Laborers' International Union of North America. (*Id.* at 20-21, citing RI Ex. 1.7 at 12) Rock Island cites testimony by James Bates on behalf of IBEW that "the creation of quality union jobs is important to the state in this time of economic recovery" and that "construction and installation of the Project facilities in Illinois, including the construction and installation of the converter station in Channahon, Illinois, will be a very substantial construction project in Illinois" and "will be beneficial to the overall economy of Illinois." (*Id.* at 21, citing IBEW Ex. 1.0 at 4-5)

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 Rock Island 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. (RI 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. (RI 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...” (RI 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, Rock Island’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 Rock Island line 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 Berry indicated that Rock Island’s latest Project cost estimate is \$1.833 billion. (RI 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 Rock Island 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 Rock Island’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 Rock Island 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 Rock Island’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 Rock Island 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 RI 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 RI 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 RI Ex. 4.2 at 9-10)

According to Staff, these RICL witnesses in effect argue that the Commission need not concern itself with the cost or the viability of Rock Island'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 Rock Island’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. Rock Island 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 Rock Island’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; RI Ex. 10.14 at 29-30)

Notwithstanding the potential benefits from the Project that Rock Island 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 Rock Island 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 RI Ex. 7.30 at 3, et seq.; RI 7.31; RI Ex. 10.13 at 3)

With regard to the environment, Rock Island 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 U.S. Army Corps of Engineers (“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 RI 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 Rock Island’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.” (RI 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 on 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.” (RI 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 RI 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.” (RI 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).” (RI Ex. 4.2 at 10)

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.” (RI 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 Rock Island 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.'" (*Id.* at 60, citing 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)

In its RBOE, Staff responds to arguments in the ILA and ComEd BOEs regarding Mr. Zuraski's testimony. Staff states that the Illinois Administrative Procedure Act provides that "[u]nless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence." (Staff RBOE at 7, citing 5 ILCS 100/10-15) Staff argues, "To be clear, the Staff position is that a preponderance of the evidence in this proceeding supports the proposition that the project will promote the development of an effectively competitive electricity market." (*Id.*)

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; see also ComEd BOE at 13-17; ComEd Exceptions at 116-117)

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." (RI Petition at 8)

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 also argues that the financing condition addressed in Section VIII of this Order below should not be used to support a finding that that the Project will promote the development of an effectively competitive electricity market. (ComEd BOE at 13, 16-17)

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 Rock Island 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.*; see also ComEd BOE at 14)

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; see also ComEd BOE at 14-15)

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; see also ComEd BOE at 15)

In Subsection IV.A.1.b.iv of its initial brief, ComEd addresses "Other Questionable Assumptions." ComEd states that RI 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, 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; see also ComEd BOE at 17)

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." (see also ComEd RBOE at 13-15)

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; see also ComEd RBOE at 14-15)

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; see also ComEd RBOE at 14)

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.

As discussed in the conclusions in Section VI.J below, 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. The Proposed Order stated, in part, “As a condition of this Order, Rock Island shall not attempt to effect the interconnection [with ComEd] until it has fully complied with the applicable requirements of PJM and the other conditions in this Order, and has signed all interconnection agreements.” In its BOE, ComEd proposed “alternative exceptions language” that would revise this condition to read as follows, “As a condition of this Order, Rock Island shall not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction and interconnection of the subject

line in Illinois, until it has fully complied with the applicable requirements of PJM and the other conditions in this Order, and has signed all interconnection agreements.” (ComEd BOE at 20; Exceptions at 113)

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 Intervenor, 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 Intervenor 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 RI 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; EI 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) Rock Island argues that the Project will improve reliability by delivering more supply to load and increasing transmission transfer capability. (RI 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 it 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; see also ILA RBOE 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 Rock Island 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; see also ILA RBOE at 3)

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 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. ILA adds, “A post-development cost-allocation request would lack the discipline, openness and scrutiny it should [have].” (ILA IB at 26-27, citing ILA Ex. 7.0 at 12)

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 its Project costs imposed on Illinois retail ratepayers through regional cost allocation, may have some surface appeal but the assurance is superficial. Many unknown factors surrounding such a process remain – "the devil's in the details". (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 to adequately 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)

In its BOE, ILA states that Staff witness Mr. Zuraski acknowledged that his analysis is subject to considerable uncertainty. (ILA BOE at 11)

ILA also argues that the financing condition addressed in Section VIII of this Order below should not be used to support a finding that the competition prong criterion has been met. (*Id.* at 10-11, 14)

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, 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)

In its BOE, IAA argues that Rock Island has not shown that the Project is the least-cost means of satisfying the service needs of its customers. (IAA BOE at 9)

IAA also argues that Rock Island has failed to establish that the proposed construction will meet the second alternative test, also referred to as the competition prong, in Section 406(b)(1). (*Id.* at 10-16)

In its RBOE, in response to Rock Island's BOE, IAA argues that "the project is not necessary as required by the first prong of Section 8-406[(b)(1)]." (IAA RBOE at 5-6)

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))

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)

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 more supply options make it less likely 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 RI 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. 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 Rock Island 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 Rock Island 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 RI 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, Rock Island'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 from the anchor tenant and customers through negotiated rates charged for access to Rock Island's transmission capacity. (*Id.*, citing RI Exs. 1.0 at 8 and 10.0 at 31, 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 RI 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 RI 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 RI 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; RBOE

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 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 regarding whether wind generators will enter into contracts with Rock Island, WOW's witness Goggin stated, "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 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 RI 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 Rock Island 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.

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.*)

In its RBOE, in response to ComEd's BOE, WOW argues that In Illinois administrative proceedings, "preponderance of the evidence is the standard," and that the preponderance of the evidence demonstrates that the Rock Island Project will promote a competitive electricity market in Illinois. (WOW RBOE at 2-4)

G. Environmental Intervenors' Position

Environmental Intervenors did not present testimony. They did file briefs. In their view, Rock Island 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 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.’ (RI 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 in the state could drive additional demand for supply from renewable resources. (EI IB at 5, citing RI 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 RI 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 be used to satisfy RPSs in multiple states, which means “the prices of RECs in states tend to be linked.” (*Id.*, citing RI 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 RI 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 RI 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 RI 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 RI 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 RI 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 RI 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 RI 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 RI 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 RI 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 RI 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)

In its BOE, IBEW makes arguments regarding employment and economic benefits the project will generate, but does not offer suggested replacement language. (IBEW BOE at 11-12)

In its RBOE, IBEW states, “The IBEW views the Rock Island Project as a textbook example of a project that is necessary to allow new competitors to access and serve a destination market; therefore, the Project will promote the development of an effectively competitive electricity market.” (IBEW RBOE at 4) IBEW contends that the ILA, IAA and ComEd exceptions on this issue should be rejected. (*Id.* at 2)

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.” As we have noted in past Section 8-406 and 8-406.1 proceedings, Illinois courts have established that “necessity” in the context of the PUA means that the service proposed to be provided should be “needful and useful to the public.” See e.g. King v. ICC, 39 Ill. App. 3d 648, 653 (4th Dist. 1976). Illinois courts have held that what constitutes public convenience and necessity is within the Commission’s discretion to determine in each case, and permits the consideration of a broad range of factors as applicable to the particular case. Commonwealth Edison Co. v. ICC, 295 Ill. App. 3d 311, 317 (2nd Dist. 1998). This is a question to be determined by the Commission from a “consideration of all the circumstances.” Wabash, at 418.

Section 8-406(b) provides alternative tests for demonstrating whether 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.”

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 vet 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) To address this concern, the Commission directs Rock Island to fully comply with the applicable interconnection requirements of PJM and the other conditions in this Order relating thereto, and to sign all necessary interconnection agreements prior to energizing the transmission line.

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 assumed 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)

The Commission disagrees with Rock Island that the unique circumstances of a merchant transmission project, one which will recover its costs solely from contracts with transmission customers who purchase capacity and take service on the Project and not through cost allocation to retail customers, means that this Commission should not analyze the costs as well as the benefits of the proposed project. As Staff notes, the project may still impact Illinois landowners who do not want to transfer ownership of their

property to the entity as well as have possible environmental consequences. (Staff IB at 45) In terms of direct rate consequences, this cost is significantly less than the cost of construction borne by ratepayers under a traditional regulated cost of service approach. Additionally, RI presented evidence that the HVDC technology proposed for the Project is more effective than AC technology at transmitting large amounts of electricity over long distances, and that utilizing HVDC technology to build one long line will in turn be cheaper than constructing numerous alternative AC lines. These factors, among others presented in the record, weigh in favor of a finding that the project is the least cost means of satisfying its stated objectives. The analysis presented by Mr. Zuraski provides a useful 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. That said, the Commission believes this project has a high probability of overcoming those uncertainties and represents the potential for substantial benefits for Illinois ratepayers.

Rock Island has presented analyses utilizing operating characteristics, particularly the wind energy profile based on wind speeds, 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. It appears to the Commission that the project has the potential to unlock wind resources that when modeled are competitive with in-state generation despite the added cost of supporting the return on equity and ongoing operation of the proposed Project. (Staff Ex. 3.0 at 39-40) By connecting this generation to PJM's markets the Commission can help remove a limitation to its development and also satisfy the Illinois General Assembly's geographic preference included in the Illinois RPS (20 ILCS 3855/1-75(c)(3)).

The Commission notes that MISO's current process for approving projects accommodating the renewable portfolio standards of MISO states does not include the ComEd zone or PJM; nor does PJM's transmission planning process have an analogous goal for PJM states. In light of this, the "merchant" nature of the proposed Project, despite its uncertainty, appears to currently be the best avenue for its development.

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 some Parties argue that such potential alone is 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 requirement imposed below to satisfy Section 406(b)(3).

Rock Island has agreed that it "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 requirement 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, in order to remain in compliance with the terms of its CPCN, RI must satisfy this financing requirement.

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 Rock Island 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 requirement 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 through 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.

The Commission's decision regarding whether to grant Rock Island its requested CPCN is based upon the testimony presented in this case. In its testimony, 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. In addition, just as it stated through the course of the associated FERC proceeding, and in the statement noted above, it will not pass on any costs to captive ratepayers. Thus, in accordance with this commitment, the Commission finds that 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 from Illinois retail ratepayers through PJM or MISO regional cost allocation.

In conclusion, upon consideration of the record and the determinations contained above, and subject to the requirements set forth above and elsewhere in this Order, the Commission finds that the Project will be needful and useful to the public as it 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 RI Exs. 1.4 at 11-12, 15-16, and Ex. 2.0 at 15-16; RI RBOE at 41)

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 United States. 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 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; see also RI RBOE at 41-42)

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 rights of way. 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 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; RI RBOE at 45-46) 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, including HVDC lines, 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; RI RBOE at 43, 46)

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 another component of its construction management organization will be an OE, who will act as the Rock Island’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; RI RBOE at 45)

Rock Island responded to the concern expressed by Staff witness Mr. Rashid that Rock Island’s construction management organization is not yet fully staffed. (RI 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, 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; see also RI RBOE at 47-49)

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. (RI 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." (RI 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, such employees 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 RI 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; see also RI RBOE at 48-49)

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. (RI IB at 102, citing RI 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.*; see also RI RBOE at 42-43)

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. (RI 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. (RI IB 102-104 and RB at 106-107, citing RI 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. (RI 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. (RI 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. (RI RB at 114; RI 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 (RI RB at 114 and RI 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

Preliminarily, it is noted that Staff did not file a brief on exceptions on this issue. Prior to that, Staff addressed the issue in its testimony and briefs, as discussed below.

In its initial brief, Staff states that Staff witness Mr. Rashid, in his initial testimony, “voiced skepticism” concerning Rock Island’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 alone 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 Rock Island's plan to manage and supervise the construction of the proposed project. In RI 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 asserted 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 argued, "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 argued that a startup company like Rock Island, 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 argued, "Rock Island has not shown 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, 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; see also ILA BOE at 13-14)

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 IB at 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)

ILA also argues that the financing condition addressed in Section VIII of this Order below should not be used to support a finding that that the managerial capability criterion has been met. (ILA BOE at 10-11, 14)

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; see also IAA BOE at 23)

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 BOE at 23)

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; see also IBEW RBOE at 4-5)

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 RI 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; see also IBEW RBOE at 4-5)

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.”

In its briefs, Staff contended that Rock Island has not made the necessary showing. As noted above, Staff did not file a BOE on this issue.

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 argue that Rock Island has not satisfied the management capability criterion in Section 8-406(b)(2). 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 additional 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, such as 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"; and that 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. (RI 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. (RI IB at 107, citing RI Exs. 10.0 at 37; 10.26 at 6; see also RI RBOE at 53) 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 RI Ex. 10.14 Rev. at 12-14)

Rock Island 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. (RI 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)

As noted above, the financing condition proposed by Staff and accepted by Rock Island requires Rock Island to submit certain documents “to allow the Commission to verify its compliance with this condition.” The Proposed Order would require, as part of the approval of the financing condition, that Rock Island “file a petition with the Commission requesting such verification.”

In its BOE, Rock Island argues that the Order should not require Rock Island to file a petition to demonstrate that it has satisfied the financing condition. Rock Island argues that a petition is unnecessary and would increase the difficulty of securing financing. (RI BOE at 25-29)

In its RBOE, Rock Island disputes what it characterizes as erroneous assertions by ILA and ComEd that the Proposed Order “relies on the Staff financing condition as the

basis for its conclusion that Rock Island has satisfied the requirements of §8-406(b)(3).” Rock Island argues in part that the intent of the financing condition is to protect landowners from the risk of abandonment of a partially-completed project on their properties if Rock Island were unable to complete construction due to a lack of funding. (RI RBOE at 55-57)

Rock Island also argues in its BOE that the Order should include additional language as to the evidence and arguments regarding Section 8-406(b)(3). (RI BOE at 29-30; Exceptions at 29-32)

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; see also RI RBOE at 51)

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 (RI 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; see also RI RBOE at 51)

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." (RI 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.*; RI RBOE at 52)

As indicated below under "ComEd Position," ComEd proposed, as an alternative exception in its BOE, the following condition, "Rock Island will not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction of the subject line in Illinois, until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost." (ComEd BOE at 19-20)

In its RBOE, Rock Island opposes this condition. Rock Island contends that the condition is unclear and could arguably and improperly prevent such activities as conducting surveys, negotiating with landowners and engaging in design work, which would unduly delay the Project. (RI RBOE at 56-58)

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; see also RI RBOE at 52)

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 RI 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 Rock Island'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 customers 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*, 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* 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 Rock Island’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. [Docket No. 06-0179, Order at 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 Rock Island 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)

In its RBOE, Staff responds to arguments in the ILA and ComEd BOEs. Staff observes that the showing required in Section 8-406(b)(3) is “that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.” Staff states that the condition proposed by Staff witness Alan Pregozen is, as noted by Mr. Pregozen, calculated to: “ensure that Rock Island does not begin construction of the project without sufficient funding in place to complete it[.]” According to Staff, “[t]his condition will, logic dictates, prevent any adverse financial consequences to RICL or its customers, since no adverse consequences can result if no facilities are built.” (Staff RBOE at 5-6)

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.*, citing 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; see also ComEd BOE at 18)

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; see also ComEd BOE at 18-19)

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.” (RI 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.*)

In its BOE, ComEd also argues that if a Certificate is granted over ComEd's objections, the financing condition proposed by Rock Island and Staff, whereby Rock Island would be prohibited from "install[ing] transmission facilities" until it secures the requisite financing, should be revised. According to ComEd, RI would implicitly be permitted to undertake a host of other development activities before satisfying that condition; thus, the Commission should instead subject the CPCN to the condition that "Rock Island will not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction of the subject line in Illinois, until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost." (ComEd BOE at 19-20; Exceptions at 149)

In its RBOE, ComEd notes that the financing condition proposed by Staff and accepted by RI requires Rock Island to submit certain documents "to allow the Commission to verify its compliance with this condition."

ComEd also notes that the Proposed Order would require, as part of the approval of the financing condition, that Rock Island "file a petition with the Commission requesting such verification." In ComEd's view, RI's argument that this requirement should be deleted should not be accepted. ComEd contends that ensuring compliance with that condition in an open and transparent manner in front of the Commission is reasonable and proper. (ComEd RBOE at 15-18)

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; BOE at 7-11)

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. [1089]) 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. [1093]" (ILA IB at 33; BOE at 8) 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. [1096-1098]. 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; see also ILA BOE at 8)

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 RI 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 Rock Island’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.

In its RBOE, ILA states that Rock Island “asks that the Order be revised to include more discussion on the ‘capable of financing’ criterion under §8-406(b).” (ILA RBOE at 4) ILA takes issue with Rock Island’s suggested language and argument. (*Id.* at 4-8)

IAA Position

IAA argues that Rock Island has not demonstrated it is capable of financing the Project. (IAA IB at 15; see also IAA BOE at 25)

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)

In its RBOE, in response to Rock Island's BOE, IAA argues, "Rock Island's argument that the proposed order should not require Rock Island to file a petition to demonstrate that it has satisfied the financing condition should be rejected." (IAA RBOE at 7)

E. Environmental Intervenors, WOW 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 Rock Island 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 RI 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)

In their RBOE, Environmental Intervenors take issue with ComEd’s alternative exception that the Commission should order that “Rock Island will not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction of the subject line in Illinois, until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost.” According to EI, ComEd’s proposal is unnecessary, vague, and overly broad, and could prohibit such activities as conducting surveys and contracting with landowners for easements. (EI RBOE at 2)

IBEW; WOW

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 RI 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 RI 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; IBEW RBOE at 5-6)

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; IBEW RBOE at 5-6)

In its RBOE, IBEW urges rejection of “ComEd’s [BOE] argument that Rock Island should not be allowed to exercise its certificate for the project until it has satisfied all the conditions imposed by the order.” In IBEW’s view, “There is no reason why Rock Island, having met the requirements of Section 8-406 and being granted a Certificate for the Project, should nonetheless be precluded ... from negotiating easement acquisition agreements with landowners, entering landowner property (after providing the statutorily-required notice) to conduct land surveys pursuant to Section 8-510 of the Act ..., or engaging in other ongoing Project development activities as a Certificate holder.” (IBEW RBOE at 6-7)

Similarly, WOW recommends that the Commission “deny ComEd’s request to prohibit Rock Island from exercising actions pursuant to the CPCN until all conditions are met....” (WOW RBOE at 5-10)

In their BOEs, IBEW and WOW argue that the Commission’s Order should not include the following statement contained at the end of the conclusion in the proposed order, “As part of its approval of the condition, the Commission finds that Rock Island shall file a petition with the Commission requesting such verification.” (IBEW BOE at 8-11; WOW BOE at 2-5)

F. Commission 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. However, as discussed by Staff, these parties’ do not argue whether Rock Island is capable of financing the proposed Project in the context of harm to its customers; instead they choose only to focus on whether Rock Island has secured the necessary financing to prove that it is immediately capable of paying for the Project. As Staff states in its RBOE, “in examining a statute, it **must be read as a whole** and all relevant parts should be considered.” *People v. Lewis*, 158 Ill. 2d 386, 389; 634 N.E.2d 717, 719 (1994) (emphasis added). In keeping with this precedent, the Commission agrees with Staff that ComEd, ILA and IAA cannot simply ignore the second half of the clause in order to deem RI deficient in satisfying this requirement.

In response to the challenges presented by this particular financing situation, Staff witness Pregozen, Manager of the Finance Department in the Financial Analysis Division at the Commission, proposed a solution. 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)

The terms of the Staff-proposed solution, which were accepted by RI, are set forth in Part VIII.A., p. 137-138 above. The first sentence 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. In order to assist the Commission in verifying that Rock Island has met its commitment it also provides, “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.

Environmental Intervenors and the IBEW recommend adoption of the Staff solution. ComEd, ILA and IAA do not.

The Commission agrees with Staff’s assertions that under the circumstances, its solution helps to strike an appropriate balance and should be imposed as a requirement of the CPCN granted to Rock Island. 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 landowners’ property unless such commitments are obtained, thereby establishing proper protection for ratepayers.

The Commission takes seriously the unique balance that must be struck in this proceeding. As observed elsewhere in this Order, this is a case of first impression for the Commission, and there are many uncertainties associated with the “merchant” nature of the Project that require careful evaluation. It is important that the decisions made here do not unfairly disadvantage merchant transmission line projects across the board by setting a precedent that would not allow them to operate within their business model. At the same time, the Commission must ensure that said business model will not harm ratepayers and that the utility meets all of its requirements under Section 8-406 of the PUA. The Commission finds that the compromise reached through RI’s acceptance of Staff’s proposed requirement offers the flexibility necessary for a merchant transmission project to be feasible, while still operating within the parameters of our current regulatory structure.

As noted above, Rock Island is directed to submit certain documents “to allow the Commission to verify its compliance with this condition.” In order to avoid any unnecessary delay, but to also ensure proper Commission oversight of Rock Island’s fulfillment of this requirement of its CPCN prior to construction of the line, Rock Island is directed to submit a compliance filing in this docket, to be served on all the parties and reviewed by the Illinois Commerce Commission’s Director of the Financial Analysis Division and the Director of Public Safety & Reliability Division.

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 and alternate route in Illinois, and Rock Island Ex. 8.1 provides maps 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. (RI 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. Rock Island 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 11 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; RI 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. ((RI 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 RI 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). Rock Island contends that in light of its "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 Rock Island'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. (RI 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. (RI 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. (RI 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 Rock Island's initial brief is titled, "The Preferred Routes Best Meet the Routing Criteria."

After completing the route development process, Rock Island 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. (RI 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. Rock Island 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. (RI 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). Rock Island 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. Rock Island 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 Rock Island'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. (RI RB at 131, citing ILA

IB at 39) In response, Rock Island 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 Rock Island 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, RI 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 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 determined by Rock Island 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.

Rock Island'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, 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 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. (RI 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). Rock Island 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, Rock Island 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 RI 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 RI 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, including those proposed for temporary construction easements, are reasonable and should be, and are hereby, 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 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. (RI 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. (RI 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 the 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 Rock Island'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, who holds 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 Rock Island 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. (RI 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. (RI IB at 144, citing ILA IB at 45) Rock Island’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 (RI IB at 144-145, citing ILA IB at

45) is addressed elsewhere in Rock Island'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), Rock Island 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 ROW. (Staff IB at 66-67, citing RI Ex. 2.0 at 20-21)

Rock Island 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. (RI Petition at ¶ 6) Mr. Galli testified that Rock Island will utilize a bipolar design for the project. (Staff IB at 67, citing RI 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.

Rock Island will also install a 345/765 kV step-up transformer facility to interconnect to the Collins Substation. (*Id.*, citing RI Petition at ¶16) Rock Island 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) Rock Island 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 Rock Island provided information regarding the structures that Rock Island intended to use for the transmission line and the ROW that Rock Island 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, Rock Island 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 Rock Island'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 forth 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.

Rock Island 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 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.

Consistent with the provisions of the AIMA discussed above, the Commission directs Rock Island to 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 requirements noted 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 and is approved.

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.

They include 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, Rock Island 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. (RI RB at 154) RI asserts that Mr. Detweiler identified numerous inconsistencies between Dr. Marshall's testimony and the studies and articles Dr. Marshall cited. Rock Island described four such "inconsistencies" in its reply brief. (RI RB at 154-155, citing RI 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 one 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 ALMA 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 RI 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 Rock Island 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 eight 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), Rock Island 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 to 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 argues 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.

In its BOE, Rock Island argues that certain of the conditions imposed by the Proposed Order in response to landowner concerns should be modified or deleted. (RI BOE at 32-53) Among other things, Rock Island asserts that the AIMA comprehensively covers all aspects of Rock Island's structure placement and construction activities on landowners' agricultural properties, and that some of the conditions duplicate applicable provisions of the AIMA. In addition, Rock Island provides revised text for many of the conditions. Rock Island states that it is providing such text so that the terms of the conditions can be satisfied by Rock Island through its own actions and are appropriately limited by considerations of reasonableness and practicality, and so that the condition is a complete stand-alone, self-contained statement. (*Id.* at 32-35)

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's 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)

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)

Rock Island 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)

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 USACE prior to construction. (*Id.*, citing RI Ex. 8.3 Rev. at 31)

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 RI 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)

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)

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)

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 aerially 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)

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)

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)

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

Rock Island 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. Responses to Other Concerns in ILA Brief

In its reply brief, Rock Island 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 ("UDSA 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 asserts 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, 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)

Rock Island 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 Intervenor 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.” (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; 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 Rock Island'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)

In its RBOE, ILA takes issue with suggestions in Rock Island's BOE which would "water down" the "relatively modest conditions on Rock Island's activities" that were set forth in the Proposed Order. (ILA RBOE at 8-14)

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. Among other things, those opposing the transmission line state concerns over adverse impacts on their property and the environment, and the amount of compensation being offered to them. Many of the

concerns are similar to those expressed by ILA witnesses and some other Intervenor witnesses, and by ILA and IAA in their briefs, as summarized above.

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

First, with regard to specific landowner concerns the Commission directs Rock Island to take the following actions:

- (1) Avoid placing a structure in the area irrigated by Mr. James Bedeker's center pivot irrigators and to span the center pivot irrigator in a manner that avoids any permanent impacts to the irrigator, to the extent possible, and if the structure placement creates any permanent limitation on Mr. Bedeker's use of his existing irrigation system, Rock Island is directed to compensate Mr. Bedeker for any additional irrigation equipment that may be required;
- (2) Employ appropriate construction methods to limit and mitigate soil compaction under wet-ground conditions on Mr. Bedeker's property that are appropriate when considering his property's historic flooding problems;
- (3) 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 U.S. Army Corps of Engineers prior to construction;
- (4) Avoid or minimize the tree clearing on Mr. Ed Simpson's timber land to the extent practicable;
- (5) With regard to Ms. Simpson's land use erosion control measures, follow the IEPA's best management practices for erosion control;
- (6) Conduct the assessment of potential wetlands on Mr. Simpson's property; survey for eagle nests in the area of Mr. Simpson's property; conduct any required archeological, historical, and environmental surveys; and obtain any required permits or approvals;
- (7) Use reasonable efforts to try to reach agreement with Mr. Curtis Jacobs to negotiate specific regarding placement of the line and structures on his property so as to reasonably attempt to minimize impacts to aerial spraying activities for his operations;

- (8) [I]f it is determined that the placement of Project structures will impede access to Mr. Jacob's property, offer and attempt to discuss alternatives with Mr. Jacobs to remove or mitigate such impacts;
- (9) [I]f the Penny Slough Drainage and Levee District and the U.S. Army Corps of Engineers determine that removal of trees on is a threat to the protection of the levied area, determine ways to eliminate or mitigate such impacts, which may include use of other types of barriers to prevent erosion;
- (10) Make such adjustments as are practicable in order to avoid impacts on Mr. Jacobs' CRP [Conservation Reserve Program] land.

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 soil compaction, are reasonable. In addition to these measures, Rock Island and its contractors are directed to adhere to the following additional guidelines:

- (1) With regard to remediation of soil compaction, Rock Island shall 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 shall apply fertilizer to disturbed soils. Rock Island shall permit landowners 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. Landowners also can elect to not have any chiseling performed on their property. If the landowner believes some depth other than 18 inches is appropriate, Rock Island is directed to work with the landowner to effectuate the landowner's recommendation.
- (2) Rock Island shall reasonably attempt to discuss the mitigation measures for soil compaction, set forth in the AIMA, that 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 offer to negotiate alternativemethods or measures with the landowner to prevent soil compaction.
- (3) 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.
- (4) Further, with respect to compaction issues, if the landowner wants to communicate directly with Rock Island instead of 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.

Rock Island is directed to adhere to the measures described below to identify the locations of drainage tiles and avoid damage to them during construction, and or shall take such other measures as are reasonably necessary and equally or more effective to locate the tiles and avoid damaging them. To identify the locations of drainage tile, Rock Island shall (i) visit local soil and water conservation districts and consult other available documents that describe the location of drainage tiles, (ii) consult with any contractors that installed drainage tiles, and (iii) meet with landowners and walk their fields. Once drainage tiles are located, Rock Island may reduce possible tile damage by using a steel plate or other matting to spread the loads of construction equipment.

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. 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. The Commission directs Rock Island to avoid such interferences with the drainage tile 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 requirements, 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.

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 requirement of its CPCN, Rock Island is directed to comply with the provision of the AIMA that the use of guy wires be avoided to the extent feasible and that if guy wires are required, they will be marked with highly visible guards.

The Commission also directs Rock Island to make a good faith effort to negotiate with landowners regarding specific placement of the line and structures on their property as appropriate, considering impacts of any placement changes on neighboring parcels and considering other routing criteria so as to minimize the overall impacts to aerial spraying activities along the Preferred Route.

The Commission finds, subject to the items noted above, that Rock Island has taken reasonable measures to avoid or reduce impacts to aerial applications.

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 requirements as described above.

Subject to these requirements, 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. Positions of Rock Island and Supporting Intervenors

Rock Island

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); see also RI BOE at 6-9)

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 RI Ex. 4.0 Rev. at 2, 4); see also RI BOE at 8)

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; see also RI BOE at 8)

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 – i.e. an §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; BOE at 9-10)

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 Orders in Docket 10-0079; *Central Illinois Public Service Co. d/b/a AmerenCIPS*, Docket 07-0532 (Order dated May 6, 2009); Docket 06-0706; and Docket 06-0179 as recent

cases in which both authorizations were granted in the same docket. (RI IB at 166; RI BOE at 3-4)

Rock Island argues that the various contingencies cited by ComEd and Staff are unremarkable and do support a finding that it would be premature to grant Section 8-503 relief in this Proceeding. (RI BOE at 4-6)

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.” (RI 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.” (RI RB at 164-165; see also RI BOE at 5) 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)

In its BOE, Rock Island represents that it “elected to devote its attention and resources to obtaining a CPCN and §8-503 authority from this Commission before turning its attention to the [Iowa Utility Board] proceedings.” (RI BOE at 5) The Commission observes that in testimony given on December 5, 2013, Rock Island’s President was asked, “Isn’t it correct that in Iowa that Rock Island Clean Line has not filed a franchise petition yet?” He answered, “We have not yet filed the petition. We are preparing to do so in the next several weeks.” (Tr. 234-235) Rock Island does not indicate, in its briefs or BOE, that this petition has been filed.

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; see also RI BOE at 6-7)

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)

In its BOE, Rock Island suggests language for use in the Order in the event that the Commission does not grant Section 8-503 relief at this time. (RI BOE at 12; Exceptions at 49)

In its RBOE, Rock Island expresses disagreement with arguments and suggested language in the BOEs filed by ComEd and ILA. (RI RBOE at V)

WOW, IBEW and Environmental Intervenors

In its BOE, WOW argues that Rock Island should be granted Section 8-503 approval. (WOW BOE at 5-7) In their BOE, Environmental Intervenors argue that Rock Island should be granted Section 8-503 authority in this case. (EI BOE at 1-6) IBEW argues that the requirements for an order pursuant to Section 8-503 have been met. (IBEW BOE at 4-8) These Parties did not provide suggested replacement language in or with their BOEs. IBEW states that it supports Rock Island’s suggested replacement language. WOW states that it defers to Rock Island’s replacement language.

B. Position 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 its RBOE, ComEd states that RI made clear that the Illinois portion of the line will not be constructed if the Iowa portion is not constructed. (ComEd RBOE at 4, citing Tr. 269, Skelly)

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; see also ComEd RBOE at 3-4))

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 its RBOE, ComEd asserts that RI has not explained how a Section 8-503 authorization is somehow more urgent to reassure lenders compared with the proceeding in Iowa. (ComEd RBOE at 3-4)

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; see also ComEd RBOE at 10-11))

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))

In its RBOE, ComEd argues that RI's arguments are improperly premised on the erroneous proposition that satisfaction of Section 8-406(b) automatically satisfies Section 8-503. (ComEd RBOE at 6-9)

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)

In its RBOE, in response to Rock Island's BOE, ILA argues that Rock Island may not, and should not, be granted authority under Section 8-503 as part of the order in this proceeding. (ILA RBOE at 1-3)

According to the Illinois Agricultural Association, or 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)

In its RBOE, in response to Rock Island’s BOE, IAA argues, “Rock Island’s attempt to acquire a Section 8-503 order is a thinly veiled effort to obtain a better negotiating position for easements with landowners, and it should not be tolerated by the Commission.” (IAA RBOE at 5)

D. Staff Position

In its initial brief, Staff did not address Rock Island’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)

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 be 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 Rock Island’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 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, and there is no indication from Rock Island that a franchise petition has even been filed there, even though a Rock Island witness testified on December 5, 2013 that “[we] are preparing to do so in the next several weeks.” (Tr. 234-235)

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 Intervenors. 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 Intervenors, Staff and Intervenors 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

Rock Island 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 Rock Island's request should be granted, subject to the condition proposed by Staff.

Regarding "System of Accounts," Staff explains that Rock Island agreed 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 IB at 70) Staff does not object to Rock Island's proposed accounting treatment; nor did any other Party. (*Id.*; see also RI BOE at 58)

The Commission finds that Rock Island's request -- that the applicability of 83 Ill. Adm. Code 415 be waived so long as Rock Island maintains its books and records in accordance with the FERC Uniform System of Accounts, and that Rock Island be allowed 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 -- should be granted.

Rock Island 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.

It is also noted that in its BOE and Exceptions, Rock Island proposes revisions to various findings and ordering paragraphs. Rock Island also proposes that certain appendices be added to the 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, 2013. 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.*, 302 Ill.App.3d 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.” (ILA 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.” (ILA 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." (ILA 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 RI Exs. 8.12 at 1, 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 determinations made in this order, the Commission finds, pursuant to Section 8-406 of the Act, that the proposed line as described in this Order 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; that Rock Island is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers; and that the construction of the proposed transmission line Project will promote the public convenience and necessity;
- (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 line Project over the Preferred Routes found appropriate above and as described in legal descriptions filed on e-Docket as Rock Island Exhibits 7.2 and 7.4 on October 10, 2012, and depicted and identified as the Preferred Routes on route location maps filed on e-Docket on October 10, 2012 as Rock Island Exhibit 8.1; 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 that the applicability of 83 Ill. Adm. Code 415 be waived so long as Rock Island maintains its books and records in accordance with the FERC Uniform System of Accounts, and that Rock Island be allowed 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.

By order of the Commission this 25th day of November, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Rock Island Clean Line LLC	)	
	)	
Petition for an Order granting Rock Island	)	
Clean Line a Certificate of Public Convenience	)	
and Necessity pursuant to Section 8-406 of the	)	
Public Utilities Act as a Transmission Public	)	Docket No. 12-_____
Utility and to Construct, Operate and Maintain	)	
an Electric Transmission Line and Authorizing	)	
and Directing Rock Island Clean Line pursuant	)	
to Section 8-503 of the Public Utilities Act to	)	
Construct an Electric Transmission Line.	)	

DIRECT TESTIMONY OF

DAVID BERRY

ON BEHALF OF

ROCK ISLAND CLEAN LINE LLC

ROCK ISLAND EXHIBIT 10.0

OCTOBER 10, 2012

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1 Certain capitalized terms in this testimony have the meaning set forth in the Glossary included as
2 **Attachment A** to the Direct Testimony of Michael Skelly, Rock Island Exhibit 1.0.

3 **I. WITNESS INTRODUCTION AND PURPOSE OF TESTIMONY**

4 **Q. Please state your name, present position and business address.**

5 A. My name is David Berry. I am Vice President – Strategy and Finance of Clean Line
6 Energy Partners LLC (“Clean Line”). Clean Line is the ultimate parent company of Rock
7 Island Clean Line LLC (“Rock Island”), the Petitioner in this proceeding. My business
8 address is 1001 McKinney Street, Suite 700, Houston, Texas 77002.

9 **Q. What are your duties and responsibilities as Vice President – Strategy and Finance**
10 **of Clean Line?**

11 A. I oversee and am responsible for the financing activities, accounting, transaction
12 structuring, and market analysis for Clean Line and its subsidiaries. I am responsible for
13 developing the transmission capacity products offered to Rock Island’s potential
14 customers and furthering relationships with those customers. I also am responsible for
15 raising the capital necessary to fund the development and construction of Clean Line’s
16 projects.

17 **Q. Please describe your education and professional background.**

18 A. I received a Bachelor of Arts degree *summa cum laude* from Rice University with a
19 major in economics and a second major in history. Prior to joining Clean Line, I was
20 employed by Horizon Wind Energy as Finance Director. At Horizon Wind Energy, I was
21 responsible for financing transactions, investment analysis, power purchase agreement
22 pricing and acquisitions. I worked on and led over \$2 billion of project finance
23 transactions, including a non-recourse debt financing that was named North American

Renewables Deal of the Year by *Project Finance*, and several structured equity transactions for projects in development, construction, and operations.

Q. What is the purpose of your direct testimony?

A. I am testifying in support of Rock Island's request to be issued a Certificate of Public Convenience and Necessity pursuant to Section 8-406 of the Illinois Public Utilities Act ("PUA") to construct, operate and maintain the Rock Island Clean Line transmission project ("Rock Island Project" or the "Project") and to operate as a public utility in the State of Illinois, and to be issued an order under Section 8-503 of the PUA to construct the Project. I will first describe the market, environmental and policy benefits that led Rock Island to decide to pursue the Project. My testimony identifies government data and other publicly available information and studies that Rock Island has utilized in formulating its business plan to develop the Project. I will then address Rock Island's financial capabilities to finance construction and operation of the Project and to operate as a transmission-only utility in Illinois. I will demonstrate that Rock Island is capable of financing the construction of the Project without significant adverse financial consequences to Rock Island or its customers. I will set forth Rock Island's financing plan and explain why that plan is viable. Finally, I will address several accounting matters with respect to Clean Line's allocation of costs to Rock Island, Rock Island's maintenance of books and records in accordance with the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts, and Rock Island's request to maintain its books and records at the headquarters of Clean Line in Houston, Texas.

45 **Q. In addition to your prepared direct testimony, which is identified as Rock Island**
46 **Exhibit 10.0, are you presenting any other exhibits?**

47 A. Yes, I am presenting additional exhibits identified as Rock Island Exhibits 10.1 through
48 10.11, which were prepared under my supervision and direction.

49 **II. WHY ROCK ISLAND IS DEVELOPING THE PROJECT**

50 **Q. Can you please summarize the purpose of the Project?**

51 A. The Project will connect Illinois and the 765 kilovolt (“kV”) PJM network to the
52 outstanding wind resources of northwest Iowa and nearby areas in South Dakota,
53 Nebraska and Minnesota (collectively called the “Resource Area”). This transmission
54 link will enable over 4,000 megawatts (“MW”) of wind farms to be constructed, which
55 otherwise would not be built due to limitations of the existing grid, and to have their
56 electricity delivered to Illinois. These wind farms can provide low-cost, clean and
57 renewable energy to Illinois.

58 **Q. Why has Rock Island decided to pursue this Project?**

59 A: Rock Island has decided to pursue this Project because it will result in the following
60 benefits. These benefits are discussed in my testimony and the testimony of the other
61 Rock Island witnesses in this proceeding.

- 62 • The Project will deliver to the Illinois market some of the highest capacity factor
63 wind resources in the country. These resources are lower cost and more plentiful than
64 resources located in Illinois and states farther east.
- 65 • The Project will provide access to renewable energy resources needed to meet state
66 Renewable Portfolio Standard (“RPS”) requirements and to allow Illinois and other
67 states to comply with their RPSs in a cost-effective manner. By accessing a plentiful
68 supply of high capacity factor wind energy, the Project reduces the risk of high RPS
69 compliance costs and the failure to satisfy RPS requirements due to limitations of the
70 existing transmission grid. Further, because prices for Renewable Energy Credits
71 (“RECs”) in different states are linked, the supply of RECs available to meet other
72 states’ RPS laws is relevant to Illinois.

- The Project will increase the supply of renewable energy to Illinois and the PJM Interconnection, LLC (“PJM”) market. It will provide a substantial source of zero marginal cost energy, which will increase generator competition and exert downward pressure on wholesale energy prices.
- The wind resources enabled by the Project will reduce the need for energy from other sources and will therefore reduce emissions of carbon dioxide, sulfur dioxide, nitrogen oxides, and mercury. The Project will also reduce water usage otherwise required for cooling thermal power plants.
- The Project will create geographical diversity in the wind projects that deliver into Illinois and PJM, thereby reducing variability, facilitating wind integration, and improving reliability.
- The Project will provide a substantial number of Illinois jobs, both in the transmission line construction and in the manufacturing of components used in the wind industry.

A. Project Wind Resource Potential

Q. How much renewable energy will the Project deliver to Illinois and regional electricity markets?

A. The Project will deliver approximately 15 million megawatt-hours (“MWh”) of renewable energy per year. This amount of energy is made possible by the outstanding wind resources of the Resource Area, where wind capacity factors now routinely exceed 40%.

Q. Does the Resource Area have untapped potential for the development of high quality wind resources?

A. Yes. The U.S. Department of Energy’s National Renewable Energy Laboratory (“NREL”) ranks Nebraska, South Dakota and Iowa as the states with the second, third and seventh highest wind capacity potential in the U.S., respectively. According to NREL, Nebraska and South Dakota have the potential for 777,000 MW and 766,000 MW, respectively, of wind generation facilities in areas with sufficient wind speeds to support gross capacity factors greater than 40%. The annual generation potentials of

these facilities are 3,084,000 GWh and 3,039,460 GWh, respectively.¹ However, according to the American Wind Energy Association, Nebraska and South Dakota had only 337 MW and 784 MW, respectively, of installed wind generation capacity as of June 30, 2012, meaning only a tiny fraction of these states' wind potential is currently utilized.² While wind generation capacity has been more extensively developed in Iowa, with 4,524 MW of capacity installed as of June 30, 2012,³ an enormous, untapped development potential remains in the state. According to NREL, Iowa has the potential to install over 318,000 MW of wind projects with gross capacity factors above 40%.⁴

The Rock Island Project's western converter station will be located in O'Brien County, which is in the windiest part of Iowa. Within O'Brien County and the eight counties it borders, I estimate that there is at least 45,000 MW of high quality wind generation potential.⁵ To create this estimate, I used the United States wind map developed by AWS Truewind and sponsored by NREL, included as Rock Island Exhibit 10.1. AWS Truewind is a leading wind energy meteorological firm with over 30 years of experience providing services to the wind industry. Their work is widely accepted by

¹ NREL, Estimates of Windy Land Area and Wind Energy Potential by State for Areas with a Gross Capacity Factor of 40% and Greater at 80 Meters (2010); available at: http://www.windpoweringamerica.gov/docs/wind_potential.xls (last visited September 12, 2012) [hereinafter "NREL Estimates of Wind Energy Potential"]. The NREL Estimates of Wind Energy Potential assume turbine technology prevalent in 2009. Therefore, NREL may understate the capacity factors that could be obtained using current or future turbines. However, improved turbine technology will not change the relative capacity factors between geographies. That is to say, the Resource Area will still support higher capacity factors and have more wind potential at a given capacity factor than less windy locations farther East.

² American Wind Energy Association, *AWEA U.S. Wind Industry Second Quarter 2012 Market Report*; available at: http://www.awea.org/learnabout/publications/reports/upload/2Q2012_Market_Report_PublicVersion.pdf (last visited September 13, 2012).

³ *Id.*

⁴ NREL Estimates of Wind Energy Potential.

⁵ The nine county area includes O'Brien, Lyon, Osceola, Dickinson, Sioux, Clay, Plymouth, Cherokee, and Buena Vista Counties.

Rock Island Exhibit 10.0
Page 6 of 47

wind developers, investors, lenders, and utilities. The wind map is a standard tool used by wind developers and utility planners used to identify areas of high wind resource potential. The wind map was developed using computerized weather models pioneered by the National Weather Service. Working with Clean Line's Geographic Information Systems team, I measured the areas in O'Brien County and neighboring counties with estimated average wind speeds at 80 meters above ground of more than 8 meters per second (80 meters is a typical hub height of modern wind turbines). This is a level of wind speed that, applying current turbine technologies, I estimate could produce a net capacity factor of 40% or higher. To determine the capacity potential of this area in megawatts, I applied a ratio of 5 MW of installed wind generation capacity per square kilometer, *i.e.*, the amount of wind turbine capacity that can reasonably be installed per square kilometer. This ratio is used in the NREL Estimates of Wind Energy Potential. I consider this ratio to be appropriate based on my experience in wind development and based on typical turbine setbacks from other turbines, roads, residences and additional siting constraints. Rock Island Exhibit 10.2 shows the detailed calculations for the 45,000 MW estimate of high quality wind generation potential in O'Brien County, Iowa, and the eight surrounding counties.

In light of the preceding estimates and my own experience in developing wind farms in the Resource Area while with Horizon Wind Energy, I am confident that the amount of the available wind resources is not a constraining factor on the number of wind energy projects that can be built in the Resource Area. Rather, the key constraints are transmission infrastructure and market access. Without transmission paths to load centers and buyers of renewable energy, additional wind projects in the Resource Area will not

139 proceed. By creating these transmission paths, the Rock Island Clean Line will enable
140 new, cost effective wind farms to be constructed in the Resource Area.

141 **Q. Why are higher wind speeds and higher capacity factors important?**

142 A. Higher wind speeds lead to a higher capacity factor, meaning that the wind generator runs
143 at a higher average percentage of its maximum power output. For example, a wind
144 turbine with a 2 MW capacity rating can produce a maximum amount of 2 MW of power
145 under ideal circumstances. The actual power produced varies with wind speed; a wind
146 turbine might produce at 50% of its maximum output if the wind speed at its hub height
147 were 8.0 meters per second (m/s). The same turbine might produce at its full power
148 rating with a wind speed of 15.0 m/s and might produce at no power with a wind speed of
149 4.0 m/s.

150 Even small differences in wind speed have important consequences for the
151 amount of energy that can be produced. The kinetic power potential of wind varies with
152 the cube of the wind velocity. Consequently, an 8.5 m/s average wind speed site will
153 have, other things being equal, 1.79 times the power potential of a 7 m/s site. This effect
154 substantially reduces the cost of wind energy produced by facilities located in areas with
155 higher average wind speeds. As more energy is produced by a wind turbine, the unit cost
156 of energy decreases, because the upfront capital cost can be recovered over a larger
157 number of megawatt-hours. A market survey conducted by Lawrence Berkeley National
158 Laboratory ("LBNL") found that from 2010-2011, wind farms in the Heartland region
159 that includes South Dakota, Minnesota, Nebraska, and Iowa had average power purchase
160 prices that were more than 20% lower than wind farms in the Great Lakes region

including Illinois, Indiana, and Ohio.⁶ LBNL also found that in 2011, installed wind farms in the Heartland region had an average capacity factor of nearly 40%, compared to about 30% for wind farms in the Great Lakes region.⁷ During my time as Finance Director for Horizon Wind Energy, I had broad responsibility for pricing power purchase agreement proposals, and my experience was consistent with LBNL's findings that high capacity factor sites result in the lowest cost renewable energy. Furthermore, because of high levels of competition among wind power developers, the savings from high capacity factors sites were not kept by the developers, but were instead passed on to power purchase customers and, ultimately, to consumers. My experiences at Horizon Wind Energy, and the experiences of other Rock Island management team members in wind development, have made clear to us the importance of building transmission to the windiest parts of the country in order to generate large volumes of renewable energy at affordable prices.

Q. How do the quality of the wind resources and the development potential in the Resource Area compare to Illinois?

A. In general, the wind resources are stronger in the Resource Area than in Illinois. Rock Island Exhibit 10.1, as I described earlier, is a wind map of the United States which illustrates that wind speeds at 80 meters (a typical hub height of modern wind turbines) are, on average, higher in northwest Iowa than in Illinois. According to NREL, potential projects with above 40% gross capacity factors in Iowa, South Dakota and Nebraska

⁶ LBNL, "2011 Wind Technologies Market Report." p. 53. Available at: http://www1.eere.energy.gov/wind/pdfs/2011_wind_technologies_market_report.pdf (last visited August 31,2012). Hereinafter referred to as "2011 Wind Technologies Market Report."

⁷ Id., p. 46.

could annually generate 7.4 billion MWh of renewable electricity. The same NREL analysis concluded that the potential wind farms in Illinois with above 40% gross capacity factors could annually generate only 15.9 million MWh, or about 0.2% as much as in the states of Iowa, South Dakota and Nebraska combined.⁸ Furthermore, in my experience, due to lower population density in the Resource Area, more windy areas in the Resource Area are suitable for and supportive of wind energy development, as compared to sites in Illinois and farther East.

Despite the comparative abundance of wind potential and suitable land for wind projects in states to the west of Illinois, I do expect that the wind industry will continue to grow in Illinois and in other states farther east. However, increased transmission capacity from the windiest areas of the country, such as the Resource Area, to Illinois and markets to the east is still needed to assure that an adequate, competitive supply of renewable energy is available to these markets. Without new transmission, there may not be enough accessible high quality sites to meet demand, and those sites that do exist may have undue market power.

Q. Is there currently ample long-distance transmission capacity between the Resource Area and other areas in the Great Plains region with high quality wind resources and market areas such as northern Illinois?

A. No, there is not. Rock Island Exhibit 10.3 is a map showing the high voltage transmission grid in the United States.⁹ A comparison of the U.S. wind map provided in Rock Island Exhibit 10.1 and the map of the U.S. high voltage transmission grid in Rock

⁸ NREL Estimates of Wind Energy Potential.

⁹ The source for the map in Rock Island Exhibit 10.3 is Ventyx's Energy Velocity database, which is a commonly used utility industry tool.

Island Exhibit 10.3 shows that the transmission capacity needed to bring electricity produced by wind generation facilities in the areas of the U.S. 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 direct current (“DC”) lines of any voltage, currently connect the Resource Area to northern Illinois. While it is theoretically possible to move power from the Resource Area to northern Illinois using 345 kV lines, this would: 1) entail substantially higher electric losses as compared to an HVDC solution, 2) expose the shipper to congestion costs on the AC system that result from transmission constraints, and 3) require the shipper to pay wheeling charges to both Midwest Independent Transmission System Operator, Inc. (“MISO”) and PJM. These additional costs and complexities make it unrealistic and uneconomic from a practical standpoint for wind developers to move power from new wind facilities in the Resource Area to northern Illinois. Moreover, there are currently very limited opportunities to interconnect wind farms in the Resource Area to the existing grid. In O’Brien County, Iowa, and the eight bordering counties, due to transmission limitations, no new wind turbines have been installed since 2009, despite the 45,000 MW of high capacity factor resource potential in the same area, which I describe earlier in my testimony. MISO publishes a map of available interconnection capacity attached as Rock Island Exhibit 10.4, which shows that northwest Iowa and the other states in the Resource Area have very little available transmission capacity.¹⁰

¹⁰ MISO Generator Interconnection Contour Map. Available at: https://www.midwestiso.org/Library/Repository/Study/Generator%20Interconnection/GI-Contour_Map.pdf (last visited September 26, 2012)

222 **Q. Are wind developers actively pursuing wind farms in the Resource Area?**

223 A. Yes. I am aware of 15 wind developers with active development projects in the Resource
224 Area, and Rock Island has briefed each of these developers on its transmission project.
225 As Rock Island moves closer to construction and obtains additional regulatory approvals,
226 other developers are likely to undertake development efforts. As described above, there
227 is no shortage of windy land suitable for wind farms in the Resource Area. Nonetheless,
228 as Mr. Skelly testifies and as I know from my own experience in developing wind
229 generation projects, development of new wind projects in the Resource Area will not
230 proceed until the developers are reasonably confident that there will be adequate
231 transmission capacity to connect their projects to load and population centers such as the
232 northern Illinois market.

233 **Q. Did you provide any information to any other Clean Line witnesses about the**
234 **potential power production of wind farms connected to the Project?**

235 A. Yes. I provided Clean Line witnesses Gary Moland and Leonard Januzik with ten-minute
236 and hourly modeled production data for wind farms potentially connected to the Project.
237 To prepare this data set, I selected eight potential wind farms in northwest Iowa, totaling
238 4,349 MW in capacity, that were included in the Eastern Wind Integration and
239 Transmission Study ("EWITS study").¹¹ The EWITS study was sponsored by NREL,
240 who hired a leading wind energy meteorology firm, AWS Truewind, to create production
241 data for potential wind farms located throughout the Eastern Interconnection. These
242 production data were created using detailed computer models of weather patterns and

¹¹ Though the Project's maximum delivery capacity is 3,500 MW, a higher capacity of wind farms is likely to be installed in the Resource Area. Because multiple wind farms rarely produce at their maximum output simultaneously, the additional wind farm capacity above 3,500 MW can increase utilization of the transmission line, and therefore lower delivered cost.

243 have been used by a number of utilities and regional transmission organizations in later
244 wind integration studies, including studies performed by PJM, Southwest Power Pool,
245 and the New England Independent System Operator.

246 **Q. Can 4,350 MW of new wind farms be constructed within the time that it will take to**
247 **construct the Rock Island Project?**

248 A. Yes. The development and construction timeline of wind farms is much shorter than that
249 of a transmission line. In my experience, it takes approximately two years to develop a
250 wind farm in the Resource Area and other areas similar in their permitting requirements
251 and land use. Construction, even for large wind farms, then takes between six months
252 and a year. Rock Island is almost three years into a multi-year permitting and routing
253 process and expects that land acquisition and construction and will take an additional
254 three years once all key permits and approvals are obtained for the Project. Because of
255 its longer timeline, Rock Island needs to obtain approvals to build the Project before the
256 associated wind farms will begin construction. As I stated earlier, unless wind farm
257 developers have reasonable assurances, such as will be demonstrated by the issuance of
258 necessary permits and other authorizations for proposed transmission facilities, that their
259 projects will have an adequate transmission outlet, these wind farm developers and their
260 investors will not commence construction of their projects.

261 Installing a large number of wind turbines in a single geographic area is not new
262 to the wind industry. When I began working in the wind industry in 2005, most projects
263 were under 100 MW, and no turbines installed in the United States were larger than 2
264 MW. Now, 400 MW wind farms and 3 MW machines are common. According to the
265 LBNL, the average capacity of wind turbines installed in the United States has increased

33% from 2005 to 2011.¹² Moreover, it is common for developers to locate multiple wind farms in close proximity. In the area surrounding Abilene, Texas, developers have constructed more than 2,500 MW of wind generation, while the in Columbia River Gorge region, there are currently more than 4,400 MW in service and additional projects are under construction.

Q. Will wind farms built in the Resource Area reduce the aggregate capacity of wind farms to be built in Illinois?

A. In my opinion, no. First, the size of the market for renewable energy, as I discuss further below, is sufficiently large to allow for the expansion of wind projects both in Illinois and in the states to the west of Illinois – assuming that sufficient transmission is built to bring the output of the wind farms in the western states to markets in Illinois and farther east. According to data published by the U.S. Energy Information Administration (“EIA”), Illinois’ wind energy generation currently accounts for about 46% of the total wind energy generated within the PJM states.¹³ Illinois generally has the highest capacity factor sites currently in operation in the PJM region. Consequently, both wind farms in the Resource Area and wind farms in Illinois will be cost advantaged relative to wind farms located farther east, solar projects, offshore wind farms, and other potential sources of supply that could meet the RPS requirements in the PJM states.

Second, state RPS targets are a key driver of renewable energy projects, but they are not the only driver, nor do they set a cap on wind energy development. For example,

¹² 2011 Wind Technologies Market Report, p. 24.

¹³ U.S. Energy Information Administration, Form EIA-923, “Power Plant Operations Report.” (spreadsheet available on EIA website’s “Form EIA-923 detailed data” section). Available at: <http://www.eia.gov/electricity/data/eia923/> (last visited September 15, 2012).

more wind farms have been installed in Iowa and Texas than are necessary to meet the current requirements of their respective RPS. While the 2013 RPS targets were 105 MW for Iowa and 5,256 MW for Texas, as of June 30, 2012, Iowa and Texas had 4,524 MW and 10,648 MW of installed wind capacity, respectively.¹⁴ Both states have many additional wind projects under development that are on hold pending further build out of the transmission grid. Further, as I describe below, the highest capacity factor wind sites are competitive with generation costs from thermal resources. As a result, RPS targets are not a ceiling for renewable energy development but a floor. Consumers stand to benefit if renewable energy supply exceeds RPS targets. A large supply of renewable energy will put downward pressure on the cost of RECs, and thus reduce the cost to load serving entities of complying with RPS targets. As further discussed in the testimony of Clean Line witnesses Dr. Karl McDermott and Gary Moland, the additional wind energy supply that the Rock Island Project will enable to access the Illinois market will reduce wholesale power prices, which creates further benefits for electric consumers.

B. Demand for Renewable Energy

Q. What factors will drive demand for renewable energy delivered by the Project?

A. Demand for renewable energy, such as the energy delivered by the project, will be high in coming years for a number of reasons. Over half of the 50 states have adopted renewable energy goals or targets to purchase a certain percentage of their electricity from renewable sources, and a number of customers and utilities voluntarily purchase renewable energy in excess of the applicable statutory goals and targets. Moreover, due

¹⁴ American Wind Energy Association, *AWEA U.S. Wind Industry Second Quarter 2012 Market Report*; available at: http://www.awea.org/learnabout/publications/reports/upload/2Q2012_Market_Report_PublicVersion.pdf (last visited September 13, 2012).

to the age of the existing generation fleet and additional environmental regulation, the U.S. generation mix will continue to evolve towards cleaner sources. Finally, high capacity factor wind energy has become cost competitive with other power sources, and therefore is a compelling option for utilities as a part of their generation planning. I discuss each of these factors in detail below.

Q. Please describe the requirements of the Illinois RPS.

A. Illinois has established RPS requirements for electric utilities supplying “eligible retail customers” and for alternative retail electric suppliers (“ARES”).¹⁵ The RPS requirement specifies that a certain percentage of the total energy supplied by Commonwealth Edison and Ameren Illinois to their “eligible retail customers” must come from renewables. The RPS began at 2% of total supply by June 1, 2008, and has increased (and will continue to increase) incrementally to 25% of total supply to “eligible retail customers” by June 1, 2025).¹⁶ These RPS requirements are also applicable to ARES with respect to the retail load they serve, although ARES are currently required to satisfy 50% of their RPS obligation, and may elect to satisfy up to 100% of their RPS obligation, by making alternative compliance payments to the Illinois Power Agency (“IPA”) which the IPA is then to use to procure RECs.¹⁷ For electric utilities serving “eligible retail customers,” at

¹⁵ As defined in §16-111.5(a) of the PUA, 220 ILCS 5/16-111.5(a), “eligible retail customers” are “those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive under Section 16-113 [of the PUA] and those other customer groups specified in this Section [§16-111.5], including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service.”

¹⁶ Specifically, the RPS increases by at least 1% per year from June 1, 2009, to at least 10% by June 1, 2015, and thereafter by at least 1.5% per year to at least 25% by June 1, 2025. The RPS is set forth in Section 1-75(c)(3) of the Illinois Power Agency Act (20 ILCS 3855/1-75(c)(3)) and is made applicable to ARES by Section 16-115D of the Public Utilities Act (220 ILCS 5/16-115D).

¹⁷ Sections 16-115(d)(5) and 16-115D of the Public Utilities Act, 220 ILCS 5/16-115(d)(5) and 16-115D, and Section 1-56 of the Illinois Power Agency Act, 20 ILCS 3855/1-56.

least 75% of the renewable energy used to meet their RPS requirement must come from wind generation. For ARES, at least 60% of the renewable energy used to meet their RPS requirement must come from wind generation. As a result of these statutory requirements, Illinois will have a strong and growing demand for electricity generated from renewable resources, and from wind generation in particular, well into the future. Under the Illinois RPS law, beginning in 2012, a preference is given to cost-effective renewable energy generated in Illinois and “adjoining states,”¹⁸ which include Iowa. Therefore, energy delivered by the Project from Iowa wind farms will be eligible to meet the Illinois RPS.

While the migration of Illinois customers from the electric utilities to ARES may affect the amount of wind required to meet the RPS, it will not change the total amount of renewable energy needed. Because wind is the low-cost renewable resource, as discussed below in my testimony, it should continue to capture most of the ARES’ RPS demand. Therefore, ARES’ gains in market share should not decrease the need for cost-effective wind energy, such as that delivered by the Project. In some circumstances, load switching to ARES can actually increase renewable energy demand. As allowed by Illinois law, numerous municipalities in Illinois have conducted referenda that authorized a municipal aggregation program whereby an alternative retail provider supplies electricity to residential and small business retail customers, other than those customers who opt out of the program or who are already served by an ARES.¹⁹ A number of these municipalities have required the alternative retail provider to obtain a significant portion

¹⁸ Illinois Power Agency Act, 20 ILCS 3855/1-75(c)(3).

¹⁹ IPAA §1-92, 20 ILCS 3855/1-92.

of its electricity supply from additional renewable resources beyond the RPS minimum requirements, or to offer the retail customers an option to specify that a stated percentage of the electricity supplied must come from renewable resources above and beyond the RPS minimum requirements.

Q. Do other states, in addition to Illinois, also have RPS established by statutes or regulations?

A. Yes. Thirty states and the District of Columbia have renewable energy standards. Another seven states have voluntary renewable energy goals. 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, in addition to Illinois.²⁰ Because RECs could be used in any number of states to satisfy the state's RPS, the prices of RECs in states that have RPSs tend to be highly linked. 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 and will push REC prices towards the price cap or alternative compliance payment limit that may be applicable under each state statute or regulation. This effect was observed in 2009, when RECs 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.²¹

²⁰ Indiana and Virginia have adopted voluntary renewable energy goals.

²¹ See 2011 Wind Technologies Market Report, p. 54.

364 **Q. What is the total demand for renewable energy under the RPS of Illinois and the**
365 **other PJM states?**

366 A. Taking the municipal aggregations mentioned above into account, I estimate that Illinois
367 RPS demand will be 13.3 million MWh in 2015, 24.3 million MWh in 2020, and 36.2
368 million MWh in 2025. I estimate that the demand for renewable energy from states in the
369 PJM footprint will be 82.7 million MWh in 2015, 131.0 million MWh in 2020, and 165.0
370 million MWh in 2025. These figures were determined by using the statutory
371 requirements and load forecasts from the Energy Information Administration's 2012
372 Annual Energy Outlook.²² The calculations to arrive at these figures are provided in
373 Rock Island Exhibit 10.5.

374 PJM separately estimated 2025 RPS demand at 131.5 million MWh.²³ This figure
375 is lower than Rock Island's estimate principally because it only includes the RPS
376 obligations of load serving entities in the PJM service territory. For example, PJM's
377 estimate only includes the portion of the Illinois RPS demand located in the PJM service
378 area, and it excludes the Illinois RPS obligations of MISO members like Ameren from its
379 calculation. However, electricity produced by Iowa wind farms connected to the Project
380 will be able to meet the RPS requirement of both MISO and PJM entities in Illinois. My
381 demand estimate includes RPS obligations from all load serving entities in PJM states,
382 regardless of their RTO membership, but PJM's more conservative approach also

²² EIA, "Annual Energy Outlook 2012." Available at: <http://www.eia.gov/forecasts/aeo/> (last visited August 31, 2012).

²³ PJM 2011 Reliability Analysis Update. Available at: <http://pjm.com/~media/committees-groups/committees/teac/20110415/20110415-reliability-analysis-update.ashx>. (last accessed September 17, 2012).

supports the conclusion that there will be a large future demand for renewable energy, such as the energy delivered by the Project, due to RPS targets.

Q. How does this total volume of renewable energy demand due to state RPS requirements compare with existing supply?

A. According to data published by the U.S. Energy Information Administration, in 2011, total renewable energy generation in the PJM states was about 27.8 million MWh. In Illinois, total renewable energy generation during that same time period was about 7.0 million MWh.²⁴ Thus, the current level of renewable energy supply in Illinois and the PJM states falls far short of the projected demand over the next 12 years based on state RPS requirements. By delivering 15 million MWh of renewable energy each year, the Rock Island Project presents an opportunity for PJM to increase its annual renewable generation by more than 50%, and the Project could deliver almost twice as much wind energy as is currently being produced in Illinois.

Q. How will the Project affect wholesale energy prices and REC prices?

A. By increasing the supply of energy bidding into the Illinois and PJM markets, the Project will result in a decrease in wholesale energy prices. This benefit is detailed in Gary Moland's testimony (Rock Island Exhibit 3.0) and is further discussed in Dr. Karl McDermott's testimony (Rock Island Exhibit 4.0), and has also been documented by the Illinois Power Agency in a recent report on the benefits of wind energy to Illinois.²⁵ The

²⁴ Includes energy generation from wind, solar thermal and photovoltaic, wood and wood-derived fuels and other biomass. U.S. Energy Information Administration, Electric Power Monthly. Available at <http://205.254.135.7/electricity/monthly/index.cfm> (last accessed September 17, 2012).

²⁵ Illinois Power Authority, "Annual Report: The Cost and Benefits of Renewable Procurement in Illinois Under the Illinois Power Agency and Illinois Public Utility Acts." Available at: <http://www2.illinois.gov/ipa/Documents/April-2012-Renewables-Report-3-26-AAJ-Final.pdf>. (last accessed on August 31, 2012).

Project will also provide an additional supply of RECs that can be bid into the Illinois procurement process and similar processes in other states. RECs are commodities that can be bought and sold between multiple parties and that allow their owners to claim that renewable electricity was produced to meet a renewable energy requirement. RECs provide their buyers with flexibility to meet renewable energy goals without having to purchase renewable energy from sources close to their load. The additional supply of RECs provided by the Project will reduce prices and reduce the risk of non-compliance with state RPS requirements, as I have described.

Q. What will happen if new transmission lines are not constructed to bring electricity from states with better wind resources to Illinois and the other PJM states?

A. If sufficient transmission to connect better wind resource areas, such as the Project's Resource Area, to Illinois and PJM markets are not developed, wind developers will be forced to develop wind farms at sites closer to load and the existing transmission grid, but with lesser wind resources than are available in more remote areas such as the Resource Area. This will lead to increased costs for RPS compliance and an overall increase in costs to consumers. A lack of transmission connecting the better wind resource areas may also force a higher percentage of RPS obligations to be met through solar or biomass projects, which are typically more expensive than comparable wind projects. If sufficient renewable energy resources are not available, utilities may have to make alternative compliance payments under state RPS laws. Both more expensive RECs and alternative compliance payments would increase retail rates relative to a case where there is a plentiful supply of RECs generated by the highest capacity factor wind energy projects.

424 **Q. Does Illinois have an interest in other states having adequate resources available to**
425 **meet their state RPSs?**

426 A. Yes, for several reasons. First, shortfalls in other states in renewable energy resources to
427 meet RPS requirements will tend to increase REC prices throughout the region, and
428 therefore the cost of RPS compliance for suppliers to Illinois consumers. Historical
429 evidence shows that tight supply tends to increase REC prices in multiple states, not just
430 a single state. An LBNL report, for example, found a substantial correlation in REC
431 prices between states.²⁶ In my experience as a developer and owner of wind farms, I saw
432 that REC prices in the markets of different states that can access the same supply tend to
433 move together in a highly correlated fashion. For example, I saw that the cost of RECs to
434 meet the Illinois RPS had a strong link to the cost of RECs that could meet the
435 Pennsylvania and New Jersey RPS. This observation is, of course, consistent with
436 economic logic. If REC prices were higher in State A compared to State B, and a REC
437 was eligible to meet both states' RPSs, owners of RECs would sell them in State A's
438 market until the prices levelized with the prices in State B's REC market. Differences in
439 REC pricing between markets where RECs can be traded across states are likely to be
440 arbitrated away, leading prices to converge. Accordingly, Illinois' ability to meet its
441 own RPS cost effectively depends on other states also having an adequate supply of
442 renewable resources and RECs to do so.

443 Second, Illinois is a major player in the wind supply chain and benefits from
444 manufacturing jobs driven by the construction of wind projects. Because the majority of
445 a wind farm's costs come from turbine procurement, the economic benefit from

²⁶ See 2011 Wind Technologies Market Report, p. 54.

construction will be spread across those states that participate in the turbine supply chain, regardless of where the turbines are ultimately installed. As further addressed in the testimony of Dr. David Loomis, Illinois could realize substantial economic benefits from the wind farms that would be constructed as a result of the Rock Island 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. For example, carbon dioxide emissions contribute to the atmospheric concentration of greenhouse gases regardless of the location of their source. Additionally, particulate emissions from power plants can affect human health in downwind areas, as noted by the Environmental Protection Agency (“EPA”) in its regulation of pollution in upwind states that contributes to downwind non-attainment areas.²⁷

Q. In addition to state RPS demand, what other factors will drive demand for renewable energy?

A. With retirements of plants in the existing U.S. generation fleet due to age and environmental requirements, customers will demand clean and cost-effective sources of energy. Over the past four years, U.S. coal generation has decreased by 14%, while total generation has decreased by only 1%.²⁸ According to the EIA, utilities report that, over

²⁷ The contribution of upwind pollution to downwind states’ air quality is reflected in the Clean Air Act, which requires that states’ air quality plans must “(D) contain adequate provisions—(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard.” (42 U.S.C. § 7410(a)(2)(D)).

²⁸ EIA, “Electric Power Monthly.” Available at: http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_1_1 (last accessed August 31, 2012).

the next four years, they intend to retire almost 26,000 MW of coal plants.²⁹ Over the next two decades, the total number of retirements of coal plants is likely to be much higher due to the limitations imposed by and costs of compliance with environmental regulations and the favorable economics of other generation sources such as natural gas. In its 2012 Annual Energy Outlook, the EIA performed detailed economic modeling of the US electric grid and projected the total amount of coal retirements across a number of future scenarios. In its Reference case, which is a “business as usual” case based on current laws, policies and market trends, the EIA forecasts almost 50,000 megawatts of coal capacity retirements by 2035, and in a scenario featuring greenhouse regulation, retirements before 2035 reach 70,000 megawatts.³⁰ The construction of any significant amount of new coal generating plant capacity is extremely unlikely due to high capital costs and the likelihood of additional environmental regulation being imposed. Several adopted or proposed rules of the EPA impact coal plants, including:

- The finalized Mercury Air Toxics Standard required by Section 112 of the 1990 Clean Air Act Amendments, which mandates that the maximum available control technology for limiting air pollutants such as mercury, acid gases, metals and organics be installed at coal- and oil-fired power plants with nameplate capacities greater than 25 MW.
- The Clean Air Interstate Rule (“CAIR”), covering 27 eastern states, including Illinois, implemented a cap and trade system for sulfur dioxide and nitrogen oxides. Though the EPA attempted to replace CAIR with the Cross State Air Pollution Rule (“CSAPR”), the D.C. Circuit Court of Appeals vacated CSAPR, but in doing so reinstated CAIR until a new rule is successfully promulgated.
- The Clean Water Act requires the EPA to implement rules requiring that “cooling water intake structures reflect the best technology available for minimizing adverse

²⁹ EIA, “Form EIA-860 detailed data.” Available at <http://www.eia.gov/electricity/data/eia860/index.html> (last accessed September 16, 2012).

³⁰ EIA, “Annual Energy Outlook 2012.” Available at: <http://www.eia.gov/oiaf/aeo/>. (last accessed August 31, 2012).

489 environmental impact.”³¹ Under a settlement agreement, the EPA is required to
490 implement final standards for existing power plants by June 27, 2013.³²

491 • A proposed Carbon Pollution Standard for New Power Plants, which would limit
492 carbon dioxide emissions from new electric generation facilities larger than 25 MW
493 to 1,000 pounds per MWh.³³

494 As more coal plants retire, they will need to be replaced by other, cleaner sources of
495 generation, including low cost wind energy, in order to keep rates from increasing and to
496 maintain a secure electric supply. Additionally, the difficulty in constructing new coal
497 plants will require utilities to turn to other sources of generation, such as wind energy, to
498 meet load growth and replace retired generation.

499 **Q. Is wind a cost effective resource?**

500 A. Yes. In the windiest parts of the country, wind power purchase agreements are now
501 routinely signed in the \$30 per MWh range, and sometimes even below \$30 per MWh.³⁴
502 The downward trajectory of wind energy costs is due to two factors. First, installation
503 costs have declined by approximately 30% since their peak, which I estimate to have
504 occurred in 2008. Second, the energy yield per wind turbine has improved due to better
505 technology. The relevant technological innovations include taller towers, longer blades,
506 advanced materials, and more sophisticated controls. Together these innovations have
507 increased capacity factors by up to 30% at the same wind speed. In the \$30 per MWh

³¹ Clean Water Act, Section 316(b), 33 U.S.C. §1326(b).

³² *2nd Amendment to Settlement Agreement among the EPA, Plaintiffs In Cronin, et al. v. Reilly*, 93 CIV. 314 (LTS) (SDNY), and *Plaintiffs in Riverkeeper, et al. v. EPA*, 06 CIV. 12987 (PKC) (SDNY). Available at: <http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/loader.cfm?csModule=security/getfile&PageID=627843> (last accessed September 17, 2012).

³³ Proposed amendments to 40 C.F.R. Part 60, 77 Fed. Reg. 22392-22441 (April 13, 2012); available at: <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2011-0660-0001> (last accessed September 26, 2012).

³⁴ See, for example, 2011 Wind Technologies Market Report, p. 52.

range, high capacity factor wind is cost effective compared to other new generation resources and is unquestionably the cheapest way to meet renewable and clean energy goals. As a point of comparison, NREL estimates the cost of new, utility-scale photovoltaic solar projects at \$90-150 per MWh.³⁵ DOE's Energy Information Administration estimates the cost of a new combined cycle gas plant at \$66 per MWh and the cost of a new conventional coal plant at \$95 per MWh.³⁶ While these costs vary by location and project specifics, wind from the Resource Area clearly can compete with other generation alternatives.

C. Other Project Benefits

Q. In addition to responding to the demand for electricity from renewable resources and offering a clean, cost-effective energy source, what other benefits led Clean Line to pursue the Project?

A. The Project will increase geographic diversity in the wind resources available to Illinois and neighboring states, which can reduce the costs of integrating wind energy into the electric portfolio. Moreover, the Project will provide economic benefits in the form of decreased wholesale electricity and REC prices and environmental benefits through reduced emissions and water usage from non-renewable power generation sources.

Q. How is wind incorporated into the electric power grid?

A. Because wind output varies over time, it needs to be complemented with energy generation from more dispatchable sources, such as fossil fuel-fired power plants. These

³⁵ NREL. "2011 Solar Technologies Market Report," p. 52. Available at: <http://www.nrel.gov/docs/fy12osti/51847.pdf>. (last accessed August 31, 2012).

³⁶ EIA. "Levelized Cost of New Generation." Available at: http://www.eia.gov/oiaf/aeo/electricity_generation.html (last accessed August 31, 2012).

conventional sources step in whenever the energy output from renewable resources falls. Wind integration is a term used in the electric industry to describe the way that the bulk power system is run in order to accommodate the variable nature of wind generation. Ramping generation from conventional power plants up and down can have costs; it may reduce the operational efficiency of the plants, thus increasing the cost of energy produced by them. In addition, there are certain design limits to the speed with which these plants can be ramped up and down. However, the bulk power system has a great deal of built-in flexibility. Since load constantly increases and decreases, the generation fleet already has to adjust power levels to match supply and demand. Moreover, the costs of wind integration (such as the costs of ramping conventional generators up and down to support the variable generation) can be greatly reduced by a number of techniques, including the use of forecasting and geographic diversity in the portfolio of wind projects.

Q. How does geographic diversity of wind resources facilitate wind integration?

A. 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. Meteorological events that cause an increase or decrease in wind speed and a corresponding increase or decrease in power output affect different areas of the country at different times. Consequently, the combined energy output of geographically diverse wind farms is less variable and has fewer wind integration costs than the output of geographically concentrated wind farms.

Several studies have corroborated the benefits of geographic diversity in a wind energy portfolio. Xcel Energy engaged Enernex, a leading electricity consulting firm, to

perform a study on the feasibility and cost of integrating two gigawatts (“GW”) and three GW of wind into the Public Service Company of Colorado’s electric system. The study compared multiple portfolios of wind farms with greater and lesser geographic diversity—a similar methodology to the analysis presented in my testimony below. The study found that “the degree of geographic diversity in the wind facilities added to grow the wind penetration level from 2 GW to 3 GW produced changes in average system operations integration cost [for all wind farms] in the range of 4-16%.”³⁷ Additionally, a report by the Electric Power Research Institute summarized industry knowledge of wind integration. In this report, a team of experts reviewed wind integration studies conducted by utilities around the country. The report observed that “There are several options for increasing flexibility of power system [including]...increased transmission between regions, which allows greater sharing of flexibility and reduces the need for balancing due to geographic diversity.”³⁸

Q. How will the Rock Island Project affect the diversity of wind generation serving Illinois and the PJM system?

A. The addition of wind energy delivered by the Project will help increase the geographic diversity of Illinois’ and PJM’s renewable energy portfolios. The times when the wind is blowing in northwest Iowa, the western terminus of the Project, are, to a high degree, statistically independent from times when the wind blows in the best wind resource

³⁷ Xcel Energy, *Public Service Company of Colorado 2 GW and 3 GW Wind Integration Cost Study*, August 19, 2011, p. 20. Available at: http://www.xcelenergy.com/staticfiles/xcel/Regulatory/Regulatory%20PDFs/11M-710E_2G-3GReport_Final.pdf (last accessed September 16, 2012).

³⁸ Electric Power Research Institute, *Impacts of Wind Generation*, April 2011, p. 4. Available at: <http://www.uwig.org/EPRI-1023166.pdf> (last accessed August 31, 2012).

570 locations in Illinois. The wind often blows in northwest Iowa when it is not blowing
571 heavily in Illinois, and vice versa.

572 Rock Island Exhibit 10.6, which is a correlation analysis I created using data from
573 the NREL's Eastern Wind Integration and Transmission Study (the "EWITS" study),
574 demonstrates the diversification enabled by the Project. Using numerical weather models
575 that capture the way weather patterns move across the United States, the EWITS study
576 developed a time series of the output at wind farms across the United States. The exhibit
577 shows the correlations between wind power generated at modeled wind farms situated
578 near the Project's origination point in northwest Iowa and modeled wind farms situated in
579 the best wind resource areas in Illinois and Indiana. A lower number implies a lower
580 correlation between the geographic areas; i.e., wind blows and power is produced at one
581 site when the wind is not blowing at the other site, and vice versa. A correlation
582 coefficient of zero indicates complete statistical independence, whereas a correlation
583 coefficient of 1.0 indicates a perfect correlation. As can be seen from the chart, the Iowa
584 wind resource that will be connected to the Project has a very low correlation with wind
585 in Illinois and Indiana, the two states where most of the wind farms in PJM are currently
586 located and the two PJM states that are likely to see the highest number of installations in
587 the future. The amount of electricity generated from wind farms in northwest Iowa is
588 statistically independent from the amount of electricity generated from wind farms in
589 Illinois and Indiana, and production from wind farms in Iowa will commonly occur in
590 different hours than production at wind farms in Illinois and Indiana. Consequently,
591 adding wind farms in Iowa to a portfolio of wind farms in Illinois and Indiana will create
592 a geographically diverse portfolio that is likely to result in steadier production and

smaller ramps by fossil-fueled generation sources than a portfolio of wind farms all situated in the same geographic location.

Q. Please describe the environmental benefits of the Rock Island Project.

A. Generating electricity from wind resources is environmentally friendly because the process does not emit carbon dioxide or other by-products such as nitrogen oxide, sulfur dioxide, mercury, particulates, coal ash, scrubber sludge as in the case of coal-fueled generation, or radioactive waste as in the case of nuclear generation. According to the Energy Information Administration, the United States produces 5.4 billion metric tons of carbon dioxide annually, and 40% of those emissions are generated by the electric power sector.³⁹ Adding more renewable power to the energy supply mix will produce environmental benefits by inhibiting the growth of carbon emissions. Another environmental benefit of wind energy is found in water savings. Wind farms do not require the large amounts of water that are needed for producing electricity from coal or nuclear power plants.

By stimulating new wind energy development, the Rock Island Project will reduce carbon, sulfur, particulate and organic compounds emissions, and waste by-products and will also reduce water usage, as compared to the production of comparable amounts of electricity from fossil-fueled sources. The Rock Island Project will deliver up to 3,500 MW of carbon-free electric power into Illinois and will deliver approximately 15 million MWh of clean electric energy per year into the Illinois and PJM markets. That amount of electricity would, if generated by other generation resources in the year 2016, emit over nine million tons of carbon dioxide, over 7,000 tons of nitrogen oxide, over

³⁹ EIA, "Monthly Energy Review." Available at: <http://www.eia.gov/totalenergy/data/monthly/#environment> (last visited Sept. 17, 2012).

11,000 tons of sulfur dioxide, and over 130 pounds of mercury. These emissions reductions are the low values achieved across multiple future scenarios of environmental regulation, and therefore could be considerably higher under other scenarios with less future environmental regulation of other generation sources. These estimates of emissions reductions and the methodology used to develop them are described in the testimony of Gary Moland (Rock Island Exhibit 3.0). By reducing the utilization of fossil-fueled generation, Rock Island would also reduce the amounts of coal ash and (potentially) scrubber sludge that would need to be stored or disposed of, and substantially reduce water use for power plant cooling.

III. FINANCIAL CAPABILITIES AND FINANCING PLAN

Q. Please describe the ownership relationship between Clean Line and Rock Island.

A. The immediate parent company of Rock Island is Rock Island Wind Line, LLC, which is the sole member. Clean Line is the immediate parent company and sole member of Rock Island Wind Line, LLC. Therefore, Clean Line is the indirect parent company of Rock Island and owns 100% of the beneficial interest in Rock Island.

Q. Does Clean Line have equity investors?

A. Yes. The majority owner of Clean Line is ZAM Ventures, L.P. ("ZAM Ventures"), which is the principal investment vehicle for ZBI Ventures, L.L.C. ("ZBI Ventures"). ZBI Ventures is a subsidiary of Ziff Brothers Investments, L.L.C. Additional equity investors in Clean Line include Michael Zilkha of Houston, Texas.

Q. What is the nature of the equity investment in and the commitment to Clean Line that have been made by the equity investors?

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637 A. The initial equity investors are providing capital to enable Clean Line to undertake the
638 initial development and permitting work for its transmission line projects, including the
639 Rock Island Project, which is to be constructed and owned by Rock Island, the Petitioner
640 in this proceeding. I estimate that of the total cost of a transmission project, such as the
641 Project, approximately 1% to 2% is spent in development activities (obtaining siting
642 authority, interconnection studies, routing, permitting, and public outreach),
643 approximately 10% is spent in pre-construction activities (ordering the DC converters
644 and acquiring rights of way), and the remaining approximately 88% is spent in
645 construction and commissioning activities. The funding provided by the equity investors
646 will enable Clean Line and its subsidiaries to bring the Project, and the other transmission
647 line projects being developed by other subsidiaries of Clean Line, to a point of
648 development at which long-term transmission service agreements can be signed with
649 transmission customers and, on the basis of these agreements, project-specific financing
650 arrangements can be entered into with lenders, equity investors, and/or other partners.
651 The additional capital obtained through these financing arrangements will allow Rock
652 Island to construct the Project. The initial equity investors may participate in the project
653 financings by making debt or additional equity investments along with new lenders,
654 investors and/or partners.

655 **Q. Please summarize Clean Line's financing plan for construction of the Project.**

656 A. When the Project has completed the majority of its permitting and licensing process,
657 Rock Island will enter into long-term contracts with customers for transmission capacity
658 on the Project. Rock Island will then issue debt secured by the revenue stream from the
659 transmission capacity contracts to raise the capital necessary in order to complete the

remaining development activities, construct the Project, and place it into operation.
Additional equity capital may also be raised to help finance construction of the Project.

Q. How does project finance differ from the corporate finance approach that many utilities use to finance new transmission lines and other additions to their plant and equipment?

A. The key distinction between corporate and project finance is which revenues and assets investors rely upon to recover (and secure, in the case of secured debt) their investment and to earn a required return. When utilities issue corporate debt or equity to fund new construction, the issued securities typically are secured by, and the buyers typically rely on, all the assets and revenues of the issuer, not just the assets and revenues of the new project that is being financed. In the case of utility debt securities, the securities are typically secured by a mortgage on the entire assets of the utility. Project finance, on the other hand, relies principally on (and in some cases exclusively on) the assets and revenues of a particular project as the source of security.

Q. Is project finance a credible model for financing the development and construction of projects such as the Rock Island Project?

A. Yes. Many successful transmission projects have followed the same model in which initial equity investors fund development and the project is later refinanced at the project level to fund construction. Utilities and developers have applied this model to traditionally rate-based transmission lines like the Path 15 project in California and the Trans Bay Cable project crossing the San Francisco Bay. This model is also common for merchant transmission lines like the Rock Island Project. Other merchant transmission projects that have pursued or are pursuing this financing model include the Neptune

underwater HVDC project between New Jersey and Long Island and the Zephyr line from Wyoming to Nevada currently under development by American Transmission Company and Duke Energy. Many of the Competitive Renewable Energy Zone (“CREZ”) transmission lines in Texas followed the project finance model as well.

Q. Are you confident that the project finance markets will support the construction of the Rock Island Project?

A. Yes. Large amounts of liquidity exist in the capital markets for transmission projects that have reached an advanced stage of development. The capital markets have a substantial history of supporting transmission projects, including merchant transmission projects, through debt and equity financings. Rock Island Exhibit 10.7 provides a list of precedent transactions in both the equity and debt markets. As I noted in my previous answer, a number of transmission line projects have entered into project finance arrangements to fund their construction. For example, in 2003, the Path 15 project, an 83 mile stretch of 500 kV lines in Southern California, closed \$209 million in debt financing spread across the bank and bond markets. In 2005, the Neptune Project, a ± 500 kV HVDC underwater transmission line, raised \$600 million in a private placement at a competitive spread to LIBOR. In early 2008, Trans Bay Cable LLC successfully closed an approximately \$500 million transaction in the project finance market to fund a 53 mile underwater HVDC project. In September 2008, the Trans-Allegheny Interstate Line project closed a \$550 million senior secured loan, and in January 2010 that project closed an additional \$800 million of financing, comprised of \$350 million in floating bank debt and \$450 million in fixed coupon bonds. Additionally, significant institutional investors such as the California Public Employees Retirement System (known as CalPERS), John Hancock

Financial Services, and TIAA-CREF have also made major equity investments in transmission lines, as have the private equity firms ArcLight Capital Partners, Energy Investors Fund, Energy Capital Partners and Starwood Energy. All of these examples confirm that debt and equity financing is in plentiful supply for projects like the Rock Island Project. Texas's recent experience with the CREZ lines provides further confirmation of the viability of project finance applied to transmission lines.

Q. What is the CREZ transmission program?

A. The CREZ transmission build-out program was established by the Texas legislature in 2005 to advance the construction of new wind farms in Texas. The CREZ projects are primarily designed to transport electricity generated by renewable energy resources to larger load centers in Texas, while simultaneously providing the infrastructure necessary to meet the long-term needs of the areas with the greatest growth potential. Transmission projects have been assigned to developers, both incumbent utilities and new entrants, through an application process. In March of 2009, the Texas Public Utility Commission ("PUC") issued an order approving projects comprising 2,300 miles of new 345 kV transmission lines pursuant to the CREZ legislation.

Q. Did the Texas PUC approve any CREZ projects to be constructed by independent transmission companies?

A. Yes. The Texas PUC awarded CREZ projects to eight transmission service providers: Oncor, Lower Colorado River Authority, South Texas Electric Cooperative, Sharyland Utilities, Electric Transmission Texas, Lone Star Transmission, Wind Energy Transmission Texas, and Cross Texas Transmission. Of these entities, Electric Transmission Texas, Lone Star Transmission, Wind Energy Transmission Texas, and

729 Cross Texas Transmission were new, independent entities established to pursue the
730 CREZ projects. Like Rock Island, these new entities had strong investor backing and
731 plans to use project financing to raise capital to construct their designated transmission
732 lines.

733 **Q. Were the CREZ transmission providers able to raise sufficient capital to proceed**
734 **with their projects?**

735 A. Yes. With several project finance loans oversubscribed – meaning more lenders wanted
736 to participate than was possible based on the size of the loan or debt offerings – the
737 CREZ projects enjoyed strong success in raising capital. The following examples all
738 used project finance: In June of 2011, Sharyland raised over \$730 million for its
739 designated project in the bank and private debt markets; Sharyland's parent company
740 Hunt Consolidated, Inc., subsequently announced plans for two Real Estate Investment
741 Trusts totaling \$2.1 billion that will invest in Sharyland's CREZ lines as well as other
742 natural gas and electric transmission assets. In July 2011, Cross Texas Transmission
743 raised over \$430 million in bank debt; in August 2011, Wind Energy Transmission Texas
744 raised over \$500 million in debt financing; and in November 2011, Lone Star
745 Transmission raised \$386.6 million in bank loans for its CREZ line.

746 **Q. Were the CREZ loans and other financing committed for the CREZ projects prior**
747 **to the transmission service providers receiving key permits for their projects,**
748 **including Texas PUC approval?**

749 A. No. The CREZ transmission service providers provided information about their parent
750 companies and plans to finance the lines as part of the selection process. However, the
751 transactions I described in my previous answer did not occur until the respective project

sponsors had received one or more Certificates of Convenience and Necessity from the Texas PUC.

Q. Is it typical for energy projects using project finance to obtain full financing prior to obtaining the necessary permits and other regulatory approvals?

A. No. Project lenders always, in my experience, mandate that receipt of the necessary permits and approvals are a condition precedent to funding a project loan. Project-based equity investors also typically have the same requirement.

While I am aware of certain transactions in which debt and equity investors have made commitments conditioned on obtaining remaining permits and approvals, this model is not viable for most projects such as the Rock Island Project. First, banks and other lending institutions will not make conditional commitments until they have a very high degree of certainty that the project will actually be approved by the applicable regulatory agencies. Their economic interest is harmed by the opportunity cost of tying up financial resources that may never be deployed, as the same capital could earn a return in another investment. Second, the time horizon of the Rock Island Project is such that construction will not begin for at least two years, depending on the time frame in which this application is approved. Conditional commitments to project finance are made where there is a much shorter period of time anticipated between the commitment being made and the anticipated date of the event that will trigger the release of the funds. Third, lenders typically charge a commitment fee on future loan commitments, which can be quite costly to the project. In summary, I think it is highly unlikely that debt providers would make such a long-term commitment before key approvals are in place, or that project developers would accept the costs of such early commitments.

775 **Q. How does the approach that Rock Island plans to employ compare to the financing**
776 **methods used for other kinds of energy projects?**

777 A. Developers of new independent power generation projects have long relied on project
778 finance to fund their construction. For example, the U.S. wind power industry has raised
779 tens of billions of dollars of project-level debt and equity over the last five years.
780 Horizon Wind Energy (now EDP Renewables), which is one of the leading developers of
781 wind generation facilities in the U.S., successfully used this approach to develop, finance,
782 construct, and place into operation a number of significant wind generation projects
783 throughout the U.S.

784 **Q. At what point will Rock Island obtain financing for the construction of the Rock**
785 **Island Project?**

786 A. Our current plan is to obtain construction financing once we have obtained the major
787 regulatory approvals to proceed with the Project and have sold a majority of the capacity
788 on the Project. These approvals include the certificates and order that are the subject of
789 this proceeding and a project approval from the Iowa Utilities Board for the portion of the
790 line in Iowa, as well as negotiated rate authority from the FERC (which was granted in a
791 FERC order issued May 23, 2012). In addition to obtaining these approvals, we will need
792 to enter into contracts for the transmission capacity on the Rock Island Project prior to
793 obtaining full financial commitments for the Project. The exact percentage of capacity
794 that needs to be under contract prior to obtaining full financing commitments will depend
795 on the price, counterparty creditworthiness, and term in years of the signed transmission
796 contracts.

797 **Q. Please describe the nature of the transmission capacity contracts and why they are**
798 **necessary to support the Project's financing.**

799 A. Rock Island intends to offer long term transmission capacity contracts. These contracts
800 will provide for a reservation charge, meaning the transmission customer will pay
801 regardless of what percentage of the time the customer uses the reserved capacity. This
802 pricing arrangement is typical for transmission lines, including those operated by MISO
803 and PJM. It is also similar to the contractual arrangements for natural gas pipelines.
804 Rock Island will impose credit requirements on its transmission customers. The credit
805 requirements will require that the transmission customer have investment grade or higher
806 credit ratings or that the customer post additional security in the form of cash or a letter
807 of credit, or a parent guaranty from an entity with investment grade credit ratings. These
808 credit requirements will provide revenue certainty, which will allow lenders to be
809 comfortable that Rock Island can repay its debt.

810 **Q. How will lenders size the debt they lend to Rock Island?**

811 A. Lenders typically look at project finance borrowing capability based on debt service
812 coverage ratios, where the numerator is contracted cash flow available to service debt,
813 and the denominator is principal and interest owed. As an example, if lenders were
814 willing to make 20-year loans so long as contracted revenues provide a 1.25 times debt
815 service coverage ratio, the Project would need to contract about 60% of its transmission
816 service in order to raise 70% of its initial capital costs through debt. The detail behind
817 this calculation is shown in Rock Island Exhibit 10.8.

818 **Q. What conditions will project lenders place on Clean Line before they advance the**
819 **money to build the Project?**

820 A. Lenders will carefully scrutinize construction contracts and, as I have described, typically
821 will only advance money when the appropriate conditions have been met, including (a)
822 having all necessary permits, (b) having procured sufficient financing commitments to
823 complete construction, and (c) having a high degree of certainty on budget and timeline.
824 While this diligence creates an additional administrative burden for the transmission
825 developer, it ensures that projects proceed prudently. Construction lenders will not
826 release funds to begin construction unless Rock Island demonstrates it has commitments
827 for sufficient financing to construct the entire Project. Lenders will not take the risk that
828 additional necessary financing cannot be obtained, resulting in an incomplete project with
829 limited collateral value. Therefore, Rock Island will not begin to install physical
830 facilities until it has obtained adequate funding.

831 **Q. If Rock Island is able to obtain the regulatory approvals and the transmission**
832 **contracts as you describe, do you foresee any difficulty in obtaining the necessary**
833 **financing to build the Project?**

834 A. I do not. Several precedent transactions have demonstrated that project finance for
835 transmission lines is a viable model. Further, Clean Line has developed an extensive
836 database of lenders and equity investors who have either made past investments in
837 transmission projects or have expressed an interest in investing in one of Clean Line's
838 projects once it has secured the key permits and contracts. My colleagues and I have
839 worked with many of these lenders and equity investors on prior transactions.

840 **Q. Do the equity investors in Clean Line have the commitment and experience to**
841 **support this plan?**

842 A. In my opinion, yes. As Mr. Skelly describes, both ZAM Ventures and the Zilkha family
843 have deep experience in the energy field, including in electric power and renewable
844 energy. Both ZAM Ventures and its affiliates and the Zilkha family have previously
845 made significant investments in start-up companies in the energy industry, including
846 companies developing renewable resources projects, and are deeply experienced with our
847 development and financing model. Mr. Neil Wallack, who is President of ZBI Ventures
848 and a limited partner of ZAM Ventures, provides information on the perspectives and
849 commitment of Clean Line's majority owner on this investment.

850 **Q. Does Clean Line have the management expertise to successfully execute its**
851 **development and financing model?**

852 A. Yes. Along with several other members of our management team, including Mr. Skelly,
853 our CEO, and Ms. Desai, our Executive Vice President – Commercial and Operations, I
854 was previously employed by Horizon Wind Energy, where we helped bring a number of
855 wind energy projects into operation using project financings. Additionally, other
856 members of our management team, including Mr. Hurtado, our Executive Vice President
857 and Mr. Shilstone, our Director of Development, have experience in developing
858 independent power generation projects. Ms. Patton, our Vice President and General
859 Counsel, while with Allegheny Energy provided legal advice concerning the financing of
860 the Trans-Allegheny Interstate Line, which entailed \$1.35 billion of external financings
861 between September 2008 and January 2010. Mr. Kottler, our Project Development
862 Director, was formerly a corporate attorney at a large law firm where he was involved in

Rock Island Exhibit 10.0
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a number of significant financial transactions encompassing many sectors of the renewable energy industry. More complete descriptions of the qualifications and experience of these members of Clean Line's management team are provided in Rock Island Exhibit 1.3 sponsored by Mr. Skelly.

Q. Please summarize why Rock Island's financing plan is viable.

A. Project finance is a time-tested and proven way to finance the construction of transmission lines. There are a significant number of precedent transactions that have set a framework for the terms, pricing, legal documentation, and interested parties. Clean Line has identified and developed relationships with a large number of potential financing parties. Finally, our staff has the experience and demonstrated capability to execute large project financing transaction, and our equity investors have the commitment and the experience to support our financing plan.

IV. FINANCIAL AND ACCOUNTING STRUCTURE

Q. Please identify Rock Island Exhibits 10.9 and 10.10.

A. Rock Island Exhibit 10.9 is the balance sheet of Rock Island at December 31, 2011 and August 31, 2012. Rock Island Exhibit 10.10 is the statement of income for Rock Island for the 12 months ending December 31, 2011 and eight months ending August 31, 2012. I note that because neither Clean Line nor any of its subsidiaries currently have any operational projects, neither Clean Line nor Rock Island had any operating revenues for the period covered by the statement of income in Rock Island Exhibit 10.10. Therefore, the historical operating results depicted on Rock Island Exhibit 10.10 are not meaningful.

884 **Q. What will be Rock Island's sources of operating revenues?**

885 A. Rock Island's sources of operating revenues will be the payments it receives from the
886 transmission capacity customers of the Rock Island Project pursuant to the transmission
887 services contracts that Rock Island enters into with these customers. As Mr. Skelly
888 explains, the prices that Rock Island charges will be subject to the jurisdiction of FERC.
889 Rock Island has been granted negotiated rate authority by FERC and expects to be able to
890 charge negotiated rates that will recover the costs of developing, constructing and
891 operating the Rock Island Project.

892 **Q. Does Rock Island have its own, separate management and administrative staff?**

893 A. No. At this time, Rock Island has only three officers and no employees. The three
894 officers are Michael Skelly, President; Jayshree Desai, Executive Vice President; and
895 Kathryn Patton, General Counsel. All three of these officers are employees of Clean
896 Line. Rock Island does not expect to establish a separate management and administrative
897 staff dedicated to the Rock Island Project. Rather, management and administrative
898 functions will be performed for Rock Island by the management and administrative staff
899 of its ultimate parent company, Clean Line. These management and administrative
900 functions include, in addition to executive management, the accounting, treasury, finance,
901 tax, payroll, employee benefits, human resources, procurement, accounts payable and
902 receivable, engineering, real estate and property management, internal audit, regulatory,
903 and legal functions.

904 **Q. How will costs, including management and administrative staff time, incurred by**
905 **Clean Line be charged to, and recorded as costs of, Rock Island?**

906 A. Costs, including external costs, related directly to the development of a project are
907 charged to the relevant subsidiary, in this case to Rock Island. Effective January 1, 2011,
908 the cost of salary and benefits of Clean Line's employees are allocated to specific
909 projects. Each project has a team of employees who dedicate all of their time to that
910 project. For these employees, 100% of their salary and benefit expenses are allocated to
911 the relevant project. Other Clean Line employees, such as management and
912 administrative staff, work on multiple projects. These employees track and report their
913 time spent on specific activities for the individual subsidiaries, so that the applicable
914 portion of their salary and benefits expense for the period can be charged to the
915 applicable subsidiary. Finally, Clean Line incurs some overhead expenses that benefit all
916 its subsidiaries. These include tasks performed by management and administrative staff
917 of Clean Line, such as treasury and benefits management, and external costs such as
918 corporate office rent, office equipment, legal fees, and tax preparation fees. These general
919 overhead costs are allocated in accordance with company policy.

920 Clean Line recognizes the importance of appropriately recording and charging
921 costs to Rock Island and the other subsidiaries, even at relatively early stages of the
922 development of the Rock Island Project and the other transmission projects. Accurate
923 cost accounting and allocation to the subsidiaries is important so that the costs incurred in
924 developing the individual subsidiaries' projects will be available to support financing
925 activities, rate and tariff development, and regulatory reporting requirements.

926 **V. MAINTENANCE OF BOOKS AND RECORDS OUT OF STATE**

927 **Q. Is Rock Island requesting approval from the Commission to maintain its principal**
928 **office and its books and records at a location outside of the state of Illinois?**

929 A. Yes. It is my understanding that the Public Utilities Act and the Commission's
930 regulations require a public utility to maintain an office in Illinois and to keep its books
931 and records at its office in Illinois, but that the Commission may authorize the public
932 utility to keep its books and records outside the State. Rock Island is requesting approval
933 to maintain its books and records at its principal office and that of its ultimate parent
934 company, Clean Line, in Houston, Texas.

935 **Q. What is the address of Rock Island's principal office?**

936 A. The principal office is located at 1001 McKinney Street, Suite 700, Houston, Texas
937 77002.

938 **Q. Why is it appropriate for Rock Island to be allowed to maintain its books and**
939 **records at its office in Houston, Texas?**

940 A. As I described earlier in my testimony, the accounting, financial and administrative
941 management and staff of Clean Line will perform accounting, financial, treasury and
942 other administrative services for Rock Island (and for the other subsidiaries of Clean
943 Line), including maintenance of Rock Island's accounting and financial books and
944 records. The management and administrative staff of Clean Line performing these
945 functions will be located at the principal offices in Houston. Additionally, Rock Island,
946 due to the nature of its business and operations, will be operating in, and potentially
947 subject to the jurisdiction of regulators in, at least two states, Iowa and Illinois. For these
948 reasons, it would be inefficient and unduly expensive, and could necessitate duplicative

efforts, for Rock Island to maintain its books and records in Illinois, or at any location other than the principal office of Rock Island and its parent company in Houston, Texas.

Q. Does Rock Island expect to maintain an office in Illinois?

A. Yes, Rock Island plans to maintain an office or offices within Illinois as it moves into the development, construction and operation of the Rock Island Project. However, this office or offices will support local development, right-of-way acquisition, construction and operating activities, not accounting and financial activities. Those activities will continue to be performed at the principal office of Rock Island and Clean Line in Houston, Texas.

VI. USE OF FERC UNIFORM SYSTEM OF ACCOUNTS

Q. What system of accounts will Rock Island use to maintain its books and records of account?

A. As a multi-state provider of transmission service in interstate commerce that will be subject to the jurisdiction of FERC as well as of this Commission and at least one other state commission, Rock Island 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. The FERC order issued May 23, 2012, granting Rock Island negotiated rate authority, directs Rock Island to maintain its books and records in accordance with the FERC Uniform System of Accounts.⁴⁰ Rock Island Exhibit 10.11 is a copy of the Chart of Accounts that Rock Island has adopted in accordance with FERC's Uniform System of Accounts at 18 C.F.R. Part 101.

⁴⁰ *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142 (2012), at P 47.

970 **Q. Please explain the request in Rock Island’s Petition concerning the applicability of**
971 **the Commission’s regulation at 83 Illinois Administrative Code 415, Uniform**
972 **System of Accounts for Electric Utilities.**

973 A. It is my understanding that based on the nature of its operations, Rock Island will be a
974 “public utility” but not an “electric utility” as defined in the Public Utilities Act. Because
975 Rock Island will not be an “electric utility,” based on a literal application of the
976 Commission’s regulation at 83 Illinois Administrative Code Part 415, Uniform System of
977 Accounts for Electric Utilities (“Code Part 415”), Rock Island will not be subject to the
978 Commission’s regulations of Code Part 415. Nevertheless, Rock Island acknowledges
979 that the Uniform System of Accounts in Code Part 415 would be the Commission’s
980 system of accounts that is the most closely relevant to Rock Island’s operations. In Code
981 Part 415, the Commission has adopted FERC’s Uniform System of Accounts in 18
982 C.F.R. Part 101 as the Commission’s Uniform System of Accounts for Electric Utilities,
983 with certain deviations.

984 In any event, maintenance of Rock Island’s books and records of account in
985 accordance with FERC’s Uniform System of Accounts at 18 C.F.R. Part 101 should
986 provide appropriate, useful and sufficient accounting and financial information for this
987 Commission’s regulatory purposes. This is particularly the case given the great similarity
988 and consistency between FERC’s Uniform System of Accounts and this Commission’s
989 Uniform System of Accounts for Electric Utilities. Additionally, it would create undue
990 and unwarranted burden and expense for Rock Island if it were required to maintain its
991 books and records of account in accordance with both FERC’s Uniform System of
992 Accounts and, for Illinois regulatory purposes, this Commission’s Uniform System of

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993 Accounts for Electric Utilities. Accordingly, Rock Island requests that, to the extent the
994 Commission deems necessary, it waive the applicability of 83 Illinois Administrative
995 Code Part 415 to Rock Island so long as Rock Island maintains its books and records in
996 accordance with FERC's Uniform System of Accounts at 18 C.F.R. Part 101.

997 **Q. Does this conclude your prepared direct testimony?**

998 A. Yes, it does.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Rock Island Clean Line LLC	)	
	)	
Petition for an Order granting Rock Island	)	
Clean Line a Certificate of Public Convenience	)	
and Necessity pursuant to Section 8-406 of the	)	
Public Utilities Act as a Transmission Public	)	Docket No. 12-0560
Utility and to Construct, Operate and Maintain	)	
an Electric Transmission Line and Authorizing	)	
and Directing Rock Island Clean Line pursuant	)	
to Section 8-503 of the Public Utilities Act to	)	
Construct an Electric Transmission Line.	)	

ADDITIONAL SUPPLEMENTAL DIRECT TESTIMONY OF

DAVID BERRY

ON BEHALF OF

ROCK ISLAND CLEAN LINE LLC

ROCK ISLAND EXHIBIT 10.13

December 18, 2012

Rock Island Exhibit 10.13
Page 1 of 19

1 Certain capitalized terms in this testimony have the meaning set forth in the Glossary included as
2 **Attachment A** to the Direct Testimony of Michael Skelly, Rock Island Exhibit 1.0.

3 **Q. Please state your name, business address and present position.**

4 A. My name is David Berry. I am Vice President – Strategy and Finance of Clean Line
5 Energy Partners LLC (“Clean Line”). Clean Line is the ultimate parent company of Rock
6 Island Clean Line LLC (“Rock Island”), the Petitioner in this proceeding. My business
7 address is 1001 McKinney Street, Suite 700, Houston, Texas 77002.

8 **Q. Have you previously submitted prepared testimony and exhibits in this proceeding?**

9 A. Yes, I have previously submitted (1) prepared direct testimony, dated October 10, 2012,
10 which is identified as Rock Island Exhibit 10.0, and accompanying exhibits identified as
11 Rock Island Exhibits 10.1 through 10.11, and (2) supplemental direct testimony, dated
12 November 27, 2012, identified as Rock Island Exhibit 10.12. My supplemental direct
13 testimony, Rock Island Exhibit 10.12, provided information on the addition of National
14 Grid USA, through its wholly owned subsidiary GridAmerica Holdings Inc., as an equity
15 investor in Clean Line.

16 **Q. What is the subject matter of this additional supplemental direct testimony?**

17 A. First, I will describe how Rock Island will secure the financing to complete the Project
18 before commencing the installation of transmission towers on landowner property, and I
19 will propose a condition on this topic to the certificate of public convenience and
20 necessity that Rock Island is requesting for the Project. Second, I will describe Rock
21 Island’s obligation to provide non-discriminatory open access transmission service on the
22 Project, how transmission users will be able to obtain service on the transmission line, the
23 types of transmission users who are expected to be the transmission customers of the
24 Project, and how the operation of the transmission line will be for public use. I am
25 providing this additional supplemental direct testimony at the request of ICC Staff.

Part I: Financing Commitments for the Rock Island Project

Q. Does Rock Island intend to raise sufficient financing to complete the Project before it permanently installs transmission towers on landowner property?

A. Yes. Rock Island will obtain sufficient debt and equity financing, or commitments for such financing, for the total Project cost, prior to commencing the permanent installation of towers on property on which Rock Island acquires a transmission easement. Obviously, Rock Island also cannot install transmission conductor until it has installed its transmission towers.

Q. Is Rock Island willing to formalize this commitment as a condition to be included in its Certificate of Public Convenience and Necessity?

A. Yes. Rock Island is willing to accept the following condition to its certificate of public convenience and necessity:

Rock Island will not install transmission facilities for the Rock Island Clean Line Project on easement property until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost. For the purposes of this condition:

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

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

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

(iv) “total project cost” shall mean the 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).

Q. Is this certificate condition consistent with the financing and construction plan that you described in your direct testimony?

A. Yes, and the condition, if adopted, will formalize this plan as a requirement of Rock Island’s certificate of public convenience and necessity. As I described in my direct testimony, in order for Rock Island to begin to construct and install the transmission line, it must (1) first, secure sufficient contracts for transmission service (using the processes I will describe in Part II of this additional supplemental direct testimony) to support raising the capital to finance construction of the Project, (2) second, issue debt and/or obtain debt and equity commitments sufficient to finance construction of the entire Project, and (3)

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105 only then, actually commence construction and installation of the permanent transmission
106 facilities (towers, conductor and the converter stations). The bottom line is that
107 permanent installation of facilities cannot and will not commence unless and until the
108 need for the Project is actually established through the market test of transmission
109 customers contracting for sufficient service on the transmission line to support and justify
110 financings that raise sufficient capital to cover the total Project cost. The proposed
111 financing condition will formalize that sequence.

112 **Part II: Rock Island's Provision of Transmission Service for Public Use**

113 **Q. Will Rock Island provide transmission service on the Project pursuant to a tariff?**

114 A. Yes. As a transmission provider under the jurisdiction of FERC, Rock Island will
115 provide transmission service to transmission customers pursuant to an Open Access
116 Transmission Tariff ("OATT") that conforms to the requirements of the FERC pro forma
117 OATT. Upon completion of the Project, Rock Island will turn over operation of the
118 transmission line to an RTO, either PJM or MISO. Rock Island will then be incorporated
119 into the tariff of the RTO that has operational control of the Project, with a separate
120 schedule under the RTO's tariff for transmission service on the Rock Island Project. That
121 schedule will set forth any terms of service, including the rates charged by Rock Island,
122 that differ from the RTO's standard terms and service. The RTO will administer service
123 on Rock Island in accordance with the RTO tariff and Rock Island's Project-specific
124 schedule.

125 **Q. What obligations will Rock Island have in offering and providing service pursuant**
126 **to a transmission service tariff that conforms to FERC's pro forma OATT?**

127 A. Rock Island will be obligated to provide non-discriminatory, open access transmission
128 service to all "eligible customers" as defined by the FERC pro forma OATT. Both the
129 RTO tariff and Rock Island's schedule to the RTO tariff must be approved by FERC.

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130 FERC will review these documents for compliance with FERC open access rules and to
131 ensure they do not unduly discriminate against or provide undue preference to any
132 eligible customer.

133 **Q. How does the FERC pro forma OATT define eligible customers?**

134 A. As specified in the FERC pro forma OATT, the transmission service tariff must define an
135 “eligible customer” as follows:

136 (i) Any electric utility (including the Transmission Provider and any
137 power marketer), Federal power marketing agency, or any person
138 generating electric energy for resale is an Eligible Customer under the
139 tariff. Electric energy sold or produced by such entity may be electric
140 energy produced in the United States, Canada or Mexico. However, with
141 respect to transmission service that the Commission is prohibited from
142 ordering by Section 212(h) of the Federal Power Act, such entity is
143 eligible only if the service is provided pursuant to a state requirement that
144 the Transmission Provider or Transmission Owner offer the unbundled
145 transmission service, or pursuant to a voluntary offer of such service by a
146 Transmission Owner. (ii) Any retail customer taking unbundled
147 Transmission Service pursuant to a state requirement that the
148 Transmission Provider or a Transmission Owner offer the transmission
149 service, or pursuant to a voluntary offer of such service by a Transmission
150 Owner, is an Eligible Customer under the Tariff. As used in Part VI,
151 Eligible Customer shall mean only those Eligible Customers that have
152 submitted a Completed Application.

153 This is a very broad definition that in practice requires Rock Island to offer transmission
154 service to any buyer of transmission service, subject only to the limitation of Section
155 212(h) of the Federal Power Act. I understand that this limitation prohibits FERC from
156 ordering retail wheeling or sham wholesale transactions. The ability of retail customers
157 to buy transmission service is therefore left to the states.

158 **Q. Has Rock Island selected the transmission customers for the Project?**

159 A. No. Though Rock Island has identified a number of wind generators and load serving
160 entities that are potential customers, none of the Project’s capacity has been contracted at
161 this time. No potential customers have obtained any rights to buy service in the future.

162 All future sales will be subject to the multiple processes for selling transmission capacity
163 that I describe below.

164 **Q. How will Rock Island comply with the obligation to provide non-discriminatory**
165 **open access transmission service to eligible customers as defined by the pro forma**
166 **OATT?**

167 A. As an open access transmission provider under the jurisdiction of FERC, Rock Island will
168 offer all eligible customers the opportunity to purchase transmission service on the
169 Project. Rock Island will not deny any eligible customer the opportunity to purchase
170 transmission service. Moreover, Rock Island will not unduly discriminate against any
171 transmission customer in favor of another eligible customer.

172 **Q. Please describe the conditions under which FERC approved Rock Island's rate**
173 **authority.**

174 A. In November 2011, Rock Island filed an application with FERC for authorization to sell
175 transmission services at negotiated rates and for related relief. (FERC Docket No. ER12-
176 365-000.) FERC approved Rock Island's application, subject to the stipulations that
177 Rock Island (1) cannot limit transmission service on the Project to electricity generated
178 from any specific source, and (2) cannot give preference to any particular type or types of
179 resources over other resources that seek to contract for capacity. *Rock Island Clean Line*
180 *LLC*, 139 FERC ¶ 61,142 (2012), at P 31.

181 Additionally, FERC approved Rock Island's request to allocate the initial capacity
182 on the Project by selling up to 75% of the capacity to anchor tenant customers and by
183 running an open season process for the remaining (*i.e.*, 25 % or more) of the capacity on
184 the Project. *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142 (2012), at PP 28-30. The
185 FERC Order approved Rock Island's open season process as fair, transparent and non-
186 discriminatory, noting that the process includes, among other features, notice of the open

187 season to entities potentially interested in purchasing transmission capacity and a
188 methodology for evaluating bids for capacity.

189 **Q. Please explain the process by which eligible customers will have the opportunity**
190 **become anchor tenant customers.**

191 A. Rock Island set forth in its negotiated rate application in FERC Docket No. ER12-365-
192 000 ("FERC Application"), at 23-24, a process for contracting with anchor tenants that
193 will comply with FERC's open access requirements and prohibition against undue
194 preference and discrimination. The FERC order accepted this process, conditioned on the
195 informational filing noted below. The process is composed of the following steps:

- 196 1. Rock Island has made substantial efforts to identify wind developers located in the
197 Resource Area and load serving entities with RPS obligations or that otherwise
198 demand renewable energy. Rock Island will invite all such wind developers and load
199 serving entities to participate in the anchor tenant process, so long as they "(1) have
200 demonstrated the ability to meet creditworthiness standards that will be necessary to
201 secure the equity and loan financing necessary for the Project, (2) have a
202 demonstrable need to presubscribe to significant blocks of Project capacity, and (3)
203 are likely to execute a precedent agreement in a timeframe consistent with the
204 development timeline needed by Rock Island."
205
- 206 2. In addition, Rock Island will entertain requests from any other eligible customers to
207 participate in the anchor tenant process, so long as they meet the above criteria.
208
- 209 3. Rock Island will select the parties with whom it negotiates precedent agreements
210 based on objective criteria that are consistent with FERC requirements.
211
- 212 4. After concluding negotiations, Rock Island will make an informational filing with
213 FERC. The filing will describe the parties who have been selected to negotiate for
214 anchor customer status, a general description of the precedent agreements negotiated,
215 and a listing of which anchor customers have executed agreements.
216

217 **Q. Do you have an expectation as to the total number of customers who will be anchor**
218 **tenant customers?**

219 A. Not specifically. As I describe in my direct testimony and earlier in this testimony, Rock
220 Island's transmission contracts with anchor tenants will provide a basis for financing
221 construction of the Project. Although Rock Island will have credit requirements for

222 potential anchor tenant customers, it is nevertheless possible that one or more
223 transmission customers could encounter financial difficulties and default on their
224 contracts. This risk would have an impact on the costs and terms on which Rock Island is
225 able to obtain debt financing. Therefore, in order to minimize this risk, it is in Rock
226 Island's interests to have more rather than fewer anchor tenant customers.

227 **Q. Please describe the process by which Rock Island will conduct an open season or**
228 **open seasons through which eligible customers can enter into contracts for the**
229 **remaining transmission capacity.**

230 A. The open season will provide for an initial allocation of the Project's remaining capacity
231 through a structured process in which all eligible customers can participate as described
232 in Rock Island's FERC Application at 33-34. The FERC order approved this process,
233 also conditioned on the filing of an information filing. The process consists of the
234 following key steps:

- 235 1. Rock Island will post detailed bidding guidelines, evaluation criteria, estimated rates,
236 and proposed agreements on an internet website.
- 237 2. Rock Island will provide notice of the open season in appropriate trade publications.
- 238 3. Rock Island will give all bids equal priority in awarding the Project's initial capacity,
239 subject to the evaluation criteria published on the website.
- 240 4. Rock Island will file the results of the open season with FERC in a report that will
241 include the terms of the open season, including notice, the method for evaluating bids,
242 the identity of the parties that purchased capacity, and the amount, term, and price of
243 that capacity.

244 **Q. If any capacity remains unallocated after the anchor tenant and open season**
245 **process, will it be offered to eligible customers?**

246 A. Yes. As administrator of the Rock Island OATT, the RTO will offer any unallocated
247 capacity to any eligible customer under the OATT. The opportunity to purchase this
248 capacity will in no way be limited to the initial anchor tenants or open season
249 participants.

250 **Q. Once the initial transmission service agreements expire, or are terminated by one of**
251 **the parties, what will happen to that capacity?**

252 A. Any capacity that becomes available will be offered to any eligible customer under the
253 Project's OATT. The anchor tenant process and open season process determine only the
254 initial allocation of the Project capacity. Any future sale of capacity will be governed by
255 the OATT, just as is the case for traditional, cost of service transmission providers.

256 **Q. If a customer does not receive an initial allocation of the Project's capacity through**
257 **the anchor tenant or open season process, can it still request capacity at a later**
258 **date?**

259 A. Yes. Any eligible customer can request service at any time. If firm service is not
260 available because the Project's capacity is fully subscribed, an eligible customer can
261 request non-firm service. Under the terms of the FERC pro forma OATT, Rock Island
262 must provide non-firm service to any eligible customer so long as the same capacity is
263 not being used by the holder of firm transmission rights. Because Rock Island anticipates
264 that a significant portion of its firm transmission service customers will be wind farms
265 and purchasers of energy from wind farms, non-firm service is likely to be available
266 much of the time. For example, if a wind farm connected to the Project purchases long-
267 term, firm service, it may only use 50% of the subscribed capacity on average due to the
268 variable nature of wind output. The balance of the subscribed capacity would be
269 available to any eligible customer requesting non-firm service. Consequently, there will
270 be meaningful opportunities for customers that do not receive an initial allocation of
271 capacity to purchase non-firm service on the Project. In addition, in the secondary
272 market I describe below, customers that do not receive an initial allocation of capacity
273 can purchase capacity from customers who do receive an initial allocation.

274 **Q. Will eligible customers that do not receive an initial allocation of capacity be able to**
275 **purchase transmission rights from customers that do receive an initial allocation?**

276 A. Yes. The Rock Island OATT, as administered by the RTO, will provide for the posting
277 of any available transmission capacity, including that held by the Project's transmission
278 customers. This will create a secondary market for the Project's transmission capacity.
279 Through this secondary market, customers who have contracted for capacity on the
280 Project will make their contracted capacity available to other transmission users, in whole
281 or in part, on a short-term or longer-term basis, and on a firm or non-firm (*i.e.*, the
282 capacity can be used by the secondary customer unless the primary customer uses it)
283 basis.

284 **Q. Can you please summarize the ways in which eligible customers will be able to**
285 **obtain transmission service on the Rock Island Clean Line?**

286 A. First, any eligible customer may request to negotiate a precedent agreement with Rock
287 Island for long-term, firm service during the anchor tenant process. Second, any eligible
288 customer may participate in the open season process and have an equal opportunity to
289 procure long-term, firm service. Third, if Rock Island does not sell all of its capacity
290 through the anchor tenant process and open season, any eligible customer may request the
291 remaining firm service under the Rock Island OATT. Fourth, upon the expiration or
292 termination of the initial transmission service contracts entered into during the anchor
293 tenant process and open season, any eligible customer may request the freed-up capacity
294 under the Rock Island OATT. Fifth, any eligible customer may request non-firm service
295 on Rock Island at any time, and Rock Island is obligated to grant these requests so long
296 as the capacity is not in use by firm transmission customers. Sixth, Rock Island will
297 create a secondary market for the Project's transmission capacity, in which holders of
298 capacity will be able to make their contracted capacity available to eligible customers.

299 **Q. Will all eligible customers, as defined by the pro forma OATT, have equal**
300 **opportunity to contract for capacity as anchor tenant customers, to contract for the**
301 **remaining capacity during the open season, and to participate in the secondary**
302 **market for transmission service on the Rock Island Project?**

303 A. Yes. This is an essential component of Rock Island's obligation and undertaking to
304 provide non-discriminatory open access transmission service. Of course, the prospective
305 customer must be able to satisfy generally applicable conditions of service that will be
306 stated in the tariff. Additionally, the total amount of customers that can be served and
307 transmission capacity that can be provided on a firm service basis will be limited by the
308 total capacity of the Project (although, as I have noted, non-firm service will be
309 available). Within those limitations, all eligible customers will have equal opportunity to
310 contract for transmission capacity and service.

311 **Q. How does Rock Island's obligation to serve all eligible customers compare to the**
312 **obligation to serve customers of traditional utilities?**

313 A. The applicable FERC rules and regulations regarding the provision of non-discriminatory
314 service to all customers apply both to merchant lines, like Rock Island, and to traditional,
315 cost-based, incumbent utilities. Rock Island is a merchant project because it is assuming
316 the market risk of the Project and does not have a process to recover its costs from
317 ratepayers, and therefore must sell capacity through negotiated contracts. As FERC
318 stated in its order on Rock Island's FERC Application, "Commission precedent
319 distinguishes merchant transmission projects from traditional public utilities in that the
320 developers of merchant projects assume all of the market risk of a project and have no
321 captive customers from which to recover the cost of the project." *Rock Island Clean Line*
322 *LLC*, 139 FERC ¶ 61,142 (2012), at P 1. Although it is a merchant project, Rock Island
323 is not released from the obligation to be an open access transmission provider that applies

324 to all transmission utilities under FERC's jurisdiction. Rock Island's OATT will be
325 substantially similar to the OATT of any FERC jurisdictional transmission provider, with
326 the exception of the rates which will be negotiated specifically for the Project.

327 Rock Island's anchor tenant process and open season process only govern the
328 initial allocation of firm capacity on the Project. Rock Island's ongoing obligations under
329 its OATT will be substantially identical to the obligations of a traditional utility. The
330 RTO that takes operational control of Rock Island's transmission facilities will also
331 administer Rock Island's open access obligations. That same RTO will administer the
332 open access obligations of its other member utilities that provide traditional, cost-based
333 service.

334 **Q. What types of entities do you anticipate will be transmission customers of the Rock**
335 **Island Project?**

336 A. We would expect that, for the most part, the transmission customers will fall into two
337 categories. The first category will be owners of generation resources located in the
338 Resource Area that will contract for transmission capacity to deliver the output of their
339 plants into the PJM transmission network at the Collins substation in northern Illinois.
340 This category of customer could be expected to have contracted with one or more
341 suppliers to the retail market (*e.g.*, a utility, such as Commonwealth Edison, or an ARES
342 or other competitive supplier) to purchase the generators' output. For example, a
343 generator could be awarded a contract through the annual procurement process run by the
344 Illinois Power Agency to supply a portion of Commonwealth Edison's requirements for
345 serving its eligible retail customers; or, the generator could have entered into one or more
346 contracts to supply electricity to one or more ARES, who will use the electricity to serve
347 its (their) retail customers. As another example, the generator could enter into contracts
348 with municipal electric utilities or with electric cooperatives to supply them with

electricity. The generator could also contract to supply its output to a wholesale power marketer that in turn will resell the electricity to an electric utility, an ARES or other competitive retail supplier, a municipal electric utility or a cooperative. In any of these examples, the electricity transported to northern Illinois by the Project would ultimately be sold to and used by thousands of individual retail electricity customers.

The second principal category of transmission customer that we would expect is 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 capacity to deliver to northern Illinois electricity that they purchase from generators located in the Resource Area. As with the first category of transmission customers, the electricity transmitted by the Project to northern Illinois would ultimately be sold and distributed to thousands of individual retail electricity customers.

Q. You previously stated that under the pro forma OATT, retail customers can be “eligible customers” for transmission service, but is it realistic to expect that retail customers would in fact be transmission customers of the Rock Island Project?

A. As a practical matter, residential and smaller non-residential customers will not be transmission customers of the Project, due to the size of transactions on the transmission grid and the customer sophistication required to engage in transmission transactions. However, in this respect, the Project is no different from any other transmission provider – residential and smaller non-residential customers do not directly contract for transmission service. Almost all transmission service is contracted for by large entities such as utilities, power marketers, retail electric suppliers and other large wholesale market participants. That said, it would not be surprising to have a larger retail customer contract directly for transmission capacity to facilitate its procurement of electricity from

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374 the Resource Area. Such a retail customer could be, for example, a large institutional
375 customer such as a university or a medical center complex, or a governmental entity,
376 which wishes to obtain a portion of its electric supply from renewable resources and
377 wishes to negotiate for and procure the renewable energy directly, rather than obtain the
378 electricity by purchasing it from an intermediary power marketer or retail electric
379 supplier.

380 **Q. You have mentioned that Rock Island's rates for transmission service will be subject**
381 **to FERC jurisdiction, but are there other activities of Rock Island, as a public**
382 **utility, and the Rock Island Project that will be regulated by the ICC?**

383 A. Yes. It is my understanding that the following activities of Rock Island and the Project
384 (and possibly other activities) will be subject to regulation by the ICC if Rock Island is
385 certificated as a public utility:

- 386 ● Contacts and negotiations with landowners in Illinois for right-of-way easements for
387 the transmission line. (83 Ill. Admin. Code Part 300.)
- 388 ● Construction of the transmission line in Illinois. (83 Ill. Admin. Code Part 305.)
- 389 ● Issuance of securities by Rock Island. (Section 6-102 of the Public Utilities Act.)
- 390 ● Contracts between Rock Island and affiliated interests relating to properties and
391 activities in Illinois. (Section 7-101 of the Public Utilities Act.)
- 392 ● Any "reorganization" (as defined in Section 7-204 of the Public Utilities Act) that
393 may occur for Rock Island or its parent company.
- 394 ● Maintaining financial accounts and filing annual reports with the Commission in
395 accordance with its requirements. (Sections 5-102 and 5-109 of the Public Utilities
396 Act.)
- 397 ● Reporting accidents to the Commission. (83 Ill. Admin. Code Part 220.)

398 **Q. Will the Rock Island Project be operated for public use in the transmission of**
399 **electricity?**

400 A. Yes. Rock Island is constructing and will operate the Project for public use for the
401 transmission of electricity. Rock Island is holding itself out to serve the public. As I

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described earlier in this testimony, any eligible customer (as defined by the FERC pro forma OATT) will be able to request service on Rock Island's facilities. Rock Island accepts regulation as a public utility by the ICC and is not attempting to structure its operations so as to avoid public utility status. Rock Island understands that the construction and operation of its Project should be regulated by the ICC because of the important service that the Project will be providing to the electricity-consuming public. The Rock Island Project will directly connect over 4,000 MW of generation to northern Illinois that would not otherwise be connected and is expected to deliver approximately 15 million MWh of electricity per year to northern Illinois. This amount of electricity is equal to the annual usage of approximately 1,400,000 homes. As I have described, the electricity transmitted over the Rock Island Project will be sold and distributed to thousands of individual retail customers in Illinois and other states. The Rock Island Project will transmit electricity for the use of the public. The public that will be served by the power transmitted by the Project from the Resource Area to northern Illinois will be retail customers in the footprints of the PJM and MISO RTOs. The Project is useful, advantageous and beneficial to the public in Illinois due to 1) the amount of electricity that the Project will deliver into northern Illinois, 2) the impacts of the transmission line and the generation connected to it on electricity prices and electricity market competition in Illinois (as I, along with Rock Island witnesses Gary Moland and Karl McDermott, described in direct testimony), and 3) the impacts of the Project on reliability and diversity of supply (as I, along with Rock Island witness Leonard Januzik, described in direct testimony).

The Project will contribute to meeting renewable portfolio standards ("RPSs") established in the Illinois statutes and statutes of other PJM states. These are important public policy initiatives enacted by the Illinois General Assembly and the legislatures of

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the other states. Although, as I explained earlier, Rock Island cannot deny service to any particular type of customer nor give a preference in allocating capacity and providing service to any particular type of customers, all or most of the generation connected to the Project in the Resource Area is expected to be wind generation facilities. As I showed in my direct testimony, the existing renewable generating resources in Illinois and other PJM states are insufficient to meet the aggregate RPS requirements of Illinois and other PJM states as they grow over time, as prescribed by the statutes. As I also described in my direct testimony, there is and should continue to be a public demand for electricity from renewable resources in addition to the demand that results from fulfilling the statutory RPS obligations. The Rock Island Project will be useful, beneficial and advantageous to the public in Illinois in meeting these demands.

Q. Have you compared the Rock Island Project to other projects for which the ICC has granted certificates of public convenience and necessity to entities whose facilities would be used to transmit electricity for the use of the public?

A. Yes. Although I have not conducted an exhaustive review of previous cases, there are several useful examples.

In Docket 01-0142, the ICC granted certificates of public convenience and necessity to operate as a public utility 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 (including public power entities), some of which were located in Illinois, and to ATC’s affiliate ATC Management, Inc. The Petition in that case recited that:

5. The Petitioners meet the definition of public utilities as set forth in the Act, Section 3-105. The Petitioners own, control, operate and manage, within this State, for public use, facilities used for the transmission of electricity. (Petition in Docket 01-0142 at ¶5.)

453 6. The Petitioners, as public utilities, are transmitting
454 electrical energy for use by the public. Pursuant to ATCLLC's
455 nondiscriminatory Open Access Transmission Tariff on file with the
456 Federal Energy Regulatory Commission, ATCLLC's eligible customers
457 include any retail customer taking unbundled transmission service
458 pursuant to a state requirement that a transmission provider offer the
459 transmission service. (Petition in Docket 01-0142 at ¶6).

460 7. Because the Petitioners' transmission lines are transmitting
461 power within Illinois to serve Illinois customers, it is in the public interest
462 that the Commission oversee certain aspects of the Petitioners' operations
463 as provided in the Public Utilities Act. Although many aspects of the
464 Petitioners' operations are within the jurisdiction of the Federal Energy
465 Regulatory Commission, other operations are subject to state supervision.
466 (Petition in Docket 01-0142 at ¶9).

467 The Petitioners' witness, Jeffrey Rauh, described the Petitioners' facilities in Illinois and
468 testified that "The transmission facilities owned by the companies transmit power for
469 public use." (Direct Testimony of Jeffrey Rauh in Docket 01-0142 at line 286.) The ICC
470 found that "The Petitioners' transmission lines are transmitting power within Illinois to
471 serve Illinois customers; therefore, it is in the public interest that the ICC oversee certain
472 aspects of the Petitioners' operations, especially, those operations that concern the
473 electrical lines in question;" and found that ATC and ATC Management fell within the
474 definition of a "public utility" as set forth in the Public Utilities Act. *American*
475 *Transmission Company, L.L.C. and ATC Management Inc.*, Docket 01-0142, Order
476 issued January 23, 2003, at 5.

477 In Docket 06-0179, the ICC granted certificates of public convenience and
478 necessity to Illinois Power Company and to a newly-formed entity, Ameren Illinois
479 Transmission Company ("Ameren Transco"), to construct three new 345 kV electric
480 transmission lines. The purpose of the three new transmission lines (referred to in the
481 Petition in that case as "the Project") was to enable electricity to be delivered from a
482 single generation source, the Prairie State Generating Company plant in Washington
483 County, Illinois, an independent power producer. The Prairie State plant and its output

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are jointly owned by eight cooperatives or municipal power entities in Illinois and other states and Peabody Energy. The Petition in Docket 06-0179 stated that the petitioners proposed to construct the new transmission lines “[i]n order to accommodate the Prairie State Facility,” *i.e.*, to transmit the output of a single generating plant. Petition in Docket 06-0179 at ¶3. The Petition recited that upon completion of the proposed transmission lines, “Ameren Transco will own, control, operate and manage, within this State, for public use, facilities for the transmission of electricity: *i.e.*, its share of the Project;” and that Ameren Transco “will be transmitting electricity for use by the public at rates, terms, and conditions subject to regulation by the FERC.” Petition at ¶5-6. The Petition further recited that “The Project will therefore allow the Prairie State Facility to connect to the transmission grid in a safe and reliable manner and will provide for reliable delivery of the plant’s output into the bulk electric system.” (Petition at ¶12). I note that in Docket 06-0179, ICC Staff objected to the issuance of a certificate to American Transco on grounds relating to its financial capabilities and the need for American Transco to participate as an owner of the Project for financing purposes, but did not contend that the requested certificate should not be granted because the three new transmission lines were being constructed to export power from a single generator’s facility into the bulk transmission grid and therefore were not for public use. The ICC found Ameren Transco to be a public utility and granted a certificate to Illinois Power Company and Ameren Transco for the construction, operation and maintenance of the three new 345 kV transmission lines. *Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company*, Docket 06-0179, Order issued May 16, 2007, at 41.

In Docket 06-0706, Illinois Power Company and Ameren Transco also requested certificates of public convenience and necessity, to construct, operate and maintain a new transmission line in the area of Ottawa, Illinois. The Petition stated that Ameren Transco

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509 “will be transmitting electricity for use by the public at rates, terms, and conditions
510 subject to regulation by the Federal Energy Regulatory Commission.” Petition in Docket
511 06-0706 at ¶2. The ICC found that Ameren Transco and its proposed transmission
512 activities satisfied the definition of a public utility and that Ameren Transco was a public
513 utility, and granted the certificates to build the proposed transmission line. *Illinois Power*
514 *Company d/b/a AmerenIP and Ameren Illinois Transmission Company*, Docket 06-0706,
515 Order on Reopening issued June 23, 2010, at 1 and 34-35.

516 Similar to the projects for which the ICC granted certificates in the cases
517 described above, Rock Island will be transmitting millions of MWh of electricity for use
518 by the public.

519 I also note that petroleum and natural gas pipelines frequently contract their finite
520 capacity in a similar manner to Rock Island’s plans, *i.e.*, by contracting with anchor
521 tenant customers for a portion of the transportation capacity and contracting the
522 remaining capacity to shippers using an open season process, with other shippers having
523 the opportunity to obtain service on the pipeline through secondary market transactions.
524 It is my understanding that in Illinois, to obtain a certificate as a “common carrier by
525 pipeline,” a pipeline owner must demonstrate that it owns, controls, operates or manages,
526 within Illinois, equipment, facilities or other property, or a franchise, permit, license or
527 right, used or to be used in connection with the conveyance of gas or any liquid other
528 than water “for the general public.”

529 **Q. Does this conclude your additional supplemental direct testimony?**

530 **A.** Yes, it does.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Transmission Company of Illinois	:	
	:	
Petition for a Certificate of Public	:	
Convenience and Necessity, pursuant to	:	
Section 8-406.1 of the Illinois Public Utilities	:	
Act, and an Order pursuant to Section 8-503	:	
of the Public Utilities Act, to Construct,	:	12-0598
Operate and Maintain a New High Voltage	:	
Electric Service Line and Related Facilities	:	
in the Counties of Adams, Brown, Cass,	:	
Champaign, Christian, Clark, Coles, Edgar,	:	
Fulton, Macon, Montgomery, Morgan,	:	
Moultrie, Pike, Sangamon, Schuyler, Scott	:	
and Shelby, Illinois.	:	

ORDER

DATED: August 20, 2013

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Transmission Company of Illinois	:	
	:	
Petition for a Certificate of Public	:	
Convenience and Necessity, pursuant to	:	
Section 8-406.1 of the Illinois Public Utilities	:	
Act, and an Order pursuant to Section 8-503	:	
of the Public Utilities Act, to Construct,	:	12-0598
Operate and Maintain a New High Voltage	:	
Electric Service Line and Related Facilities	:	
in the Counties of Adams, Brown, Cass,	:	
Champaign, Christian, Clark, Coles, Edgar,	:	
Fulton, Macon, Montgomery, Morgan,	:	
Moultrie, Pike, Sangamon, Schuyler, Scott	:	
and Shelby, Illinois.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On November 7, 2012, Ameren Transmission Company of Illinois ("ATXI") filed with the Illinois Commerce Commission ("Commission") a petition seeking a Certificate of Public Convenience and Necessity pursuant to Section 8-406.1 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., authorizing ATXI to construct, operate, and maintain new 345 kilovolt ("kV") electric transmission lines running generally across Illinois from Missouri to Indiana. Pursuant to Section 8-406.1(i), ATXI also seeks an order authorizing or directing the construction of the transmission lines pursuant to Section 8-503 of the Act. Petitioners do not at this time seek authority to take property under Section 8-509 of the Act.

Two months after the filing of the petition, ATXI realized that the landowner list attached to its initial filing omitted over 100 landowners. ATXI submitted the list of missing landowners in a January 7, 2013 filing. The Administrative Law Judges ("ALJs") ruled that the filing of the petition was complete on January 7, 2013 and used that date as the filing date for purposes of calculating the deadline under the expedited treatment provisions of Section 8-406.1(g). On January 24, 2013, the Commission affirmed the ALJs' action and extended the deadline an additional 75 days as permitted under Section 8-406.1(g). With the action taken by the Commission on January 24, 2013, the deadline in this matter became August 20, 2013.

Due to the lengths of the proposed transmission lines, the Commission's Chief Clerk sent notices of this proceeding to approximately 8,436 potentially affected landowners. Numerous entities and individuals filed petitions for leave to intervene. Rather than list the 80 intervenors here, Appendix A to this Order contains an alphabetized list of parties and any abbreviations that they may be known by elsewhere in this Order. Commission Staff ("Staff") participated in this proceeding as well.

Pursuant to due notice, several status hearings were held in this matter before duly authorized ALJs of the Commission at its offices in Springfield on December 3, 2012, January 17, 2013, March 1, 2013, and May 8, 2013. Evidentiary hearings were held on May 13, 14, 15, 16, and 17, 2013. At the evidentiary hearings, appearances were entered by counsel on behalf of several parties, as reflected in the transcript for each day of the hearings. Several intervening landowners represented themselves on a pro se basis as well. The record was marked "Heard and Taken" on July 3, 2013.

ATXI offered the testimony of Maureen Borkowski, President and Chief Executive Officer of ATXI and Senior Vice President of Transmission at Ameren Services Company ("Ameren Services"),¹ Ronald Dyslin, a Senior Consultant with Environmental Resources Management ("ERM"),² James Dwyer, a Certified Wildlife Biologist with EDM International, Inc.,³ Linda Erdreich, a Senior Managing Scientist at Exponent, Inc.,⁴ Rodney Frame, an affiliate with Analysis Group, Inc.,⁵ Jeffrey Hackman, Manager of Transmission Operations at Ameren Services, Darrell Hughes, a Supervisor of Valuation and Cost of Capital in the Corporate Finance Department of Ameren Services, Dennis Kramer, Manager of Transmission Policy and Planning at Ameren Services, Jerry Murbarger, a Transmission Design Specialist in the Transmission Lines Design Group for Ameren Services, Donell Murphy, a Partner with ERM, Julia Tims, Technical Director of Biodiversity and Ecosystem Services with ERM, and Rick Trelz, a Real Estate Supervisor for Ameren Services.

Staff submitted the testimony of Greg Rockrohr, a Senior Electrical Engineer in the Energy Engineering Program of the Safety and Reliability Division of the Commission's Bureau of Public Utilities. MISO offered the testimony of Jeffrey Webb, MISO's Senior Director of Expansion Planning. James Bates, the Business Manager for Local Union 51, IBEW, AFL-CIO, testified on behalf of IBEW. WOW called Michael Goggin, the Manager of Transmission Policy for the American Wind Energy Association, to testify.

Several intervening landowners and groups thereof offered testimony. Richard Ehrhart, part owner and Treasurer of N. Kohl Grocer ("NKG"), testified on its behalf. ACPO called the following landowners and tenant farmers to testify: Edward

¹ Ameren Services is the service company subsidiary of Ameren Corporation. Ameren Services provides various services to its affiliate Ameren operating utilities, including ATXI.

² ERM is a provider of environmental, health, safety, risk, and social consulting services.

³ EDM International, Inc. is a consulting firm assisting electric utility companies.

⁴ Exponent, Inc. is a scientific and engineering consulting firm.

⁵ Analysis Group, Inc. is a firm that provides microeconomic, strategy, and financial analyses.

Behrensmeyer, Greg Edwards, Eleanor Flesner, Keith Flesner, Larry Groce, Alex House, Stuart Kaiser, David Lewis, Melvin Loos, Brent Mast, Marvin Miller, John Peters, and Katherine Thomure. Landowner Loren Wiese testified on behalf of Wiese Farms in Brown and Pike Counties. To address its concerns in Fulton and Brown Counties, TNC offered the testimony of Douglas Blodgett, the Director of River Conservation for the Illinois Chapter of TNC, Jeff Walk, the Director of Conservation Science for TNC's Illinois Chapter, and Michael Patrick Ward, an Assistant Professor in the Department of Natural Resources and Environmental Sciences at the University of Illinois at Urbana-Champaign. Gerald Korsmeyer testified for the Korsmeyer Trust in Schuyler County. Landowners Paul Bergschneider, Kelly Dodsworth, and Stephen Rhea testified on behalf of MSSCLPG. Andrew Robinette, a homeowner in Morgan County, testified on his own behalf. FutureGen called Kenneth Humphreys, its Chief Executive Officer, to testify. Sangamon County property owners Gregory and Theresa Pearce offered testimony on their own behalf. Leon Corzine, an owner of land in Macon and Shelby Counties, testified on his behalf. Gan Properties called its manager, Kenneth Skolnik, to testify. Landowners Larry and Ginger Durbin and landowner and Rose Township Supervisor Joseph Woodall offered testimony for Shelby LG. Moultrie PO called as witnesses James Dauphinais, a Managing Principle of Brubaker & Associates, Inc. ("BAI")⁶, Robert Fischer, a First Officer for Corporate Aircraft Maintenance, Inc., Rudolph Reinecke, Vice President and Project Manager for the environmental consulting firm Integrated Environmental Solutions, LLC, and Greg Sanders, a landowner in Moultrie County. Mary Burns, a Piatt County landowner, Dave Hrupsa, owner of the Tuscola Airport, and Howard Kamm, a Douglas County landowner, testified on behalf of the PDM Coalition. Bruce Daily, a Coles County landowner, testified on behalf of Coles and Moultrie LI. Barbara File, a partner in Brock-Jones, offered testimony on behalf of the partnership. Mike Popham, Ron Popham, and Scott Weber, Coles County landowners, testified for Coles LO. Richard Copeland of Coles County testified on behalf of the Copeland Family. John Reed testified on his own behalf concerning his aerial application business in Coles County. Tarble, which consists of member companies Charleston Stone Company in Coles County, Quality Lime Company in Clark County, and Van Tarble & Sons, LLC in Clark County, offered the testimony of Jerald Tarble, President of Charleston Stone Company, President of Quality Lime Company, and Manager of Van Tarble & Sons, LLC. Donna Allen, a Clark County landowner, testified on her own behalf. Clark and Edgar CC called George Orin, a Clark County landowner, to testify. Paul Thrift, a landowner in Edgar County, testified on his own behalf. In addition, Paul Mixon, the Director of the Electrical Engineering Program at the College of Engineering at Arkansas State University, testified on behalf of Edgar Intervenors, John Thompson, and Paul Thrift. JDL offered the testimony of Lori Spangler, one of its co-owners in Clark County, and Charles Ellis, an electrical engineer with the consulting firm D.L. Markley & Associates. Stop Coalition offered the testimony of Perry Baird, co-trustee of a revocable land trust in Clark County, David Bush, professional engineer and land surveyor, and Peggy Dix Mills, Margaret Sue Snedeker, and Laura TeGrotenhuis, three landowners in Clark County. Magdi Ragheb testified on behalf of the Ragheb family. Michael Lockwood, a landowner in Champaign County, testified on his own behalf. Mark Dixon, the Director

⁶ BAI provides energy, economic, and regulatory consulting services.

of Real Estate of the Commercial and Industrial Divisions of The Atkins Group, Bruce Knight, the City of Champaign Planning Director, and William Smith, a Village of Savoy trustee, each testified on behalf of Champaign and Savoy. Colfax-Scott LPG called Carl Bitler, John Boland, and Deborah Klein, each a landowner in Champaign County, to testify. Appendix B to this Order contains a list of witnesses grouped by party.

ACPO, ATXI, Brock-Jones, Clark and Edgar CC, Colfax-Scott LPG, Mr. Corzine, the Durbins, Farm Bureau, Gan Properties, Korsmeyer Trust, MH Construction, MISO, Moultrie PO, MSCLTF, MSSCLPG, NKG, PDM Coalition, the Pearces, the Raghebs, the Ruholls, Staff, TNC, and WOW each filed an Initial Brief. ACPO, ATXI, Brock-Jones, Clark and Edgar CC, Colfax-Scott LPG, Farm Bureau, FutureGen, Gan Properties, Korsmeyer Trust, MISO, Moultrie PO, MSSCLPG, PDM Coalition, the Raghebs, the Ruholls, Staff, and WOW each filed a Reply Brief. Champaign and Savoy filed a joint Initial Brief and joint Reply Brief. Coles and Moultrie LI, Coles LO, JDL, Mr. Reed, Stop Coalition, and Tarble filed a joint Initial Brief. Coles LO, JDL, Mr. Reed, Stop Coalition, and Tarble filed a joint Reply Brief. Edgar Intervenors, Mr. Thompson, and Mr. Thrift filed a joint Initial Brief. Mr. Ramey and Ms. Raynolds filed a joint Initial Brief. A Proposed Order was served on the parties. ACPO, ATXI, MISO, Moultrie PO, MSSCLPG, PDM Coalition, Staff, and WOW each filed a Brief on Exceptions. Champaign and Savoy filed a joint Brief on Exceptions. JDL, Stop Coalition, and Tarble filed a joint Brief on Exceptions as well. The Briefs on Exceptions have been considered in the preparation of this Order. The schedule in this matter did not permit the filing of Briefs in Reply to Exceptions.

Pursuant to Section 2-107 of the Act, the Commission must accept from Illinois residents' comments on matters before the Commission through its website and toll-free telephone number. The Commission has received approximately 285 such comments. The Commission has considered these comments to the extent allowed by law.

II. DESCRIPTION OF ATXI AND THE PROJECT

ATXI was formerly known as Ameren Illinois Transmission Company. ATXI is an Illinois corporation with one employee and a wholly-owned subsidiary of Ameren Corporation. ATXI owns, operates, controls, and manages within Illinois certain transmission facilities for the furnishing or delivery of electricity, and is therefore a public utility within the meaning of Section 3-105 of the Act.

The transmission project that ATXI seeks to construct consists primarily of a new 345 kV transmission line spanning from the Mississippi River near Quincy, Illinois to the Indiana border near Terre Haute, Indiana. This primary portion of the project runs through parts of Adams, Brown, Christian, Clark, Coles, Edgar, Macon, Montgomery, Morgan, Moultrie, Pike, Sangamon, Scott, and Shelby Counties. Another significant portion of the project is a new 345 kV transmission line that runs from Ipava, Illinois to Meredosia, Illinois where it connects with the previously described transmission line. The Ipava to Meredosia segment runs through parts of Brown, Cass, Fulton, Morgan, and Schuyler Counties. The third significant segment of the project wraps around the

West and South sides of Champaign in Champaign County. This 345 kV transmission line terminates at Rising, Illinois on one end and at Sidney, Illinois on the other end. This part of the project is not connected to any other part of the project. ATXI refers to the portions of this project collectively as the Illinois Rivers Project, the planning for which began in 2006, if not earlier.

The Illinois Rivers Project consists of approximately 375 miles of new 345 kV transmission lines, nine new or expanded substations, and six 345/138 kV transformers. In accordance with Section 8-406.1(a)(1)(B)(viii), ATXI has identified a "Primary Route" and an "Alternate Route." Both routes necessitate a permanent 150 feet wide right-of-way easement. The total easement area for the Primary Route contains approximately 6,800 acres. The total easement area for the Alternate Route contains approximately 7,100 acres. The majority of the easement area will only have over-hanging wires. The construction of single shaft steel poles with no permanent "down guys" or anchors will reduce the amount of land removed from use. In addition, ATXI represents that it plans to place the structures near or adjacent to existing property lines or use lines (i.e. agricultural field lines). ATXI anticipates that the Primary Route will cost approximately \$1,091,600,000 to construct while the Alternate Route will cost approximately \$1,167,500,000. Other parties that have intervened in this proceeding have proposed alternative routes. The project will be placed in service over several years, with the earliest in-service dates expected in 2016 and the final portion of the project to be placed in-service by the end of 2019.

ATXI asserts that the proposed transmission lines and associated facilities are necessary in order to provide adequate, reliable, and efficient service to consumers. The Illinois Rivers Project is also, ATXI contends, the least cost means of satisfying the service needs of transmission customers within the MISO footprint. ATXI states that the Illinois Rivers Project represents four of six projects in Illinois that the MISO Board of Directors approved in December of 2011 as part of its Multi-Value Project ("MVP") Portfolio. MISO identifies the four projects as: 1) Palmyra Tap-Quincy-Meredosia-Ipava and Meredosia-Pawnee, 2) Pawnee-Pana, 3) Pana-Mt. Zion-Kansas-Sugar Creek, and 4) Sidney-Rising. The municipality names represent the locations of substations. ATXI adds that these four projects will enable the reliable delivery of renewable energy, including wind power, within the MISO footprint.

III. APPLICABLE STATUTORY AUTHORITY

The expedited consideration provided for in Section 8-406.1 of the Act is available only to public utilities seeking to construct a new high voltage electric service line and related facilities. Section 8-406.1(a) sets forth in detail the information required to be filed in support of the application. The statute further provides:

- (f) The Commission shall, after notice and hearing, grant a certificate of public convenience and necessity filed in accordance with the requirements of this Section if, based upon the application filed with the Commission and the evidentiary record, it finds the Project will

promote the public convenience and necessity and that all of the following criteria are satisfied:

- (1) That the Project is necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least-cost means of satisfying the service needs of the public utility's customers or that the Project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives.
- (2) That the public utility 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.
- (3) That the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

As referenced above, Section 8-406.1(g) states:

- (g) The Commission shall issue its decision with findings of fact and conclusions of law granting or denying the application no later than 150 days after the application is filed. The Commission may extend the 150-day deadline upon notice by an additional 75 days if, on or before the 30th day after the filing of the application, the Commission finds that good cause exists to extend the 150-day period.

In addition, the statute requires that a decision granting a certificate under Section 8-406.1 shall include an order pursuant to Section 8-503 of the Act:

- (i) Notwithstanding any other provisions of this Act, a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order.

Section 8-503 of the Act concerns, among other things, additions to or extensions of public utility facilities. This section 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. PROPRIETY OF THE PETITION

Section 8-406.1 of the Act became effective on July 28, 2010 with the adoption of Public Act 96-1348. The revisions to the Act contained in Public Act 96-1348 were made at the urging Ameren Corporation. In its sole discretion, ATXI has chosen to avail itself of the procedures in Section 8-406.1 to obtain expedited consideration of its Illinois Rivers Project. The Illinois Rivers Project, if not the largest, is one of the largest transmission line construction projects proposed in Illinois within the last few decades. As noted above, this project spans 375 miles and has affected at least 8,436 landowners.

Given the scope of this project, the Commission questions ATXI's exercise of its discretion to seek expedited review. From their respective Initial Briefs, the Farm Bureau and Raghebs apparently share this concern. The Farm Bureau in particular is troubled by the schedule in this matter and questions to what extent due process has been provided. Any projects affecting landowners' rights must be given careful and complete consideration. This is particularly so when the impact can not be easily reversed, as is the case once a high voltage electric transmission line is constructed. The Commission acknowledges ATXI's efforts at public engagement, which include the creation of a dedicated Illinois Rivers Project website and holding numerous public meetings generally along the route of the proposed facilities. Nevertheless, the sheer size of this project calls into question how well any entity can anticipate, identify, and address the many facets that are inherent to such a project. ATXI's own experience in this proceeding provides several examples of the problems and concerns that may arise.

The earliest of ATXI's problems relate to the lists of potentially affected landowners it filed on November 7, 2012. The lists of potentially affected landowners, municipalities, and nearby utilities contained numerous errors and redundancies which required the Chief Clerk's Office to spend considerable time reviewing the lists to ensure that they were accurate and usable. At least two weeks under the expedited schedule were lost before notice of the prehearing conference could be sent. Two months later ATXI realized that it neglected to send a complete list of landowners with its initial filing. The only blessing associated with this shortcoming in ATXI's filing is that due process required the Commission to extend the deadline to provide the newly notified landowners some semblance of an opportunity to respond.

So that it has meaningful options to consider when confronted with landowners' objections to the construction of a transmission line on or near their property, the Commission typically provides landowners an opportunity to identify alternative routes for the transmission line. But whereas ATXI has had at least seven years to prepare the massive Illinois Rivers Project and file it at a time of its choosing, the expedited schedule in this proceeding only afforded landowners less than three weeks to identify alternative routes and those that own the impacted land. The Commission knows from numerous utility facility siting dockets that many factors must be considered in selecting facility routes. To what degree landowners were able to satisfactorily consider such factors in preparing their alternate routes is unknown.

ATXI had the opportunity to reduce the burden of this proceeding when presented with the ALJs' December 12, 2012 ruling. The ALJs inquired as to whether ATXI would be willing to withdraw the Ipava to Meredosia segment and/or the Sidney to Rising segment from this docket. ATXI declined with regard to both segments. Generally, ATXI asserted in its December 19, 2012 response that because the four components of the Illinois Rivers Project were simultaneously considered by MISO as part of its MVP Portfolio, the four components must remain together. According to the "MISO Transmission Expansion Plan 2011," dated December 19, 2011, MISO considered the components four separate projects within a portfolio of multiple projects. ATXI added that withdrawing any segment would jeopardize its 2016 in-service date. ATXI also expressed concern about having to repeat the statutorily required notices and public meetings if it withdrew either segment and re-filed as another docket. Such explanations by ATXI, however, do not resolve the Commission's confusion as to why after at least seven years of planning, ATXI now insists that these four components of the Illinois Rivers Project benefit from a sense of urgency. Nor does the Commission take well ATXI's suggestion that its hands are tied now because of its own earlier decision to submit the four components in the same petition. The expenditure of resources by ATXI to implement its decisions does not somehow justify the decisions and in and of itself preclude other courses of action on its part.

On May 3, 2013, the ALJs presented ATXI with another opportunity to lessen the burden of this proceeding. On that date, the ALJs noted the volume of testimony received and number of routes under consideration and inquired whether ATXI would be willing to withdraw its request for expedited consideration, thereby eliminating the need for haste in resolving this matter. Rather than consider amending its petition as a request under Section 8-406 (or some other option where areas without alleged reliability concerns were given more time), ATXI's May 7, 2013 response to the ALJs' inquiry questioned the legality and practicality of withdrawing its desire for expedited consideration. ATXI also asserted that the number of routes was manageable in light of stipulations that it has entered into with various individuals and groups. The Commission acknowledges that ATXI has entered into seven stipulations, but this fact does not alleviate the Commission's concerns. Given that the alternative routes proposed by intervenors were identified in a matter of weeks, the Commission has no assurance that as of yet unidentified shortcomings in these hastily developed routes will not later emerge if adopted under one of the stipulations. The facts of Docket No. 06-

0706, which also involved ATXI under its prior name, offer an example of problems that arose under a stipulation involving ATXI's own alternate route. The fact that the routes ATXI developed for this proceeding on its own schedule appear to have shortcomings does not provide the Commission with any confidence in the decision to expedite the Illinois Rivers Project.

Such shortcomings in ATXI's own routes and analysis became apparent during the evidentiary hearing. ATXI witness Murphy testified at the hearing that in some areas of the ATXI primary and alternate routes only aerial surveillance was done. (Tr. 745) Ms. Murphy also reported that "we conservatively assumed that any building that appeared to be a residence was, in fact, an occupied residence." (Tr. at 753, see also Tr. at 784-785) She acknowledges that ATXI did not confirm from the ground the occupancy of any building. (Tr. at 754) This assumption disturbs the Farm Bureau, ACPO, and Raghebs, who believe such practices call into question ATXI's credibility. The risk with such an assumption was revealed when ATXI cross-examined Mr. Corzine regarding his alternative route proposal along U.S. Route 51 in Shelby and Macon Counties. Utilizing a map projected on a screen, counsel for ATXI asked Mr. Corzine about several structures along Route 51 that ATXI understood from satellite imagery to be residences. Mr. Corzine testified that several of the structures were not residences but in fact were various farm buildings or commercial enterprises. (see generally Tr. at 328-335) Because the number of occupied residences along the various proposed routes is a factor in determining the suitability of each route, it is easy to see how such assumptions by ATXI can lead to errors in choosing a route. How many other ATXI assumptions about its routes and those proposed by intervenors are incorrect is not known.

Had ATXI chosen to file under Section 8-406, rather than Section 8-406.1, more time would exist to investigate potential shortcomings in ATXI's analysis. Perhaps Staff witness Rockrohr expresses the Commission's concerns best when asked if he believes the schedule for this proceeding allows for development of a complete and thorough record upon which the Commission can base its decision. Mr. Rockrohr responded as follows:

No, but I understand that the schedule in this docket is dictated by Section 8-406.1 of the Act, and it is my belief that a record that is as complete as possible will be developed. All parties appear to be working diligently to provide each other and the Commission with the best information they can within the schedule for this docket. However, due to the length of ATXI's proposed Project, and the number of interveners submitting proposals, some information about potential routes will not be thoroughly addressed in the record. My point is simply that more time for discovery and development of alternative route proposals might have led to different proposals and conclusions that are not included in the record of evidence. (Staff Ex. 1.0R at 54-55)

The Commission expects that parties will have done their best in the limited time available to respond to ATXI's proposal. But, as Mr. Rockrohr suggests, the Commission is troubled by the very real possibility that the expedited schedule for considering such a massive project may result in less than optimal outcomes. Alternatives may be overlooked and shortcomings may be missed. Granting a certificate under this Section of the Act, for a project of this size and magnitude, is an issue of first impression for the Commission and one which involves hundreds of landowners in Illinois, a tremendous amount of investment and a significant amount of land. The Commission takes its responsibility to review this application with great seriousness and does not arrive at its decision lightly. Regardless of ATXI's motivation or the merits of the decision to file under Section 8-406.1, ATXI has exercised its legal discretion to do so. The Commission must follow the directives set forth by the General Assembly in this Section of the Act, so we will make every effort to weigh the evidence that is before us and make the best decisions possible in light of the record.

V. NEED FOR THE PROPOSED FACILITIES AND DEVELOPMENT OF A COMPETITIVE ELECTRICITY MARKET

As indicated above, among the criteria that must be evaluated in determining whether to grant a certificate under Section 8-406.1 is whether the proposed construction (1) is necessary to provide adequate, reliable, and efficient service to customers and is the least-cost means of satisfying customers' service needs or (2) 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. ATXI believes that the Illinois Rivers Project satisfies both criteria. Virtually all parties agree that some form of this project is necessary.

ATXI witness Kramer testifies that the project came into being as part of a regional solution to the regional needs of the electric grid. In December of 2011, the MISO Board of Directors approved several projects slated for development across the MISO footprint. The regional MVP Portfolio of projects provides additional connectivity across the grid, reducing congestion, and enabling access to a broader array of resources by load in Illinois and elsewhere. ATXI asserts that the methodology employed by MISO to evaluate and identify MVPs has been approved by the Federal Energy Regulatory Commission ("FERC") because it is an important step in facilitating investment in new transmission facilities to integrate large amounts of location-restrained resources, including renewable generation resources, to further support documented energy policy mandates or laws, reduce congestion, and accommodate new or growing loads.

MISO witness Webb explains that the Illinois Rivers Project was developed through a multi-year MISO planning process that began with the Regional Generation Outlet Study ("RGOS") in 2008. The goal of the RGOS was to create a regional transmission plan that would enable states within the MISO region to meet relevant renewable portfolio standards ("RPS") at the lowest delivered wholesale energy cost. The RGOS was the first step in a very lengthy and detailed analysis of the transmission

system that eventually led to the determination that the transmission lines identified as MVPs (including the Illinois Rivers Project) are necessary. Mr. Webb reports that the goal of this analysis was to design a transmission portfolio which takes advantage of the linkages between local and regional reliability and economic benefits to promote a competitive and efficient electric market within MISO. The portfolio was developed using reliability and economic analyses, applying several future scenarios to determine the robustness of the designed portfolio under a number of potential energy policies.

Mr. Webb testifies that the MVP study process ultimately determined that a 345 kV path was required through central Illinois. Only Dr. Ragheb, testifying on behalf of his family as landowners, disputes this conclusion, claiming generally that the Illinois Rivers Project is undersized, is being rushed to market, and failed to adequately consider other alternatives. Dr. Ragheb, however, still acknowledges support for the development of renewable energy resources, particularly wind resources in the Midwest, and that adequately designed transmission lines are needed to effectively dispatch the electricity from the generation location to consumers. In particular, Dr. Ragheb advocates constructing a line using high voltage direct current ("HVDC") technology or a 765 kV alternating current ("AC") transmission line instead of a 345 kV AC line. Overall, Dr. Ragheb recommends developing a national transmission plan that spans multiple regional transmission organizations utilizing the most efficient least-cost technology available. He also laments that MISO's complete analyses underlying ATXI's proposal is not in the record. According to ATXI and MISO, the MISO MVP development process considered the ideas raised by Dr. Ragheb. Mr. Kramer testifies that HVDC was ultimately not adopted, and a 765 kV line was only selected for a portion of the MVP Portfolio where it was the most appropriate solution. In any event, ATXI suggests that the Ragheb family is primarily concerned with the location of any transmission line. (See Tr. at 688-689)

Mr. Kramer indicates further that during the MVP studies ATXI identified potential transmission expansions that were consistent with the regional needs and would also provide reliability benefits to Ameren Illinois Company ("AIC") customers. The Illinois MVPs were then designed to achieve these reliability goals while still providing the overall benefits of the MVP Portfolio. For the benefits of the Illinois Rivers Project to be realized, the project must connect to the existing AIC system and deliver energy to the load. Mr. Kramer states that this resulted in the selection of certain substation locations as "drop off" points for the Illinois MVPs, at which the MVPs could connect to the existing AIC 138 kV system and thereby provide the needed reliability benefits. ATXI states that the substations selected provide access to numerous 138 kV lines which distribute the energy throughout Illinois. With such interconnections, ATXI concluded that the Illinois Rivers Project eliminates the projected exposure to several post contingency overloads, and eliminates the projected exposure to low voltages and potential voltage collapse from several double contingency scenarios.

With specific regard to the development of an efficient and effectively competitive electricity market, ATXI contends that the Illinois Rivers Project will satisfy this criterion in several ways. In general, ATXI states that it will allow greater amounts of low-cost

wind energy resources to reach Illinois consumers, which will lower the costs for meeting Illinois consumers' needs for electricity and renewable energy. If the Illinois Rivers Project is not constructed, Mr. Kramer testifies that approximately 34% of the existing and planned wind development within the MISO portion of Illinois would need to be curtailed in order to maintain reliable system loading levels. He asserts that the project will ensure that the transmission system continues to operate reliably while delivering the required levels of renewable energy. In addition, the Illinois Rivers Project provides additional connectivity across the grid, reducing congestion and enabling access to a broader array of resources by loads in Illinois and elsewhere. MISO analyses indicate that the MVP Portfolio will produce an estimated \$12.4 to \$40.9 billion in present value adjusted production cost benefits to the aggregate MISO footprint under existing energy policies. Under additional possible futures, MISO calculates that this benefit increases to a maximum present value of \$91.7 billion. Additional benefits include reductions in operating reserve requirements, planning reserve margin requirements, transmission system losses, capital costs of renewable resources, and deferrals of transmission investments. These additional factors contribute between \$3.1 billion and \$8.2 billion in additional present value of benefits above the production cost savings. ATXI maintains that the MVP Portfolio, including the Illinois Rivers Project, represents the overall best solution for delivering these improvements, when considering generation, transmission, and other factors based on the expected future conditions.

As for whether the Illinois Rivers Project is necessary to provide adequate, reliable, and efficient service to customers and is the least-cost means of satisfying customers' service needs, ATXI relies on the MISO and Ameren Services reliability analysis of the ATXI and AIC transmission systems during the MISO MVP study process. In the planning process Ameren Services identified reliability concerns that could potentially be addressed by the Illinois Rivers Project when it is fully implemented and integrated into the AIC system as well as connected to the 345 kV transmission systems in Missouri and Indiana. Ameren Services utilized its knowledge of load and generation locations as well as the transmission system topology in attempting to maximize the reliability benefits provided by the Illinois Rivers Project. Specifically, as a result of an analysis of several scenarios, ATXI determined that, when fully integrated into the transmission system, the project will address a number of North American Electric Reliability Corporation ("NERC") Category B and Category C violations while delivering renewable energy necessary to meet State RPS. Mr. Kramer also states that the project will also provide local voltage support to Quincy, Meredosia, Pawnee, Pana, Decatur, and Champaign area loads and will reduce the exposure to dropping significant amounts of load for certain outage conditions during periods of high load demand. Mr. Kramer testifies that the Illinois Rivers Project will in total address approximately 50 NERC Category B and 118 Category C violations projected at 2021 load levels. He adds that the project represents the first significant system upgrades within the area in more than 20 years.

As for costs, ATXI contends that the Illinois Rivers Project represents the "least-cost" means of satisfying these reliability concerns. As part of its evaluation process,

MISO investigated alternative designs for the project. ATXI asserts that these alternatives were rejected because they did not mitigate all reliability concerns, required longer and more costly rights-of-way, traversed more populated areas, or resulted in imprudent use of local lower-voltage facilities. ATXI also points out that the project costs will be spread across the entire MISO footprint so that MISO Illinois customers would bear approximately 9% of the total cost, whereas costs for correcting each of the identified reliability issues in piecemeal projects would be borne exclusively by AIC area ratepayers. If the Illinois Rivers Project was not constructed, ATXI states that the reliability issues identified above would ultimately have to be addressed by the development and construction of other new transmission projects. In other words, ATXI believes that construction of the project will allow it to avoid the need to construct some reliability projects in the future. ATXI identified at least seven potential projects, costing an estimated \$613 million that could be required by 2022 if the Illinois Rivers Project is not constructed. ATXI adds that the alternative projects would be needed to address local reliability issues and therefore could be classified as Baseline Reliability Projects, whose cost would be allocated entirely to AIC area customers.

Staff generally concurs with ATXI's and MISO's analyses of the need for and benefits of the proposed facilities. Of the projects that ATXI might undertake, the Illinois Rivers Project appears to Staff to be a superior approach, as it addresses needs within MISO's entire operating region, and not only needs within Illinois. Since costs for the Illinois Rivers Project would be spread across the entire MISO footprint, Staff concurs that Illinois customers would bear approximately 9% of the cost. In contrast, Staff observes, costs for correcting local reliability and voltage issues with separate projects in a piecemeal fashion might be born exclusively by ratepayers within the AIC footprint.

WOW also supports a finding by the Commission that the Illinois Rivers Project is necessary and promotes development of an effectively competitive electricity market. WOW discusses how additional transmission resources will facilitate lower costs and help states meet RPS. The manner of cost allocation for the project is viewed favorably by WOW as well. WOW objects to the Raghebs' suggestion that additional quantitative data should be evaluated before determining the type, size, and routing of transmission facilities. WOW asserts that under Section 8-406.1, the Commission is to review new high voltage electric service lines for compliance with the stated standards; the statute does not require the Commission to consider all potential permutations, nor to act as a transmission planning commission. WOW states further that MISO looked at a number of lines as part of the MVP analysis, including 765 kV lines. In its analysis of the MVPs, WOW continues, MISO found that 765 kV lines were less suitable than 345 kV lines for the stated purpose for which the MVP portfolio was created and designed to meet.

The only party objecting to a finding that a portion of the Illinois Rivers Project is necessary is Clark and Edgar CC. Clark and Edgar CC understandably limits its comments to that portion of the project between Kansas, Illinois and Indiana in Clark and Edgar Counties, where its members live and own property. Clark and Edgar CC observes that at the time of the evidentiary hearing, there was no pending proceeding in Indiana to continue the transmission line into that State. With this in mind and its

understanding that the residents of Clark and Edgar Counties do not need a 345 kV transmission line to keep the lights on in their homes, businesses, and farms, Clark and Edgar CC question whether the proposed line segment from Kansas to the Indiana state line is necessary at this time. In light of this view, Clark and Edgar CC suggests that the Commission find that there is no present need for these facilities in the Clark County and Edgar County area, and deny ATXI's request as it relates to this area. ATXI insists, however, that regional needs will be provided for with this segment of the line.

The Commission has considered the parties' positions on whether the Illinois Rivers Project is necessary to provide adequate, reliable, and efficient service to ATXI's (and AIC's) customers and/or will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. Overall, based on the analyses presented by ATXI and MISO, the Commission agrees 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. With regard to Dr. Ragheb's concerns, the Commission concurs with his view that facilities must be sized with future needs in mind, particularly those associated with the transmission of renewable energy. The Commission also recognizes that HVDC transmission lines are more efficient than HVAC lines and ought to be considered for longer lines. The existing record, however, provides no grounds for the Commission to generally find that the Illinois Rivers Project is not the best approach to meet the needs at hand. As for Clark and Edgar CC's concerns, the Commission is satisfied that the subject transmission line will in fact extend into Indiana. Moreover, even if Clark and Edgar Counties are not in immediate need of additional transmission capacity, the Commission finds that the electric grid that they are a part of will benefit from the improvements brought by the Illinois Rivers Project. The Commission therefore generally concludes 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). Whether specific aspects of the project, such as the choice of particular routes and construction of particular substations, are appropriate and/or necessary will be resolved below.

VI. LEAST-COST AND THE PROPOSED LINE ROUTES

Section 8-406.1(f)(1) of the Act requires any project proposed thereunder to be the least-cost means of satisfying the identified objectives. Although overall the need to construct the transmission lines is not questioned, where to construct them has been heavily contested. Resolving the question of least-cost involves a comprehensive consideration and balancing of the overall costs and externalities of each proposed route against the benefits of each proposed route. The costs and externalities include not only the financial tally for manpower and equipment, but also the impact on local residents and resources and present and future land uses. In past Section 8-406 proceedings, this Commission has utilized 12 criteria for purposes of evaluating proposed routes. (See Docket No. 06-0706 Order on Reopening) The 12 criteria are as follows:

1. Length of the line
2. Difficulty and cost of construction
3. Difficulty and cost of operation and maintenance
4. Environmental impacts
5. Impacts on historical resources
6. Social and land use impacts
7. Number of affected landowners and other stakeholders
8. Proximity to homes and other structures
9. Proximity to existing and planned development
10. Community acceptance
11. Visual impact
12. Presence of existing corridors

(Id. at 6-7)

As was noted in that proceeding, the Commission's decision will result from a balancing of these 12 criteria to the extent that they are relevant to the proposed facilities and any other relevant criteria presented by the parties, and none is inherently more important than the next. (Id.) The various proposed routes warrant serious consideration by the Commission. To facilitate this undertaking, the Illinois Rivers Project will be evaluated as separate segments demarcated by existing and proposed substation sites.

In addition, the Commission understands from ATXI's witnesses that configuring transmission lines in particular ways can limit or mitigate the associated aura and electromagnetic fields ("EMF"). Some of the intervenors expressed concerns about these externalities. Regardless of which routes are chosen, the Commission expects ATXI to construct the facilities in such a way so as to minimize these externalities.

A. Mississippi River – Quincy

1. ATXI Position

For this portion of the project, ATXI recommends its Alternate Route, with a slight modification as the transmission line enters the Southeast Quincy Substation, in accordance with the stipulation it entered into with intervenors NKG and Matt Holtmeyer Construction ("MHC"). This "Stipulated Route" is shown in orange on ATXI Ex. 13.2 and highlighted on Figure 1, and was designated ATXI's "Rebuttal Recommended Route" in rebuttal testimony. ATXI notes that all intervenors interested in this portion of the project support the Stipulated Route. Therefore, ATXI recommends that it be the approved route.

ATXI states that the table below illustrates the support for the routes proposed for this portion of project, as reflected in the parties' respective Initial Briefs:

RIVER - QUINCY				
Route	Stipulated Route	ATXI Primary Route	ATXI Alternate Route	NKG 2
Parties Recommending Approval	ATXI, MHC, NKG, ACPO (Brent Mast)	None	None	Staff

ATXI notes that only Staff witness Rockrohr expressed support for another route – NKG’s Secondary Alternate Route (NKG Route 2). ATXI notes that a portion of that route is incorporated into the Stipulated Route. Although cost estimates prepared by ATXI at Mr. Rockrohr’s request indicate that NKG’s Route 2 has a lower projected baseline cost than the Stipulated Route, ATXI notes that the NKG Route 2 will likely require the transmission line to cross an existing transmission line at least two times to avoid displacing residences, may pose problems with respect to right-of-way width near State Route 57, and may pose reliability issues because it would be located on adjoining rights-of-way (or, according to NKG, on double-circuit structures). Alleviation of these concerns could increase the cost of the route; therefore, ATXI suggests that the Stipulated Route is the best option for this portion of the Project.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

ATXI indicates that the following table represents the length and cost of each proposed route for this segment of the line.

	Stipulated Route	ATXI Primary Route	ATXI Alternate Route	NKG Second Alternate Route
Estimated Length in Miles	< 6.2	5.3	6.2	4.8
Estimated Baseline Cost	\$22,397,000	\$20,385,000	\$22,747,000	\$19,316,000

ATXI claims there is no record evidence the Stipulated Route would be more difficult or costly to operate and maintain relative to the other routes proposed. In contrast, ATXI explains that NKG Route 2 likely would be more difficult and more costly to operate and maintain than the Stipulated Route because the line would cross existing facilities in two places, increasing reliability concerns, and because parallel or double circuit towers may be needed, requiring additional vegetation management and maintenance.

b. Impacts on Environmental and Historical Resources

ATXI states that there is no record evidence to indicate the potential environmental impacts resulting from construction of the Stipulated Route would be greater than those resulting from the other proposed routes. Rather, ATXI believes the

evidence suggests the Stipulated Route will have minimal environmental impacts, and notes that such impacts will occur regardless of the route approved by the Commission, in any event. As for historical resources, ATXI believes that there are no known archaeological sites or historic resources within immediate proximity to the Stipulated Route, and suggests that no evidence has been put forth in the record contrary to that belief.

c. Social and Land use Impacts

ATXI believes that the Stipulated Route reflects an optimum location for the transmission line in that it would limit social and land use impacts, while ATXI's Primary Route would similarly limit social and land use impacts. Although NKG witness Ehrhart testifies ATXI's Primary Route would make development of his property difficult, should the Commission approve that route, ATXI asserts that Mr. Ehrhart's concerns could be mitigated or avoided entirely during construction. ATXI notes, however, that no party currently supports ATXI's Primary Route.

ATXI states that MHC summarizes testimony provided by NKG regarding impacts ATXI's Primary Route may have on cellular and wireless data reception inside a facility NKG proposes to construct on its property. As described by ATXI witness Hackman, the magnetic field strength at the edge of the right-of-way when the line is in service will be less than 18 milligauss ("mg"). In comparison, a household blender or a typical refrigerator generate a magnetic field of approximately 20 mg at a distance of one foot, while a microwave oven on its highest setting generates a magnetic field of 200 mg. Thus, ATXI submits that it is unlikely that ATXI's Primary Route, or any other transmission line for that matter, would cause the type of problems alleged by NKG and cited by MHC. Moreover, ATXI notes that both MHC and NKG have joined ATXI in its support for the Stipulated Route for this portion of the project.

d. Number of Affected Landowners and other Stakeholders and Proximity to Homes, other Structures, and Existing and Planned Development

ATXI indicates that approximately 26 individuals own land located within 250 feet on either side of ATXI's Primary Route for this portion of the project, and that there are 34 landowners within the 250 feet of ATXI's Alternate Route. ATXI indicates that the Alternate Route and the Stipulated Route are substantially the same, so approximately 34 landowners lie within the 250 feet of the Stipulated Route as well. ATXI states that the Stipulated Route would not result in displacement of any residences, while ATXI notes that NKG's first alternative route proposal would result in displacement of five residences, while NKG's second alternative route proposal would result in displacement of one residence.

	Residential Structures within 0-75 feet	Residential Structures within 75-150 feet
Stipulated Route	0	Not specified
ATXI Primary Route	0	0
ATXI Alternate Route	0	1
NKG Second Alternate	1	Not specified

As for proximity to existing and planned development, ATXI states that there is no record evidence the Stipulated Route is proximate to any existing or planned development. NKG witness Ehrhart testifies that NKG was concerned that its planned development related to its expanded grocery distribution operations would be impacted by ATXI's Primary Route. ATXI notes that NKG's planned warehouse facility, however, would not be hindered by construction of that route. ATXI submits that no party recommends approval for the Primary Route; while the Stipulated Route eliminates NKG's concerns.

e. Community Acceptance

ATXI represents that all Intervenors with land interests along this portion of the project support the Stipulated Route, confirming community acceptance of that Route

f. Visual Impact

ATXI believes that the visual impacts of the proposed line, if any, will be substantially the same for any route. ATXI states that there is no record evidence that the Stipulated Route is less preferable with respect to visual impact than any other route proposed for this portion of the project.

g. Presence of Existing Corridors

ATXI characterizes "opportunities" as corridors with the potential for sharing or running alongside existing infrastructure, landscape features, or other existing facilities, including major roads, pipeline and other utility rights-of-way, property lines and section lines, railroads, secondary roads, and existing transmission line rights-of-way. ATXI notes that its Alternate Route, which comprises the majority of the Stipulated Route, emerged, in part, from an evaluation of opportunities and stakeholder input as to preferred opportunities. ATXI states that the Stipulated Route parallels an existing 161 kV line, while NKG's Route 2 parallels existing 138 kV and 161 kV transmission lines for its entire length. ATXI submits, however, that parallel lines should be used sparingly in order to minimize the risk of common-mode failures.

2. NKG Position

NKG supports the Stipulated Route, and believes that it is approximately the same length as the ATXI Primary Route. NKG also believes that the Stipulated Route will be less expensive and less difficult to construct than ATXI's Primary Route, as it

eliminates several ninety-degree turns. NKG opines further that the Stipulated Route will be less difficult to operate and maintain than ATXI's Primary Route, and indicates that the Stipulated Route should minimize the amount of vegetation management and tree trimming required. By minimizing the length of route, NKG believes that the Stipulated Route will create less of an environmental impact than the ATXI Primary Route. NKG also indicates that it is not aware of any historical resources that would be impacted by the portion of the project between the Mississippi River and the Southeast Quincy Substation.

NKG believes that the Stipulated Route will prevent interference with two new developments in the Quincy area, and thereby will avoid causing severe economic harm to the region and will minimize the impact on landowners and other stakeholders. NKG notes that numerous governmental and community organizations, including the County Board of Adams County, the Quincy City Council, the Great River Economic Development Foundation, and the Mill Creek Water District opposed the construction of the ATXI Primary Route due to its potential impact on an economic development area known as the South Quincy Development District. The mitigation of the impacts is at least partially attributable to the presence of existing corridors. As set forth in the MHC Alternate Route Proposal, NKG notes that the Stipulated Route follows an existing transmission line route recorded in the offices of the Adams County Recorder of Deeds in Volume 11 of Right of Ways at page 440.

3. MHC Position

MHC supports ATXI in its efforts to obtain a Certificate of Public Convenience and Necessity, except that it objects to ATXI's proposed Primary Route and accepts ATXI's Alternate Route on the condition that ATXI agrees to modification of this route.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

MHC notes that Richard Ehrhart submitted testimony filed in this proceeding on behalf of intervener NKG, in which NKG supports the Stipulated Route, which includes the modification agreed to by ATXI and MHC. MHC states that NKG believes that the Stipulated Route for this segment would present a shorter route between the Mississippi River crossing and the Southeast Quincy Substation than ATXI's Primary Route. MHC indicates that with regard to the Alternate Route Proposals, MHC's modification to ATXI's Alternate Route creates a shorter transmission line by avoiding some 90 degree turns and substituting angular routes. In terms of construction costs, MHC concurs with NKG that the Stipulated Route will cost less to construct than ATXI's Primary Route. MHC also agrees with NKG that the Stipulated Route for this segment will have a positive effect on ATXI's difficulty and cost of operation and maintenance in that it will minimize the amount of vegetation management and tree trimming.

b. Environmental Impacts

Based on the shorter route which would be created through the adoption of the Stipulated Route for this segment, MHC supports NKG's testimony that this will create less of an environmental impact than ATXI's Primary Route and Alternate Route.

c. Social and Land Use Impacts

MHC maintains that its proposed deviation to ATXI's Alternate Route would potentially resolve the objections of several parties to this proceeding and avoid severe economic harm to the region. MHC, in support of its Alternate Route proposals, states that the Stipulated Route for this segment would provide a more direct route to the Southeast Quincy Substation, is an angular rather than squared route requiring less retention or support structures or precautions, follows an existing AIC transmission line route, would result in less environmental impact, and would allow or better allow the envisioned development of the Holtmeyer Property. MHC believes that ATXI's Primary Route and Alternate Route (without the Alternate Route being modified as set out above) divide the Holtmeyer Property which would substantially, directly and materially impact and may well entirely prevent MHC from reasonably, economically, profitably, and appropriately developing the Holtmeyer Property for planned construction of a residential development.

d. Presence of Existing Corridors

MHC opines that the Stipulated Route for this segment would allow the proposed transmission line to follow an existing transmission line route. MHC notes that pursuant to a "Right of Way" recorded in offices of the Adams County Recorder of Deeds in Volume 11 of Right of Ways at page 440, Central Illinois Public Service Company, n/k/a Ameren Illinois Company, which MHC believes is a subsidiary or affiliate of ATXI and, pursuant to this Right of Way, was granted two utility easements, which appears to collectively be 216 feet in width and which is part of or near the Stipulated Route, and should be utilized as part of the Stipulated Route – River to Quincy.

4. Staff

Staff notes that ATXI recommends use of its Alternate Route, with a modification as the transmission line enters the Southeast Quincy Substation, so that the transmission line would turn and follow the second alternative route presented by NKG until reaching the Southeast Quincy Substation. Staff states that NKG and MHC entered into a stipulation with ATXI to support the route that ATXI refers to as its Rebuttal Recommended Route. Staff considers ATXI's Rebuttal Recommended Route to be superior to ATXI's Alternate Route, since it is shorter and would not impact MHC's development plans, but inferior to NKG's second alternative route, which would cost approximately \$3 million less and also would not impact MHC's development plans.

Staff acknowledges ATXI's claim that only Staff expresses support for a route other than the Stipulated Route; however, Staff suggests this is irrelevant, since ATXI and the only proponents of alternative routes other than Staff stipulated to the use of an alternative route. Moreover, Staff avers that stipulating to a route does not make it least-cost; it merely makes it acceptable to the stipulating parties.

Staff notes that ATXI concedes that Staff's recommended route would cost \$3 million less than the route to which ATXI stipulated. However, ATXI asserts that Staff's preferred route will likely require the transmission line to cross an existing transmission line at least two times to avoid displacing residences, may pose problems with respect to right-of-way width near State Route 57, and may pose reliability issues because it would be located on adjoining rights-of-way or on double-circuit structures. As ATXI contends that alleviation of these concerns could increase the cost of the route, ATXI recommends the Stipulated Route as the best option for this portion of the project.

Staff submits that while ATXI argues that Staff's proposal "may" or "will likely" result in numerous situations which could increase the cost of Staff's preferred route, ATXI is unable to say how much more costly Staff's proposal would be if any of these contingencies were in fact to occur, and it has not in any case demonstrated that they will. Staff believes that ATXI's failure of proof here is significant. As Staff notes, ATXI, and no other party, has the burden of showing that its proposal is in fact the least-cost. Staff contends that the evidence presented in this proceeding supports the proposition that, excepting some highly contingent "could" and "maybe," Staff's recommended route is the least cost. Staff asserts that ATXI has failed to meet its burden and its proposal can not be adopted.

While ATXI claims that use of NKG's second alternative route proposal would result in displacement of one residence, Staff is not convinced that any displacement would be required. ATXI correctly states that, in most cases, it will be able to build the project along intervenor proposed routes, if that is what the Commission orders. Since Section 8-406.1 of the Act requires use of the least cost means, and given the fact that NKG's second alternative route represents the overall least cost means for this segment, Staff argues that the Mississippi River to Quincy segment should be constructed using NKG's second alternative route.

a. Length of Line

Staff notes that as proposed by ATXI, this segment of the line is approximately 5.3 miles long, while ATXI's proposed alternate route is approximately 6.2 miles in length. Staff states that NKG proposes primary alternate and secondary alternate routes that are, respectively, approximately 5.8 and 4.8 miles long. NKG's second alternate route is preferred under this criterion.

b. Difficulty and Cost of Construction

Staff indicates that generally, a transmission line route that follows a straight line is shorter and costs less than a route that meanders. Not only does a shorter route cost less initially, but since there are fewer facilities to maintain, ongoing expenses associated with a shorter route are less. In addition, Staff states that the structures used for a straight route are normally less costly than structures that must support the uneven forces from conductors due to a route that changes direction. Staff notes that ATXI's estimated average price for each tangent structure, which would be used to support transmission lines with angles of 1 degree or less, is \$33,000. In contrast, ATXI's estimated average cost for a structure supporting a transmission line angled at from 1 to 15 degrees from that of a tangent structure, otherwise known as a "running angle," is \$74,250; more than double that of a tangent structure. Staff states that it costs ATXI an estimated \$107,250 to construct a dead-end structure, which is required for angles above 15 degrees, which is more than three times the cost of a tangent structure. Staff believes that these factors should be considered when evaluating all segments, although Staff will not reiterate them in detail. Staff notes that ATXI provides its cost estimate for constructing each segment in ATXI Ex. 16.3 (Rev.).

Among the routes proposed for the Mississippi River – Quincy segment, Staff suggests that NKG's second alternative route is shortest and would require the fewest dead-end structures. Accordingly, of the four routes described above, it would, all else equal, be the least expensive to construct.

c. Difficulty and Cost of Operation and Maintenance

As Staff has noted, straight transmission lines are shorter, thus there are fewer facilities to maintain, and maintenance expenses should be less. Again, this should be considered when evaluating all segments, although Staff will not reiterate them in detail. Staff notes the transmission line throughout its entire length has to be maintained on its 150 feet right-of-way regardless of to what that right-of-way is adjacent. Staff believes difficulty and cost of operation and maintenance are generally proportional to line length. Staff submits that NKG's second alternative route is shortest, and with all else being equal, NKG's second alternative route should be the least difficult and least costly alternative.

d. Number of Affected Landowners and other Stakeholders and Proximity to Homes and other Structures

Generally, Staff favors routes that pass close to fewer residences; however, Staff did not document a comparison of homes and structures on each route alternative. Staff notes that using NKG's second alternate route might require the proposed 345 kV line to cross the existing transmission line twice in order to avoid two existing residences. In addition, at State Route 57, Staff recognizes that a new 150 feet right-of-way may not fit parallel to the existing line without displacement of an existing building. Nonetheless, Staff suggests that it appears that AIC's legacy company, Central Illinois Public Service

Company, had planned to use NKG's secondary alternative route for a 345 kV transmission line during the 1980's.

e. Presence of Existing Corridors

Staff asserts that NKG's second alternative route first parallels an existing 161 kV transmission line and then an existing 138 kV transmission line as it extends east from the Mississippi River. While ATXI contends that for reliability purposes, common/adjoining rights-of-way are undesirable since they are susceptible to common-mode failures; Staff asserts that common-mode failures are normally considered for transmission lines that are constructed on common structures. Staff contends that if two transmission lines are on non-overlapping rights-of-way, as appears to be the case with NKG's second alternative route, the transmission lines could have more clearance from one another than either line has to other objects. Further, Staff notes that ATXI's own Primary and Alternate Route proposals include many miles where its proposed 345 kV transmission line runs parallel with and adjacent to an existing 138 kV line. Thus, Staff submits that ATXI cannot consider this a particularly significant impediment.

5. Commission Conclusion

For this segment of the proposed project, the Commission notes that ATXI recommends its Alternate Route, with a slight modification as the transmission line enters the Southeast Quincy Substation, in accordance with the stipulation it entered into with intervenors NKG and MHC. The Commission notes that all Intervenors interested in this portion of the project support the Stipulated Route, with NKG withdrawing its support for its alternative routes pursuant to the Stipulation.

The Commission also recognizes that only Staff expresses support in testimony for another route – NKG's secondary alternate route (NKG Route 2). ATXI, and presumably the other parties supporting the Stipulated Route, believe that NKG Route 2 will likely require the transmission line to cross an existing transmission line at least two times to avoid displacing residences, may pose problems with respect to right-of-way width near Highway 57, and may pose reliability issues because it would be located on adjoining rights-of-way (or, according to NKG, on double-circuit structures). ATXI argues that alleviation of these concerns could increase the cost and difficulty of the route's construction. The Commission does note that the Stipulated Route appears to represent the consensus of the parties with respect to this portion.

The Commission's analysis of the routing criteria discussed in the positions of the parties above appears to indicate that other than the length of line, there is either little difference between the two suggested routes, or the issue in question favors the Stipulated Route.

The Commission recognizes that Staff supports an alternative from the Stipulated Route, appearing to argue that since it will presumably be the cheapest, as it is the

shortest proposed route; therefore, it is preferable. The Commission agrees with ATXI that there appears to be other issues with Staff's preferred route which may increase the expected cost of that route. Additionally, the Commission is mindful of the benefits of the parties involved in any particular segment being able to come to an agreement, and it appears to the Commission that some weight should be given to that agreement when weighing the various options presented. It does not appear to the Commission that the Stipulated Route is so unreasonable that little weight should be given to the agreement of the parties.

Having reviewed the evidence of record, and upon consideration of all relevant route selection criteria as described by the parties, the Commission finds that the criteria described above favor the Stipulated Route for the Mississippi River-Quincy portion of the project. The Commission finds that the Stipulated Route for the Mississippi River-Quincy portion of the project is the least-cost route when all costs and benefits are taken into account.

The Commission notes that the parties in their briefs on the Mississippi River-Meredosia segment of the Illinois Rivers Project did not appear to discuss the issue of the substation in Quincy, Illinois. The Commission notes that ATXI witness Dyslin stated in his direct testimony in this proceeding, in part, as follows:

1. ATXI has acquired a new substation site southeast of Quincy, Illinois. The parcel consists of approximately 36 acres and is currently being farmed. This parcel was purchased from a private landowner in a transaction which closed on October 30, 2012. In addition, Ameren Illinois Company ("AIC") owns approximately 7 acres adjacent to the site proposed by ATXI, which ATXI will acquire and incorporate into the new substation footprint; (ATXI Ex. 8.0 at 3)

Staff witness Rockrohr testified regarding the location ATXI selected for the proposed Quincy substation site, stating it is a logical choice. (Staff Ex. 1.0 at 22-23)

The Commission finds that there appears to be no objection in the record to the location of a new substation southeast of Quincy, Illinois; therefore it will be approved as a part of this proceeding.

B. Quincy – Meredosia

1. ATXI Position

ATXI recommends that the Commission adopt the "hybrid" route proposed by Staff witness Rockrohr for the portion of the project between the Southeast Quincy Substation and Meredosia, Illinois. ATXI indicates that the Hybrid Route is shown as the red and black dashed line on ATXI Ex. 13.3 and highlighted on Figure 2, and was designated the "Rebuttal Recommended Route" in ATXI's rebuttal testimony. ATXI notes that the Hybrid Route utilizes ATXI's Primary Route as it leaves the Southeast

Quincy Substation, until that route intersects ATXI's Alternate Route just north of County Road 600N. The Hybrid Route then follows ATXI's Alternate Route until that route intersects with ATXI's Primary Route at County Road 400N, at which point it follows ATXI's Primary Route into the proposed Meredosia substation site. ATXI states that the only other routes proposed for this portion of the project were ACPO alternative routes 1, 2, and 3, which ATXI suggests are not preferable to the Hybrid Route for the reasons discussed.

ATXI represents that the table below illustrates the support for the routes proposed for this portion of project, as reflected in the parties' respective Initial Briefs:

Route	Hybrid	ATXI Primary	ATXI Alternate	ACPO Route 1	ACPO Route 2	ACPO Route 3
Party(ies) Recommending Approval	ATXI, Staff, 10 of 13 ACPO witnesses	None	None	ACPO, Staff	None	None

Although both ATXI's Primary and Alternate Routes are also constructible, ATXI argues that the Hybrid Route is the best option for this segment of the project because it is cost-effective, has been fully analyzed, and eliminates concerns raised by almost all of the intervenors who have submitted testimony regarding this portion of the project. ATXI notes that thirteen members of ACPO submitted record evidence concerning the Quincy–Meredosia portion of the project. ATXI believes that the Hybrid Route will resolve concerns regarding the impact of ATXI's proposed routes on the property of 10 out of the 13 testifying members of ACPO. With respect to the concerns of one of the three remaining witnesses, Mr. Stuart Kaiser, ATXI suggests that the Hybrid Route significantly reduces the amount of his property impacted by the route and passes over a half mile away from his residence and other structures.

ATXI submits that each of ACPO's three proposed alternative routes is flawed. ATXI states that ACPO's Alternative Route 1, while perhaps lower cost in base dollar terms, presents significant routing concerns so that it is not the "least cost" as compared to the Hybrid Route, noting that it would traverse an existing residential area near Interstate 172, requiring the displacement of at least six assumed residences. Moreover, it would require approximately 40 additional acres of tree removal. While ACPO characterized the western part of ACPO Alternative Route 1 as a "partially acquired unoccupied corridor," ATXI witness Murphy explained that approximately 50% of that corridor has not been acquired and any existing easements are too narrow to accommodate 345 kV transmission lines. ATXI argues that the corridor does not offer any meaningful routing advantage, while ACPO's Route 1 also parallels an existing 138 kV line which may present reliability, operational and maintenance concerns.

ATXI notes that ACPO Alternative Route 2 modifies a portion of ATXI's Primary Route, which modification would require two additional dead-end structures and render the route longer than ATXI's Primary and Alternate Routes, as well as the Hybrid Route, and would therefore increase the base cost. ATXI indicates that the modification is

located on a portion of ATXI's Primary Route that was not incorporated into the Hybrid Route, thus, the Hybrid Route moots any need for this modification.

ATXI states that ACPO Alternative Route 3 modifies ATXI's Alternate Route in a way that would move the transmission line away from some homes but closer to others, and would require three additional dead-end structures. ATXI asserts that this route also bisects several farm fields; therefore this modification is not advantageous.

As a result of these considerations, ATXI does not agree with Staff's assertion that ACPO's Alternate 1 is the least-cost option for this portion of the project. Instead, ATXI recommends the Hybrid Route as the best option for the portion of the project between the Southeast Quincy Substation and the proposed substation in Meredosia, Illinois, and believe it should be chosen by the Commission for this segment of the route.

a. Length of Line

ATXI indicates that the following table shows the length of each proposed route for this segment of the line.

	Hybrid Route	ATXI Primary Route	ATXI Alternate Route	ACPO Route 1	ACPO Route 2	ACPO Route 3
Estimated Length in Miles	46.3	48.7	48.2	43.6	Not specified	Not specified

Although the Hybrid Route is three miles longer than ACPO Alternative Route 1, ATXI believes that this difference is outweighed by the reduced potential societal and environmental impact the Hybrid Route poses. ATXI notes that ACPO Alternative Route 1's reduced length, in contrast, comes at a great cost – the displacement of homes.

b. Difficulty and Cost of Construction

ATXI claims that there is no record evidence the Hybrid Route would be difficult to construct. In contrast, ATXI believes that ACPO Alternative Route 1 would be difficult to construct relative to the Hybrid Route (and ATXI's Primary and Alternate Routes) because it would require displacement of six homes and more than 40 additional acres of tree removal. ATXI states that the record otherwise contains no meaningful distinction between the routes proposed as to the difficulty associated with their construction. ATXI indicates that the following table shows the estimated cost of construction for each proposed route for this segment of the line.

	Hybrid Route	ATXI Primary Route	ATXI Alternate Route	ACPO Alternate 1	ACPO Alternate 2	ACPO Alternate 3
Estimated Baseline Cost	\$105.859 million	\$105.957 million	\$104.264 million	\$96.738 million	Not specified but < \$105.957 million	Not specified but < \$104.264 million

ATXI notes that ACPO maintains its route is superior because, considering length alone; it would be less costly, relying on Staff witness Rockrohr's testimony, who believes shorter routes have lower initial costs. ATXI notes that Mr. Rockrohr testified at hearing, "when all things are equal, if one route is less expensive than the other . . . that's the route that [he is] going to recommend[.]" (Tr. at 233) ATXI argues that Staff conceded it had no opinion whether "all things are equal" between the Hybrid Route and ACPO Route 1. ATXI opines that Staff's Initial Brief "offers no opinion" regarding the routes' relative environmental, historical, social, land use, or development impacts, or, notably, their community acceptance. Staff did note however, that it generally favors routes that pass close to fewer residences. ATXI asserts that Staff acknowledged the Hybrid Route avoids several structures, including residences, while ATXI notes that ACPO Alternative Route 1 does not. Under Staff's stated standard, ATXI argues that the Hybrid Route is preferable.

ATXI notes that ACPO also argues ACPO Alternative Route 1 would not be costly to construct because the route parallels an existing 138 kV transmission line, however ATXI suggests that ACPO's conclusion here is contrary to the record evidence. ATXI states that the Illinois Rivers Project requires its own 150 feet easement, and for reliability, maintenance and operations reasons, it cannot share that easement with another transmission line. ATXI thus claims that there are no cost reductions because of paralleling, and indicates that Mr. Rockrohr agrees, noting he testified as follows:

Q. In your estimation, would the fact that there is already a right-of-way there make the construction easier, cheaper?

A. I don't think having another right-of-way there would make construction either easier or cheaper necessarily. The fact that it would be cheaper has to do with the fact that it's straighter and shorter.

Q. Okay. Not the fact that there has already been construction on that and the easements have already been obtained?

A. Well, the easement would not have been obtained, because the 138 kV line would have been on its own easement, which would be separate from this easement. (Tr. at 196-197)

Despite its efforts to demonstrate ACPO Alternative Route 1 is “least cost,” ATXI states that ACPO appears to accept that “least cost” under Section 8-406.1 does not always mean least dollar cost, as ACPO contended in its Initial Brief that a “least cost” determination is akin to “a totality of the circumstances test.” Considering the environmental and societal costs of the Hybrid Route and ACPO Alternative Route 1, ATXI asserts that it is clear a “least cost” determination favors the former.

c. Difficulty and Cost of Operation and Maintenance

ATXI indicates that there is no record evidence showing that the Hybrid Route would be more difficult or costly to operate or maintain relative to other routes proposed, and the record otherwise contains no meaningful distinction between the proposed routes regarding the difficulty or cost of operating and maintaining each.

ATXI claims that this factor favors the Hybrid Route as no party contends that route would be difficult or costly to operate or maintain. While ACPO notes that ACPO Route 1 would run along the 138 kV line, which contains existing rights of way for transmission lines, therefore the difficulty and cost of operation and maintenance of two sets of transmission lines along the same route would be less to operate and maintain as compared to the same lines located in two separate locations, ATXI argues that there is no record evidence, however, that it would be cheaper to operate and maintain two sets of transmission lines because they are parallel. To the contrary, ATXI suggests that the record reflects paralleling transmission lines, in addition to presenting reliability concerns, may also increase operations and maintenance costs, as both circuits may have to be taken out of service in order to perform maintenance on either.

d. Environmental Impacts

ATXI states that there is no record evidence the potential environmental impacts resulting from construction of the Hybrid Route would be greater than those resulting from the other proposed routes. Rather, ATXI believes the evidence suggests the Hybrid Route will have minimal environmental impacts, because that route is a combination of ATXI's Primary and Alternate Routes, which were chosen as the result of an extensive environmental analysis process that balanced environmental impacts against other relevant factors. ATXI notes that ACPO Alternative Route 1 would require 40 additional acres of tree removal, while ACPO Alternate Route 3 would also require increased tree removal.

e. Impacts on Historical Resources

ATXI claims that the Hybrid Route will not impact any known historical resources, however, there are ten known archaeological sites within 75 feet of ATXI's Primary Route, and four known archaeological sites within 75 feet of ATXI's Alternate Route. ATXI states that it will work with Illinois Historic Preservation Agency ("IHPA") to address issues that may arise during the construction process, and will obtain any required permits or approvals prior to construction.

While there is no dispute the Hybrid Route would not impact any known historical resources, ATXI contends that there is no record evidence regarding the impact of ACPO Alternative Route 1 on historical resources is because ACPO did not put any into the record. ATXI avers that this does not suggest the absence of any impact; it merely suggests the absence of any analysis of impact.

f. Social and Land use Impacts

ATXI believes that the Hybrid Route reflects an optimum location for the transmission line in that it would limit societal and land use impacts. ATXI claims the Hybrid Route also alleviates concerns regarding impacts on farming operations raised by the majority of witnesses on behalf of ACPO, the only intervenor related to this portion of the project. As ATXI previously noted, ACPO Alternative Route 1 would impact an existing residential area.

ATXI notes that ACPO contends the Hybrid Route is not preferred because it will take “prime farmland,” stating that it divides land primarily used for agriculture that is presently not encumbered by easements for transmission lines. ACPO also argues, in analyzing route proposals, the Commission should consider, among other things, “farm splitting.” (citing Ness v. Ill. Comm. Comm’n, 67 Ill. 2d 250, 254, 367 N.E.2d 672 (1977) (“Ness”)) ATXI suggests that this is a curious position for ACPO to take, as ACPO’s own route proposals cross farmland. In fact, ATXI asserts that ACPO Route 3 would bisect parcels of farmland, diagonally bisecting one that is not presently encumbered by existing transmission lines.

While ACPO argues that ATXI neglected to take into account the impact on agriculture in the area in its siting process, ATXI opines that this ignores the record evidence. ATXI states that the record reflects, as a result of the public process, “agricultural-related uses” was a key routing consideration in ATXI’s routing process. But, as ACPO must concede given its own route proposals, ATXI believes it simply is not possible to route a transmission line across Illinois without traversing some farmland.

ATXI suggests that ACPO’s real concern is that it does not want the project on ACPO’s farmland. ATXI notes, however, that the impacts ACPO allege the Hybrid Route will have on its farmland are not unique to their property; those impacts have the potential to occur regardless of where the route is located. ATXI believes that the record reflects that those concerns can be addressed through detailed design of the route, construction mitigation measures, and compensation for damages in any event. ATXI opines that ACPO’s remaining concerns regarding the impact of the Illinois River Project’s EMF on its farming equipment and “stray voltage” are simply unfounded. Nonetheless, as explained, approval of the Hybrid Route would alleviate a majority of ACPO witnesses’ concerns by their own admission.

g. Number of Affected Landowners and other Stakeholders and Proximity to Homes and other Structures

ATXI states that there are approximately 175 landowners and other stakeholders with property on or within 250 feet of either side of ATXI's Primary Route, and approximately 180 within the same proximity of ATXI's Alternate Route. ATXI indicates that these figures have not been calculated for the Hybrid Route, however it notes that the Hybrid Route would not require displacement of any residences, while ACPO Alternative Route 1 would require displacement of six residences.

	Hybrid Route	ATXI Primary Route	ATXI Alternate Route	ACPO Alternate 1	ACPO Alternate 2	ACPO Alternate 3
Residences 0-75 feet from centerline	0	0	0	6	Not specified	Not specified
Residences 75-150 feet of centerline	~14	6	18	9	Not specified	Not specified

ATXI notes that Staff recognizes that the Hybrid Route avoids several structures, including residences; while ACPO claims ATXI has not calculated the number of homes within the Hybrid Route's easement. ATXI disputes this, and argues that while neither ATXI's Primary or Alternate Routes, or any hybrid of those routes, would displace a residence; the same can not be said of ACPO Alternative Route 1.

While ACPO argues the conclusion that ACPO Alternative Route 1 would displace residences lacks credibility because it assumes that the residences potentially displaced are occupied; ATXI contends that it conservatively assumed that any building that appeared to be a residence was, in fact, an occupied residence, and it was better to err on the side of caution. ACPO points out that ATXI witness Murphy testified "the proposed route is a guideline and that ATXI engineers will have the ability to finalize the placement of the route" (ACPO Initial Brief at 10, 11-14 (arguing that, because transmission line routes depicted on ATXI's maps are just that – lines on maps – it can not be determined with certainty whether a home will be displaced).) ACPO concludes from this that it is very possible to avoid the displacement of the assumed occupied residences along ACPO Route 1. ATXI suggests that ACPO does not cite to the record for this claim; nor can it. ATXI complains that ACPO ignores the fact that even with pole placement flexibility; the transmission line easement must be 150 feet in width, all of which must avoid residences. While ACPO Alternative Route 1 utilizes a partially acquired corridor, ATXI notes that this specific corridor leaves little leeway for pole adjustment.

h. Proximity to Existing and Planned Development

ATXI suggests that this factor favors the Hybrid Route, as there is no record evidence the route is proximate to any existing or planned development. While ACPO summarily concludes that there is no reason to believe either the Hybrid Route or ACPO Alternative Route 1 would be preferable; ATXI asserts that in fact the Hybrid Route is preferable because ACPO Alternative Route 1 cuts through an existing residential development.

i. Community Acceptance

ATXI claims that the Hybrid Route eliminates the concerns of the majority of witnesses on this portion by their own admission, and so represents the route with the most community acceptance. While ACPO argues ACPO Alternative Route 1 is more accepted because it avoids the acquisition of previously undisturbed farmland; ATXI claims that the public process revealed that landowners were as concerned about having additional transmission lines on their property as they were about have new lines there.

j. Visual Impact

ATXI believes that the visual impacts, if any, will be substantially the same for any route, and suggests that there is no record evidence that the Hybrid Route is less preferable considering visual impact than any other route proposed for this portion of the project. ATXI notes that without any evidentiary support, ACPO contends, because ACPO Alternative Route 1 largely parallels an existing 138 kV transmission line, it would decrease, if not virtually eliminate, the esthetic impact of the transmission line. ATXI suggests that this ignores the fact that sufficient separation between the lines is imperative; each must be maintained on its own 150 feet right-of-way. ATXI states that Clark and Edgar CC offers another view: "There simply is no denying that power transmission poles of this nature are not attractive, regardless of the circumstances in which they are placed."

k. Presence of Existing Corridors

ATXI notes that the Hybrid Route, as a combination of ATXI's proposed routes, emerged from a comprehensive evaluation of opportunities and stakeholder input as to preferred opportunities. ATXI states that the Hybrid Route follows section lines and county roads.

ATXI opines that ACPO Alternative Route 1 parallels an existing 138 kV transmission line along County Road 800N but believe that this may present reliability, operational, and maintenance concerns. Further, ATXI states that the "partially acquired unoccupied corridor" ACPO Alternative Route 1 utilizes has not been fully acquired and any existing easements are too narrow to accommodate 345 kV transmission lines.

ATXI notes that like other intervenors, ACPO advocates for parallel transmission lines and champion ACPO Alternative Route 1 as a prime example. ATXI believes that ACPO's support for all things parallel, however, suggests a fundamental misunderstanding of what paralleling transmission lines entails. For example, while ACPO claims ACPO Alternative Route 1 will require only a widening of existing rights of way already owned by AIC, ATXI suggests that this is not accurate. ATXI submits that both the new transmission line and the existing one must be maintained on their own, separate easements.

ATXI avers that ACPO believes that utilization of the existing corridor will not present any reliability issues because Staff witness Rockrohr testified he did not see any reliability concerns arising from transmission lines on parallel, but separate and non-overlapping rights-of-way. While ACPO contends that ACPO Alternative Route 1 is a least cost option because it merely requires "widening" an existing right-of-way, not acquiring a new, separate one, ATXI suggests that ACPO is confused about its own route proposal.

ATXI is not convinced by ACPO's argument that corridors for existing transmission lines are preferable to other corridors, such as the property and section lines used by the Hybrid Route. ATXI notes that Ms. Murphy testified that "(r)eally what determines whether or not any one of those types of opportunities is advantageous or potentially more or less compatible is the extent of environmental sensitivities that occur along the various types of opportunities." (Tr. at 846) ATXI opines that an existing residential development occurs along the corridor ACPO Alternative Route 1 utilizes, which should not be disregarded by the Commission.

2. ACPO Position

ACPO states that its Alternate Route 1 predominantly follows a pre-existing AIC 138 kV in Adams and Pike Counties. ACPO notes however, that ATXI's Hybrid Route divides land primarily used for agriculture that is presently not encumbered by easements for ATXI transmission lines.

ACPO notes that as the petitioner, ATXI has the burden of proof in establishing that its route meets the least-cost means standard. Despite ATXI's continued support for the use of a route that involves the acquisition of prime farmland, ACPO does not believe that ATXI has met its burden of proof to establish that its route meets the least-cost means standard. When evaluating the routes using the 11 factors used by the Commission and Illinois courts, and as discussed further below, ACPO suggests that ATXI's Hybrid Route is not preferred under any of the factors, as the following table illustrates.

<u>Least-Cost Means Factor</u>	<u>Preferred Route</u>
1. Length of Line	ACPO's Alternative Route 1
2. Difficulty and Cost of Construction	ACPO's Alternative Route 1
3. Difficulty and Cost of Operation and Maintenance	Neither
4. Environmental Impacts	Neither
5. Impacts on Historical Resources	Neither
6. Social and Land Use Impacts	ACPO's Alternative Route 1
7. Number of Affected Landowners and Other Stakeholders and Proximity to Homes and Other Structures	Neither
8. Proximity to Existing and Planned Development	Neither
9. Community Acceptance	ACPO's Alternative Route 1
10. Visual Impact	ACPO's Alternative Route 1
11. Presence of Existing Corridors	ACPO's Alternative Route 1

ACPO notes that in its Initial Brief, ATXI offers a number of reasons for its refusal to adopt the ACPO Alternative Route 1 for the Quincy-Meredosia segment of the Illinois Rivers Project, despite substantial evidence offered in favor of ACPO Route. Instead, ATXI advocates for a route combining its primary and alternate routes first proposed in ATXI's petition, the Hybrid Route. ACPO asserts that the Hybrid Route was originally proposed as an alternative to the ACPO Route by Staff. Despite the Staff's preference for the ACPO Route, ATXI argues that the Hybrid Route is the best option for this segment of the project because "it is cost-effective, has been fully analyzed, and eliminates concerns raised by almost all Intervenor" for this segment. ACPO, however, argues that none of these reasons are factors in establishing the least-cost means standard set forth in the Act. Furthermore, this conclusion discounts the factors that not only favor the adoption of the ACPO Route but also ignores factors necessary to the analysis used by the Commission and Illinois Courts when evaluating the least-cost means standard. (See Docket No. 06-0706, June 23, 2010 Order of Reopening, and Ness) ACPO recommends that the Commission adopt for this segment of the Illinois Rivers Project its Alternate Route 1 from Quincy to Meredosia, Illinois.

a. Length of Line

ACPO suggest that a straightforward and easily quantifiable factor of the least-cost means standard is route length, which has a direct impact on both the initial cost of the construction and the cost of operation and maintenance. According to Staff witness Rockrohr, the shortest, straightest route is preferable. ACPO notes that Mr. Rockrohr also indicated that typically, the shorter the route, the lower the initial building cost, because less material and labor is necessary; while the straighter the route, the less need for costlier structures due to changes in route direction. ACPO submits that each structure used to support the transmission lines with angles less than or equal to 1 degree cost approximately \$33,000, whereas the cost to support a structure for angles in the line between 1 degree and 15 degrees more than doubles to approximately \$74,250. The cost for structures to support angles greater than 15 degrees, known as dead-end structures, is approximately \$107,250 each—more than three times the cost

of a structure to support lines with angles of 1 degree or less. ACPO contends that an examination of the ATXI's Hybrid Route and ACPO's Alternate Route 1, shows that ACPO's is not only the shortest in distance, but is straighter and contains significantly fewer dead-end structures. ACPO adds that Mr. Rockrohr agrees that ACPO's Alternate Route 1 would be the "best choice," given its shorter distance and need for far fewer dead-end structures than ATXI's Hybrid Route.

b. Difficulty and Cost of Construction

ACPO believes another straightforward and readily calculable factor of the least-cost means standard is construction costs. Because a percentage of the expense of the route is passed along to the consumer, ACPO suggests that keeping costs at a minimum is imperative, noting that the cost of ACPO's Alternative Route 1 will be nearly \$97 million whereas ATXI's Recommended Rebuttal Route will cost nearly \$106 million. As utilizing ACPO's Alternative Route 1 would offer a cost savings of well over \$9 million, it appears to ACPO that Alternative Route 1 is the preferable route option based on this criteria.

In addition to ACPO's Alternate Route 1 being the shortest and straightest option for the project from Quincy to Meredosia, ACPO argues that utilizing an already existing route that has already met analysis for another project "makes sense," since the least-cost means requirement was in place when the 138 kV line was approved by the Commission. It would logically follow that utilizing already cleared, accessible rights-of-way would prove less difficult to build upon than land that has not previously been utilized for transmission lines.

ACPO argues that ATXI is in error when it assumes that because the project as a whole will be the least-cost means solution for solving the reliability issues identified by MISO, each part or segment it recommends inherently becomes the least-cost option by being an intended part of the necessary whole. ACPO notes however, that each segment is unique, with any number of potential route alternatives, all of which offer unique benefits (opportunities) and costs (sensitivities). From the very beginning of the docket, the Administrative Law Judges have requested the parties present evidence on specific routes between substations, which ACPO has done. ACPO has presented a potential route that is shorter, more direct, and less costly than those proposed by ATXI and that utilizes existing rights-of-way owned by AIC, while also minimizing the impact on prime farmland and assumed existing residences. As indicated by the Commission and Illinois courts, the least-cost means standard considers a number of factors, including but not limited to the length of the line, its overall cost of construction, maintenance, and repair, its environmental impacts, and the number of landowners and stakeholders affected. (See Docket No. 06-0706 Order on Reopening)

c. Difficulty and Cost of Operation and Maintenance

ACPO notes that ATXI witness Murbarger made no comparison between the cost of operation and maintenance of ATXI's Hybrid Route and the ACPO's Alternate Route

1. However, ACPO states that its Alternate Route 1 runs along the 138 kV line, which contains existing rights of way for transmissions lines. As such, ACPO believe it is likely that the difficulty and cost of operation and maintenance of two sets of transmission lines along the same route would be less to operate and maintain as compared to the same lines located in two separate locations.

d. Impacts on Environmental and Historical Resources

With regard to impacts on environmental and historical resources, ACPO is unaware of any significant differences between its Alternate Route 1 and ATXI's Hybrid Route. Therefore, ACPO suggests that there is no reason to believe either would be preferable.

e. Social and Land use Impacts

ACPO notes that an additional consideration of the least-cost means standard is the transmission line's social and land use impacts. ACPO submits that for communities impacted by the Illinois Rivers Project, agriculture is a significant source of income and concern for many property owners. As such, ACPO suggests that any impact the Project may have on farming is potentially considerable and should not be discounted. In Ness, ACPO notes the Illinois Supreme Court affirmed the Circuit Court's reversal of a Commission decision to grant a Certificate of Public Convenience and Necessity because it neglected to take into account the impact on agriculture in the area. (67 Ill. 2d at 254, 367 N.E.2d at 674) In Ness, the Court considered factors such as interference with present land uses, particularly farm splitting and number of farms affected, type or quality and productivity of the farms impacted, greater costs to farmers in the area, and detrimental effect to "high productivity farms or superior soil."

ACPO objects to the petition because of its intrusion on prime Illinois farmland, however if the Commission grants the petition, then ACPO requests that the Commission utilize ACPO's Alternate Route 1 because of the undesirable impact ATXI's Hybrid Route will have on the ACPO's farming operations. ACPO suggests that the negative impact on farming operations could include:

- i. **Soil Compaction:** The transmission line towers will involve disrupting the soil. When construction equipment is continually operated over farm ground, there is a loss of yield at the location of the construction. When heavy equipment operates over farm ground, it impacts the ability of plant roots to penetrate to the soil to reach water and nutrients (e.g., fertilizer), which results in lesser or no yield. ACPO believes they will experience a reduction in yields for up to seven years.
- ii. **Drainage:** ACPO have drainage tiles in the vicinity of the proposed ATXI's Hybrid Route. The construction of the lines will likely disrupt or destroy the drainage tiles.

- iii. Aerial Spraying: ACPO use aerial spraying in their farming operations. The proposed placement for the Hybrid Route will split the properties owned by ACPO on which both sides of the properties are used for agricultural purposes. The transmission line will make it difficult or impossible to conduct effective aerial spray applications.
- iv. Field Efficiency: The possible placement of transmission line towers on properties will have a negative impact on field efficiency, because of the need for farmers to reroute their planting and harvesting routes to work around the structures supporting the transmission line.
- v. Weed Control: If the towers are placed on the properties, the properties will need to perform weed control on and around the towers. The presence of weeds reduces yield because the weeds will consume water and nutrients otherwise utilized by surrounding crops.
- vi. Irrigation: At least one member of ACPO uses center pivot irrigation systems. The placement of the transmission line through his property may inhibit this system and make necessary irrigation more costly and time consuming for the farmer.
- vii. GPS: Many ACPO members utilize GPS navigation systems in their equipment. The placement of the transmission line through their properties may interfere with or render these systems useless.
- viii. Dairy Farm: One ACPO owns a dairy farm. The barn where all the dairy cattle are housed lies adjacent to ATXI's Hybrid Rebuttal Route and would subject the dairy cattle to stray voltage, causing a decrease in milk production and negatively impacting their disposition.

ACPO suggests that there was also evidence submitted in this docket that the hum of the transmission lines will create undue stress on cattle, thereby decreasing their daily weight gain, which will lead to lower profits and higher costs of feed inputs. Moreover, ACPO notes that transmission lines produce "stray voltage," which causes a low level electrical shock to animals in confined areas. ACPO opines that stray voltage from transmission lines may reduce water and feed intake, thereby reducing daily weight gain, and thereby negatively affecting the dairy barn's operations.

f. Number of Affected Landowners and other Stakeholders and Proximity to Homes, other Structures, and Existing and Planned Development

While ATXI argues that ACPO's Alternate Route 1 is an undesirable choice for the transmission line because it would require the displacement of six residences, while ATXI's Hybrid Route would require no displacement, ACPO notes that ATXI witness Murphy also testified to the fact that the proposed route is a guideline and that ATXI engineers will have the ability to finalize the placement of the route so that it can potentially avoid displacement. ACPO submits that since it appears possible to avoid the displacement of the assumed occupied residence located on ACPO's Alternate Route 1, ATXI's aversion to ACPO's Alternate Route 1 remains unexplained.

ACPO suggests that Ms. Murphy's testimony regarding the impact on existing structures lacks credibility for several reasons. First, ACPO notes that Ms. Murphy testified that the ACPO Alternate Route 1 will place an additional eight residences within 150 feet of the centerline, two of which will be within 75 feet of the centerline. ACPO note that on cross-examination, however, Ms. Murphy admitted that she did not confirm that the dwellings that she referred to as being displaced were occupied. Moreover, Ms. Murphy could not state with any accuracy where the existing 138 kV transmission line or the ACPO proposed transmission line are indeed located. ACPO suggests that if Ms. Murphy can not attest to, or "be sure" about, the accuracy of where the existing 138 kV line occurs, it follows that she can not testify where the ACPO Alternate Route 1 occurs in relation to existing structures since the two lines are proposed to run parallel to each other.

ACPO complains that ATXI's position is a bit too flexible on this matter. ACPO notes that if a route it proposes is too close to an interveners' property, then ATXI will take the position that the route is not finalized and changes may be made to accommodate the property owner; however if ATXI is dissatisfied with an interveners' proposed route, ATXI will take the position that the proposed route will have a negative impact on existing structures, as Ms. Murphy did with ACPO Alternate Route 1.

With regard to proximity to existing and planned development, ACPO notes that no comparison was made between its Alternate Route 1 and ATXI's Hybrid Route; therefore ACPO has no reason to believe either would be preferable.

g. Community Acceptance

ACPO notes that in evaluating options for the project's proposed routes, ATXI sought the opinions of community stakeholders and property owners in public meetings when considering the potential transmission line. In these meetings, ATXI indicates it asked attendees to identify which factors, identified as "sensitivities," were most concerning to them. ACPO states that of 32 total sensitivities, stakeholders and property owners identified six as high sensitivities (cemeteries, churches, existing drainage features, prime farmland, residential use area, and schools), 12 as moderate

sensitivities, and 14 as low sensitivities. Furthermore, ACPO indicates that Ms. Murphy testified that the public in potentially impacted communities would prefer the transmission line run along existing roadway and away from agricultural use areas. Given these aforementioned facts and that ACPO's Alternate Route 1 avoids the acquisition of previously undisturbed farmland; ACPO submits that utilization of its Alternate Route 1 is preferable to that of ATXI's Hybrid Rebuttal Route.

h. Visual Impact

ACPO states that ATXI's Hybrid Route proposes to acquire and run through prime farmland, which ACPO claims will undoubtedly negatively impact the visual landscape of the properties. ACPO, however, asserts that the majority of its Alternate Route 1 runs along the existing 138 kV line, which would dramatically decrease, if not virtually eliminate, the esthetic impact of the transmission line, since the proposed corridor has already been cleared and contains 138 kV Line. As such, ACPO argues that its Alternate Route 1 is clearly preferable when considering the project's visual impact, as ACPO's route will merely require a widening of an existing rights-of-way and ATXI's Hybrid Route will require the acquisition of property presently used primarily, if not solely, for agricultural purposes.

i. Presence of Existing Corridors

ACPO notes that its Alternate Route 1 runs along an already existing 138 kV line, which should require only a widening of existing rights-of-way already owned by AIC. ACPO avers, however, that ATXI's Hybrid Route runs along section and property lines not currently used for non-agricultural purposes, which will require the acquisition of prime farmland.

ACPO states that ATXI witness Murphy explains that when considering routing options, it is advantageous to utilize "opportunities" that would allow like features to be placed by like features. Ms. Murphy asserts that, as linear features, transmission lines are "more compatible for parallel co-location" near linear corridors, such as property, section, and field lines or existing transmission line rights-of-way. Further, Ms. Murphy indicates that the more similar the feature, the better the opportunity for placement, i.e. a transmission line is more like another transmission line than a property line, as such placement would be better suited parallel to the other transmission line. ACPO submits that as ACPO's Alternate Route 1 runs parallel to the existing 138 kV line and that ATXI's Hybrid Route runs along property and section lines, ACPO's route will be preferable to ATXI's using Ms. Murphy's analysis.

ACPO claims that utilization of the existing corridor will not present any reliability issues, noting that Mr. Rockrohr indicates that he did not have electric reliability concerns "arising from the location of two transmission lines on parallel non-overlapping rights-of-way." ACPO asserts that two transmission lines on non-overlapping rights-of-way have the same amount of space or more between them as either line would have between any object.

ACPO states that ATXI offers three reasons to avoid the use of parallel lines: First, the existing line must be taken out of service during construction of the second. Further, should maintenance be needed on either of the parallel lines, the line not requiring service may need to be taken offline to complete the repairs. Finally, ATXI suggests that parallel lines are more susceptible to “common-mode failures,” meaning if one line is damaged because of weather disasters or the like, both lines would likely be impacted instead of just one.

ACPO notes, however, despite offering these reasons to avoid the use of parallel lines, ATXI recommends parallel lines for nearly eighty miles of its preferred route. Indeed, ATXI proposes running the 345 kV transmission line parallel; yet, ATXI then cites operational and reliability concerns as its rationale for discounting the use of the ACPO Alternate Route 1. ACPO suggests that ATXI’s position simply does not logically follow, as it offers no specific reason as to why the use of parallel lines in the ACPO route is less desirable than it is anywhere else.

3. Staff Position

Although Staff prefers the use of ACPO's Alternate Route 1, in the event that ATXI demonstrates that ACPO Alternate Route 1 can not be used, Staff developed the Hybrid Route by combining elements of ATXI's Primary and Alternate Routes. Specifically, ATXI would utilize its Primary Route when leaving the Southeast Quincy Substation site until it reaches the quarter-section line north of County Road 600N. The route would then follow ATXI's Alternate Route until that route joins ATXI's Primary Route at the County Road 400N alignment (see ATXI Ex. 4.2 Part 9 at 2), then follow ATXI's Primary Route east until reaching the proposed Meredosia substation site. ATXI now supports the adoption of the Hybrid Route over the other options for this segment.

In terms of length, Staff states that ATXI's Primary Route is approximately 48.7 miles in length while its Alternate Route is approximately 48.2 miles long. Staff notes that ACPO's Alternate Route 1 is approximately 43.6 miles in length. Staff's Hybrid Route is approximately 46.3 miles long. Staff observes that ACPO's Alternate Route 1 is the shortest and least costly route. Admittedly, the Hybrid Route costs approximately \$9.1 million more than using ACPO's Alternate Route 1. While ATXI is compelled to concede that ACPO's Alternate Route 1 is “perhaps lower cost in base dollar terms,” Staff notes that ATXI claims ACPO's Alternate Route 1 would traverse an existing residential area near Interstate 172, requiring the displacement of at least six assumed residences, and require approximately 40 additional acres of tree removal. Though ATXI claims in its Initial Brief that ACPO's Alternate Route 1 would require displacement of six assumed residences, Staff points out that Ms. Murphy states in rebuttal testimony that ACPO's Alternate Route 1 would place two residences within 75 feet of the centerline of the right-of-way, not six. Staff believes that it strains credulity that, at this stage in the proceeding, ATXI still is not certain which structures are occupied residences, or how many would need to be displaced if a given route were chosen. Staff is not convinced displacement of any residences would be necessary if ACPO's

Alternate Route 1 were used. Generally, Staff favors routes that pass close to fewer residences. Staff admits that it did not conduct a comparison of homes and structures on each route alternative, but believes that its Hybrid Route avoids several structures, including residences. ATXI also notes that ACPO's Alternate Route 1 parallels an existing 138 kV line from the center of Burton Township to the vicinity of Meredosia. Despite ATXI's concerns about parallel lines, Staff does not believe that parallel lines in this area would create any problems or reliability concerns.

If the Commission determines that ATXI should use the Hybrid Route for constructing the transmission line, Staff would recommend that at the location the Hybrid Route first crosses ACPO's Alternate Route 1 as it heads east from Quincy, the Commission order ATXI to use ACPO's Alternate Route 1 from that point for the remaining distance to the Meredosia substation site. Staff believes that such a combination of the Hybrid Route and ACPO's Alternate Route 1 would likely result in construction costs roughly equivalent to the cost of using ACPO's Alternate Route 1, while avoiding much of the additional tree clearing and the existing residential area near Interstate 172 to which ATXI referred.

4. Commission Conclusion

The Commission notes that ATXI recommends the approval of what it characterizes as the Hybrid Route, as proposed by Staff witness Rockrohr, for the portion of the project between the Southeast Quincy Substation and Meredosia, Illinois. ATXI suggests that if this Hybrid Route is adopted, it will be easier to construct, and should resolve many of the issues raised by various ACPO witnesses. Staff and ACPO recommend the Commission adopt ACPO's Alternate Route 1. Each notes that Alternate Route 1 is shorter than the Hybrid Route, as well as also following what appears to be at least a partially acquired unoccupied corridor for a 138kV line.

The Commission notes that both ATXI and ACPO have attempted to analyze their preferred route on each of the eleven criteria, with ATXI determining that its preferred route wins on nine points of consideration, ACPO's route one point, and one issue a draw. ACPO has likewise done this analysis and determined that its preferred route wins on six points, while the other five are a draw. The conclusion that the Commission would draw from this exercise is that on most of the eleven criteria to be considered, there does not seem to be much difference between the proposed routes.

The Commission finds that ACPO Alternate Route 1 does not appear to be "least cost" as compared to the Hybrid Route. The Commission is concerned by the evidence which appears to show that ACPO's Alternate Route 1 would traverse an existing residential area near Interstate 172, potentially requiring the displacement of at least six assumed residences. Moreover, it appears that ACPO Alternate Route 1 would require approximately 40 additional acres of tree removal. While ACPO characterizes the western part of its Alternate Route 1 as a "partially acquired unoccupied corridor," the Commission notes that ATXI contends that approximately 50% of that corridor has not been acquired and any existing easements are too narrow to accommodate an

additional 345 kV transmission line. Therefore, it does not appear to the Commission that this corridor will offer any meaningful routing advantage over the Hybrid Route. Additionally, ACPO Alternate Route 1 parallels an existing 138 kV line, which ATXI suggests may present reliability, operational, and maintenance concerns, although the fact that ATXI does not have similar concerns at other locations along the Illinois Rivers Project is troubling to the Commission.

The Commission is persuaded that the Hybrid Route is the best option for this segment of the project because it is cost-effective and should eliminate concerns raised by almost all of the intervenors who have submitted testimony regarding this portion of the project. The Commission is also troubled by the evidence that ACPO Alternate Route 1 would require extensive tree removal, as well as the possible displacement of six residences. It appears to the Commission that any cost savings envisioned by the shorter length of ACPO Alternate Route 1 would be eclipsed by the potential displacement of homes. The Commission is also troubled by the fact that none of the owners of those six residences have intervened in this proceeding, to indicate whether they support one route versus another.

Having reviewed the evidence of record, and upon consideration of all relevant route selection criteria as described by the parties, the Commission finds that the criteria described above favor the Hybrid Route espoused by ATXI for the Quincy-Meredosia portion of the project, over ACPO Alternate Route 1. Therefore, the Commission finds that the Hybrid Route for the Quincy-Meredosia portion of the project is the least-cost route when all costs and benefits are taken into account.

The Commission notes that there is little, if any, discussion in the parties' briefs on the issue of the substation at Meredosia, Illinois. The Commission observes that ATXI witness Dyslin stated in his direct testimony in this proceeding, in part, as follows:

3. ATXI has acquired a site representing an expansion of an existing substation, located on and adjacent to the Meredosia generating station property. The parcel consists of approximately 56 acres, approximately 41 acres of which is used for industrial purposes and 15 acres of which is used for agricultural purposes. A portion of the industrial property is the site of the existing substation and its appurtenances. The agricultural land is not being farmed at this time. This parcel was purchased from Ameren Energy Generating Company in a transaction which closed on October 31, 2012; (ATXI Ex. 8.0 at 3)

Staff witness Rockrohr also testified regarding the location that ATXI selected for the proposed Meredosia substation site, stating it is a logical choice. (Staff Ex. 1.0 at 26-27)

The Commission notes that there appears to be no objection in the record to the proposed expansion of the Meredosia substation, therefore the proposed expansion is approved.

C. Meredosia – Ipava

1. ATXI Position

ATXI states that its recommended route for the Meredosia to Ipava segment follows its originally proposed Alternate Route, with a slight modification to avoid a sensitive environmental area pursuant to a stipulation (covering the southern segment of the Alternate Route) between ATXI and TNC. ATXI notes that this route, (the “Stipulated Route”) is shown in orange on ATXI Ex. 13.4, is highlighted on Figure 3, and was designated the “Stipulated Route” in ATXI’s rebuttal testimony. ATXI submits that the only other route with any current support for this portion of the Illinois Rivers Project is TNC’s first alternative route (TNC Alternate Route 1). ATXI asserts that the Stipulated Route is superior to that route, however, because it effectively balances the concerns raised by most of the intervening parties, and avoids environmentally sensitive areas.

ATXI claims that the Stipulated Route is supported by TNC, and avoids the property of several other intervenors including Sherry Ralston, the Schuyler County Property Owners, Thomas and Lynda Freehill McLaughlin, and James and Tori Phillips. Also, ATXI notes that intervenor Wiese Farms opposes ATXI’s Primary Route, but presumably would not be impacted by the Stipulated Route. ATXI notes that the only party who expressed opposition to the Stipulated Route is the Korsmeyer Trust because of an alleged impact on its farming operations. ATXI claims, however, that the routing of the Stipulated Route avoids almost all of the Korsmeyer property, and where it does affect this property, it runs along the eastern side of one of the Korsmeyer parcels, so the Stipulated Route should not interfere with the irrigation system there.

ATXI claims that an added benefit of the Stipulated Route is that it avoids the environmentally sensitive areas of the Spunky Bottoms Preserve, and the Illinois Department of Transportation (“IDOT”) Wetland Mitigation Bank about which TNC initially raised concern. While ATXI does not concede that all the environmental impacts TNC theorized to occur would in fact occur, ATXI is sensitive to the environmental concerns raised by TNC, which resulted in the Stipulated Route. ATXI notes that this route utilizes the extensive siting analysis conducted by ATXI, but avoids the environmentally sensitive areas identified by TNC.

ATXI submits that only Staff witness Rockrohr supports a different route for this portion of the project, TNC’s Alternate Route 1. ATXI suggests that the basis for Mr. Rockrohr’s support of this route is narrow at best, contending that he relies solely on his review of aerial maps to determine route length and number of dead-end structures. ATXI believes that Mr. Rockrohr finds TNC Alternate Route 1 preferable because all things being equal, it would have a lower dollar cost. However, ATXI notes that he admits that there may be additional relevant facts about some of the routes which could result in a route being more or less desirable than the route he supports. In fact, ATXI contends that there are relevant facts that make TNC Alternate Route 1 less desirable,

noting that TNC Alternate Route 1 would likely result in the displacement of a residence, conflicts with a greater number of center pivot irrigation systems, and parallels an existing 138 kV line, which may present reliability or operational issues. ATXI submits that not only has the Stipulated Route garnered more support than TNC Alternate Route 1, but also has less societal impact relative to that route.

ATXI suggests that the table below illustrates the support for the routes proposed for this portion of the project, as reflected in the parties' respective Initial Briefs:

MEREDOSIA – IPAVA				
Route	Stipulated Route	ATXI Alternate Route (Unmodified)	ATXI Primary Route	TNC Alternate Route 1
Part(ies) Recommending Approval	ATXI, TNC	None	None	Staff, Korsmeyer

Of the two routes remaining for consideration, ATXI submits that the Stipulated Route is the superior option. While Staff and Korsmeyer Trust focus on the length of the line, ATXI submits that they ignore critical impacts caused by the TNC Alternate Route 1, namely residence displacement, center pivot displacement, and potential reliability and operational issues. As TNC argues, to the extent that the Stipulated Route results in a line that is slightly longer than other alternatives, that difference is justified by the important and significant improvements in the line route design from an environmental and ecological perspective that is achieved by the Stipulated Route.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

The following table represents the length and cost of each route proposed for this segment of the Illinois Rivers Project:

	Stipulated Route	ATXI Primary Route	ATXI Alternate Route	TNC Alternate Route 1
Estimated Length in Miles	N/A	50.2	48.6	42.1
Estimated Base Cost	\$113,276,000	\$101,516,000	\$104,875,000	\$107,516,000

ATXI relates that there is no record evidence the Stipulated Route would be difficult to construct, while displacement of a residence presents a significant difficulty to the

construction of TNC Alternate Route 1. Additionally, ATXI argues that TNC's Alternate Route 1 conflicts with a greater number of center pivot irrigation systems. The record otherwise contains no meaningful distinction between the routes regarding the difficulty associated with their construction.

With regard to operation and maintenance, ATXI believes that there is no record evidence the Stipulated Route would be more difficult to operate and maintain or would be more costly to operate and maintain relative to the other routes proposed. However, ATXI suggests that the potential for increased operating and maintenance issues exists for TNC Alternate Route 1 absent sufficient separation between that route and the existing transmission line to which it runs parallel. ATXI notes that the record otherwise contains no meaningful distinction between the proposed routes regarding the difficulty or cost of operating and maintaining each.

b. Environmental Impacts

ATXI states that both the Stipulated Route and TNC Alternate Route 1 avoid the Spunky Bottoms Preserve and the IDOT Wetland Mitigation Bank identified by TNC as environmentally sensitive areas. ATXI notes that TNC has withdrawn support for TNC Alternate Route 1. ATXI notes that it and TNC agree that the Stipulated Route is the superior choice from an environmental impact standpoint.

ATXI's Primary Route crosses a portion of the Spunky Bottoms Preserve and certain upland conservation areas, and while the Primary Route does not completely avoid the environmentally sensitive areas, ATXI disputes the extent of the impact. ATXI notes that all three TNC witnesses make various claims about threats to endangered species, including avoidance, collision, and electrocution, threats to the natural ecology of the preserve due to habitat fragmentation, and erosion and wetland impacts due to the construction and maintenance of the proposed Primary Route. ATXI asserts that TNC failed to substantiate its claims with peer-reviewed scientific literature. Additionally, ATXI believes that many of the ecological effects cited, including destruction of plants, establishment of invasive plants, and animal disturbance, are almost entirely temporary and can be mitigated. While the Primary Route does not entirely avoid the Spunky Bottoms Preserve, ATXI asserts that the impacts claimed by TNC have not been substantiated, may be overstated, and can be mitigated.

c. Impacts on Historical Resources

ATXI states that there are no known impacts to historical resources, including registered National Historic Places or archeological historic places, that would prevent construction of either of ATXI's routes. ATXI also commits to working with the IHPA to address any issues that may arise during the construction process.

d. Social and Land use Impacts

ATXI notes that while certain social and land use impacts are unavoidable, its route siting analysis entailed a comprehensive review process that attempted to minimize these impacts. As a result of such considerations, ATXI suggests that social and land use impacts are another factor weighing in favor of the Stipulated Route. While Korsmeyer Trust asserts that a negative effect of the Stipulated Route is interference with its farming operations and planned center pivot irrigation system, ATXI argues that both Korsmeyer Trust and Staff ignore the fact that TNC Alternate Route 1 will interfere with existing center pivot irrigation systems. ATXI also points out that the Stipulated Route is along the eastern border of one of the Korsmeyer Trust parcels, minimizing interference with its planned irrigation system. ATXI adds that unlike the TNC alternatives, the Stipulated Route avoids impacting existing center-pivot irrigation systems.

e. Number of Affected Landowners and other Stakeholders and Proximity to Homes, other Structures, and Existing and Planned Development

ATXI states that there are approximately 192 landowners and other stakeholders with property on or within 250 feet of either side of ATXI's Alternate Route. Given that the Stipulated Route is a slight modification of the Alternate Route, ATXI believes that approximately the same number of affected landowners can be assumed for the Stipulated Route. ATXI contends that there are approximately 224 landowners and other stakeholders with property on or within 250 feet of either side of ATXI's Primary Route, and asserts that the following table represents the relevant information on the routes proposed for this segment:

	Residential Structures within 0-75 feet	Residential Structures within 75-150 feet
ATXI Primary Route	0	3
ATXI Alternate Route	0	4
TNC Alternate 1	1	Not specified
TNC Alternate 2	Not specified	Not specified

As previously noted, ATXI suggests that TNC Alternate Route 1 would require the displacement of a residence, while additional information about TNC's routes does not appear in the record.

With regard to one of the more critical factors, the number of affected landowners and other stakeholders, ATXI argues that Staff and Korsmeyer Trust ignore the potential for the displacement of a residence along TNC's Alternate Route 1, noting that Staff witness Rockrohr admits that he did not document a comparison of homes and structures on each route alternative. ATXI suggests that Korsmeyer Trust's analysis of this factor is flawed, noting that it asserted that the Stipulated Route impacted 192 properties but TNC's Alternate Route 1 impacts 76. ATXI notes that this is flawed

because even though TNC did identify 76 names as being affected by its Alternate Route 1, these are names in addition to the names provided by ATXI because TNC Alternate Route 1 is a modification to ATXI's Alternate Route. While the total number of affected residences for the TNC Alternate Route 1 has not been provided, ATXI suggests a conservative assumption is that the number of landowners impacted by the Stipulated Route is the same as for TNC Alternate Route 1. ATXI argues that the only routes that considered affected landowners are the ATXI routes, including avoidance of home displacement.

ATXI states that there is no record evidence the Stipulated Route (or ATXI's Primary Route) is proximate to any existing or planned development, while there is otherwise no record evidence regarding the proximity of the other proposed routes to existing and planned development.

f. Community Acceptance

ATXI notes that the Stipulated Route is supported by TNC, and it avoids the property of several other intervenors. ATXI suggests that the Stipulated Route is the consensus route for this portion of the project.

g. Visual Impact

ATXI believes that visual impacts, if any, will be substantially the same for any route. ATXI submits that there is no record evidence that the Stipulated Route is less preferable considering visual impact than any other route proposed for this portion of the project.

h. Presence of Existing Corridors

ATXI claims that its selection of the Alternate Route, which was slightly modified to become the Stipulated Route, considered many factors; while it appears that the TNC proposed routes are based primarily on perceived environmental factors, and, therefore, did not consider or assess many potential impacts. ATXI argues that those impacts, while ignored by Staff and Korsmeyer Trust, balance in favor of the selection of the Stipulated Route.

ATXI also observes that TNC Alternate Route 1 parallels an existing 138 kV line, but notes that parallel transmission lines can result in increased cost and raise reliability issues. ATXI suggests that the presence of a parallel line weighs against selection of TNC Alternate Route 1. As discussed in ATXI's testimony, paralleling should only be done in limited circumstances because of the potential for increased costs and reliability issues.

2. Korsmeyer Trust Position

Korsmeyer Trust submits that the best routing choice for the segment of the project from Meredosia to Ipava is TNC Alternate Route 1. Korsmeyer Trust notes that TNC Alternate Route 1 is the only routing option that does not impede in any way upon any of the properties which are of interest to the intervening parties along this segment of the Project (i.e., Korsmeyer Trust, TNC, and Wiese Farms).

While TNC has entered into a stipulation to support the Stipulated Route, Korsmeyer Trust notes that TNC Alternate Route 1 was a routing option presented by TNC as its preferred option and is a routing option which eliminates the environmental concerns raised by TNC. For the foregoing reasons alone, Korsmeyer Trust suggests it would seem counterintuitive to select any routing option other than TNC Alternate Route 1, but Korsmeyer Trust notes that this route is also preferred by Staff witness Rockrohr. Korsmeyer Trust asserts that Mr. Rockrohr has no vested interest in this proceeding, and suggests that he is the only disinterested or objective witness whose testimony is now before the Commission. According to Korsmeyer Trust, Mr. Rockrohr, after examination, analysis, and visit to the various route proposals, summarized his findings as follows: "Based upon the information that I reviewed, it appears that TNC's Alternate 1 would be the best route choice for this segment. TNC's route recommendation does not cross either of the natural areas that TNC identified. In addition, my review indicates that TNC's Alternate 1 would be considerably shorter than either route that ATXI proposes. Since I am unaware of circumstances that would prevent ATXI from constructing TNC's Alternate 1, that route appears to me to be the best choice for the Meredosia to Ipava segment." (Staff Ex. 1.0R at 33)

Korsmeyer Trust suggests that a substantial portion of the basis provided by ATXI for its support of the Stipulated Route is the fact that the Stipulated Route does not interfere with either of the environmentally sensitive areas identified by TNC and the fact that the Stipulated Route contains a segment which was stipulated to by TNC. Korsmeyer Trust notes, however, that any option which seems to guarantee a resolution which does not impinge upon the land which is the interest of the respective intervenor can seem appealing or, at the least, agreeable; however, such stipulation or acceptance is in no way an indication that such routing option is the best choice for the greater number.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

Korsmeyer Trust notes that ATXI's Primary Route runs 49.8 miles, ATXI's Alternate Route runs 47.9 miles, TNC Alternate Route 1 (the route most preferred by Korsmeyer Trust) run 42.1 miles, and the TNC Alternate Route 2 run 43.8 miles. As such, Korsmeyer Trust avers that TNC Alternate Route 1 is the preferred route in terms of length. Korsmeyer Trust indicates further that ATXI's Primary Route has estimated construction costs of \$101,516,000, ATXI's Alternate Route has estimated costs of \$104,875,000, TNC Alternate Route 1 has estimated costs of \$107,516,000, and

ATXI's Stipulated Route, which is a hybrid route including a route stipulated to by ATXI and TNC, has estimated costs of \$113,276,000. Korsmeyer Trust states that the Stipulated Route is the costliest option now before the Commission, some \$5.7 million costlier than TNC Alternate Route 1. Korsmeyer Trust also indicates that TNC Alternate Route 1 is the shortest of the routing options now before the Commission, and is the only routing option to make significant use of an existing corridor, one provided by the existing 138 kV line. For these reasons, Korsmeyer Trust believes it would stand to reason that TNC Alternate Route 1 would provide the most ease of access for operation and maintenance.

b. Environmental Impacts

Korsmeyer Trust notes that TNC has raised concerns as to negative environmental impacts of various routing options; however, Korsmeyer Trust believes such concerns would be eliminated by Commission approval of TNC Alternate Route 1.

c. Social and Land Use Impacts

Korsmeyer Trust submits there is a negative impact to land use resulting from the construction of a 345 kV line across the land in which he is interested.

d. Number of Affected Landowners and other Stakeholders and Proximity to Homes, other Structures, and Existing and Planned Development

Korsmeyer Trust notes that ATXI Petition Ex. C included a list of potentially affected landowners for each route segment for both ATXI's Primary and Alternate Routes. The list of affected landowners along the Primary Route for the segment from Meredosia to Ipava included 222 names. The list of affected landowners along the Alternate Route for the segment from Meredosia to Ipava included 192 names. Korsmeyer Trust says TNC, in identifying its Alternate Route 1 herein, filed a list of affected landowners which included only 76 names. Korsmeyer Trust has made clear the misgivings it has with the construction of any 345 kV line along and upon the rich agricultural land in which it is interested. Therefore, Korsmeyer Trust contends that these criteria favor adoption of TNC Alternate Route 1.

e. Community Acceptance

If approval were given to either ATXI's Alternate Route 1 or the Stipulated Route, such approval would stand in the face of the sentiments of Korsmeyer Trust.

f. Visual Impact

Korsmeyer Trust submits that adding the new line to the existing 138 kV line (as is proposed by TNC Alternate Route 1) along the same path, the same right-of-way, and in a parallel fashion will have the least impact to the aesthetics of the affected area.

Korsmeyer Trust argues that new construction for a new line along a new route where no existing corridor exists will, by its very nature, change the landscape of the affected area.

g. Presence of Existing Corridors

Korsmeyer Trust notes that TNC Alternate Route 1 makes almost exclusive use of the existing corridor provided by an existing 138 kV line right-of-way, while it appears that no other routing option for this segment of the Illinois Rivers Project makes use in any significant manner of an existing corridor. Therefore, Korsmeyer Trust believes that this criterion favors TNC Alternate Route 1.

3. TNC Position

TNC notes that it and ATXI have entered into a stipulation identifying their preferred route for the Meredosia to Ipava segment of the Illinois Rivers Project. TNC asserts that the evidentiary record supports the Stipulated Route. Consistent with the stipulation, TNC says statements directed at other routes are submitted as a contingency, to preserve arguments in the event that the Commission does not adopt the Stipulated Route. TNC entered into the stipulation to address the environmental and ecological issues associated with ATXI's proposed routes and to narrow the contested issues in this proceeding.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

While ATXI's Alternate Route is not the absolute shortest line route among various alternatives, TNC says it is shorter than ATXI's Primary Route, to which TNC strongly objects because of its highly negative ecological effects. Notably, TNC states that no party, including Staff, objected to the Stipulated Route on the basis of length of the line. Further, to the extent that the Stipulated Route results in a line that is slightly longer than other alternatives, TNC contends that difference is justified by the important and significant improvements in the line route design from an environmental and ecological perspective that is achieved by the Stipulated Route.

TNC claims that no party objected to the Stipulated Route based upon concerns with either the difficulty or cost of construction. Regarding cost of construction, according to ATXI's rebuttal testimony, it appears that the estimated cost for the route, including the Stipulated Route, is slightly higher than ATXI's Primary Route and ATXI's Alternate Route without the Stipulated Route modification. However, in the context of the overall project, TNC suggests that this cost estimate difference is quite small and is off-set by the important and significant improvements in the line route design from an environmental and ecological perspective that is achieved by the Stipulated Route. TNC states that no party objects to the Stipulated Route on the basis of difficulty and cost of operation and maintenance.

b. Impacts on Environmental and Historical Resources

TNC believes that testimony presented has shown the negative environmental and ecological impacts of ATXI's Primary Route. TNC notes that siting ATXI's transmission line along the Primary Route would disturb and degrade natural habitats at the Spunky Bottom Preserve in Brown County, suggesting that the activities necessary for construction of the power line and associated activities would directly and negatively impact restored natural habitats at Spunky Bottoms, stressing and destroying native plants, both by design and as an unintended by-product of the construction. The Spunky Bottoms Preserve is a mosaic of restored floodplains and uplands, comprised of land owned in fee by TNC, as well as privately owned land subject to a conservation easement held by TNC. TNC claims both the Spunky Bottoms Preserve and the surrounding land have great ecological value that would be impaired by siting the transmission line along ATXI's Primary Route. TNC also opines that construction activities could disturb the normal activities of many animal species, potentially leading to disruptions of their life cycles, abandonment of the immediate construction area (and potentially the entire Spunky Bottoms Preserve), and reduced fitness and even unnatural mortalities.

TNC also suggests that access for ongoing maintenance would disrupt normal activities of many animal species, again with the potential of disrupting life cycles, causing abandonment of the area and potentially the Preserve, and contributing directly or indirectly to decreased fitness and even unnatural mortalities. TNC also believes that control of vegetation under the lines would likely alter natural plant communities, which could promote invasive species and could threaten native plant and animal communities in the footprint, throughout the Spunky Bottoms Preserve and beyond.

TNC argues that the presence of a high voltage power line running across the Spunky Bottoms Preserve -- and the periodic maintenance that goes along with that -- would have a highly detrimental effect on the natural beauty and tranquility that exists at Spunky Bottoms. Currently, in addition to being a property of high ecological value as a home for numerous important animals and plants, TNC notes that the Spunky Bottoms Preserve offers a highly valued setting for limited human activity, such as canoeing and kayaking, fishing, bird watching, and hiking.

TNC states that many of these same potential negative impacts would result from construction of the power line near upland forest bluff habitat near the Spunky Bottoms Preserve. TNC notes that it holds conservation easements over these lands, the terrain of which is prone to erosion when native plant communities are disturbed, and contends that erosion during construction and subsequent maintenance/operation of the power line is a major concern and makes ATXI's Primary Route not viable for its impact on the upland bluff habitat.

TNC opines further that siting ATXI's transmission line along its Alternate Route would disturb and degrade IDOT's Wetland Mitigation Bank in northeastern Brown County. From an environmental and ecological perspective, TNC argues the Wetland

Mitigation Bank site is especially significant both for its size and location, noting that it is rare to find over 1,600 acres of former floodplain that can be restored to natural hydrologic function, thereby contributing to a more natural river hydrology with associated reductions in flood damages -- that is, the wetland can retain water that would otherwise flood farm fields and developed areas.

TNC states that the Wetland Mitigation Bank site also provides numerous other ecosystem services including processing and recycling nutrients and sediments, improving water quality, and affording important habitats for native plant and animal species, and providing opportunities for education, research, recreation, and compatible economic development, and has been designated by the Federal Highway Administration as an Exemplary Ecosystem Initiative in 2004.

TNC submits that the Stipulated Route avoids all of these problems with ATXI's Primary Route and those portions of ATXI's Alternate route that affect the IDOT Wetland Mitigation Bank site, and, therefore, is clearly preferred.

TNC suggests that no party objected to the Stipulated Route on the basis of impact on historical resources issues.

c. Number of Affected Landowners and Other Stakeholder and Proximity to Homes, other Structures, and Existing and Planned Development

TNC notes that no party objected to the Stipulated Route on the basis of number of affected landowners and other stakeholders and proximity to homes and other structures. TNC opines that it was careful in determining the northern extent of the Stipulated Route; and TNC has not taken a position regarding impacts -- including those relating to number of affected landowners and other stakeholders and proximity to homes and other structures -- beyond the northern edge of the IDOT Wetland Mitigation Bank in southern Schuyler County. TNC observes that no party objected to the Stipulated Route on the basis of proximity to existing and planned development.

d. Community Acceptance

TNC asserts that no party objected to the Stipulated Route on the basis of lack of community acceptance. TNC believes that, as evidenced by the designation of Spunky Bottoms Preserve as an Illinois Natural Areas Inventory Site and the IDOT Wetland Mitigation Bank site as an Exemplary Ecosystem Initiative, there is demonstrated public acceptance and support for the Stipulated Route's avoidance of the Spunky Bottoms Preserve and the IDOT Wetland Mitigation Bank.

e. Visual Impact

According to TNC, no party objects to the Stipulated Route on the basis of visual impact concerns. TNC says running high voltage transmission lines across these open,

natural areas obviously would have a highly negative visual impact, which is avoided by the Stipulated Route.

f. Presence of Existing Corridors

TNC believes that no party objects to the Stipulated Route on the basis of presence of existing corridors.

4. Staff Position

Staff states that ATXI recommends use of its Alternate Route, modified in order to avoid the environmentally sensitive areas of the Spunky Bottoms Preserve and the IDOT Wetland Mitigation Bank, about which TNC raised concern. Staff continues to recommend use of TNC's Alternate Route 1, which would also avoid the environmentally sensitive areas identified above through a modification of ATXI's Alternate Route, but resulting in a shorter transmission line costing approximately \$5.7 million less than ATXI's Stipulated Route.

ATXI states TNC Alternate Route 1 would likely result in the displacement of a residence, conflict with a greater number of center-pivot irrigation systems, and parallel an existing 138 kV line. Staff does not agree that the use of TNC Alternate Route 1 would necessitate displacement of any residences. Staff's review showed that ATXI should be able to mitigate impacts to center-pivot irrigation systems through placement of structures, and ATXI appears to agree. Finally, paralleling the existing 138 kV line should not pose a problem for the route. Furthermore, Staff notes that ATXI found TNC Alternate Route 1 had advantages beyond cost in that it would reduce the number of residences within 150 feet of the centerline and require less tree removal.

Staff notes that ATXI's Primary Route is approximately 49.8 miles in length. Its Alternate Route is approximately 47.9 miles in length. Staff states that TNC proposes two lines; its first alternative is approximately 42.1 miles in length, and its second is approximately 43.8 miles in length. As noted, Staff favors TNC Alternate Route 1.

Staff first recommends that ATXI should terminate the Meredosia to Ipava segment of its 345 kV line at the existing AIC substation at Ipava. Staff states that observation of the existing AIC substation site during an aerial route inspection and the use of publicly available web sites demonstrate that the existing substation could be expanded to the south or to the north to provide adequate space for the 345 kV termination and tie to an existing AIC 345 kV line. Staff notes that ATXI does not propose installing a 345/138 kV transformer at Ipava, so not as much space would be required as at some of the other substation sites that it proposes. Staff suggests there does not appear to be any compelling reason why a new, additional substation site east of the existing AIC substation site would be necessary to tie the proposed 345 kV line to the existing AIC 345 kV line. Staff opines that ATXI does not possess a drawing of or know the dimensions of the existing Ipava substation, and so does not know whether it could terminate its proposed 345 kV line using the existing AIC substation at Ipava.

Further, Staff notes that ATXI's primary and alternate routes both pass the existing AIC Ipava substation to reach ATXI's proposed Ipava substation site.

Staff suggests that there do not appear to be any significant benefits of one route over the other beyond cost. Assuming similar construction practices would be used on all the routes, Staff believes the route length and number of dead-end structures will tend to be the primary cost drivers for this segment. TNC's Alternate Route 1 is the shortest and requires the fewest dead-end structures.

Based upon this, Staff believes that TNC's Alternate Route 1 would be the best route choice for this segment. Staff notes that TNC's route recommendation does not cross either of the natural areas that TNC identified, and it appears that TNC's Alternate Route 1 would be considerably shorter than either route that ATXI proposes. Since there appear to be no compelling circumstances that would prevent ATXI from constructing TNC's Alternate 1, Staff suggests that TNC's Alternate Route 1 appears to be the best choice for the Meredosia to Ipava segment.

5. Commission Conclusion

The Commission notes that for this segment of the Illinois Rivers Project, ATXI recommends a route for the Meredosia to Ipava portion of the project that follows ATXI's Alternate Route, with a slight modification to avoid a sensitive environmental area (the Stipulated Route), in accordance with the stipulation it entered with TNC, which pertains to the portion of ATXI's Alternate Route between Meredosia and southern Schuyler County. Pursuant to the stipulation, the Commission recognizes that TNC withdrew its support for its proposed alternative routes, although Staff and Korsmeyer Trust continue to support the use of TNC Alternate Route 1.

ATXI suggests that the Stipulated Route is superior to TNC Alternate Route 1 because it effectively balances concerns raised by the intervening parties, and avoids environmentally sensitive areas. ATXI claims that the Stipulated Route has gained community acceptance by most effectively addressing the concerns raised by intervening parties. The Commission notes that this route is supported by TNC, and appears to avoid the property of several other intervenors including Sherry Ralston, the Schuyler County Property Owners, Thomas and Lynda Freehill McLaughlin, and James and Tori Phillips. ATXI also contends that the Stipulated Route appears to avoid property owned by Wiese Farms. Although ATXI acknowledges that the Stipulated Route would have an impact on property owned by Korsmeyer Trust, ATXI believes that since the Stipulated Route will run along the eastern side of one of the Korsmeyer Trust parcels, it should not interfere with an irrigation system on that parcel, as ATXI suggests was the Korsmeyer Trust's concern. It appears to the Commission that both the Stipulated Route and TNC Alternate Route 1 avoid the environmentally sensitive areas of the Spunky Bottoms Preserve, as well as the IDOT Wetland Mitigation Bank, about which TNC raised concern.

ATXI argues that TNC's Alternative Route 1 would likely result in displacement of a residence, and conflicts with a greater number of center-pivot irrigation systems. In addition, ATXI notes that TNC's Alternate Route 1 parallels an existing 138 kV line, which may present reliability or operational issues. The Commission notes that it appears that in some instances ATXI indicates it can work around residences, while in other segments, ATXI asserts it has no leeway and a residence would need to be torn down. The Commission also notes that in many instances along this project, the planned transmission project will parallel existing lines, yet in some instances ATXI suggests that this is not desirable. It is unclear if ATXI's concern with parallel lines is due to insufficient amount of needed right-of-way, or for some other reason. The Commission would suggest to ATXI that in future filings, this issue should be explained further.

The Commission's analysis of the routing criteria discussed in the positions of the parties suggests that there is little to favor one suggested route over the other. The Commission believes that the evidence shows that TNC Alternative Route 1 is the shorter of the two routes, and it has a suggested construction cost of \$107,516,000. The Stipulated Route is approximately 6.5 miles longer and has a suggested construction cost of \$113,276,000. ATXI suggests that this extra cost is outweighed by the numerous intervenors whose property is avoided by use of the Stipulated Route, as well as the fact that the Stipulated Route will not necessitate the destruction of a residence. In the Commission's view, whether the TNC Alternative Route 1 will require the removal of a residence is somewhat unclear. It does appear clear from the record evidence that the Stipulated Route would avoid a greater number of center-pivot irrigation systems than TNC Alternate Route 1, and that the impact on Korsmeyer Trust would be manageable by ATXI and Korsmeyer Trust.

Having reviewed the evidence of record, and upon consideration of all relevant route selection criteria as described by the parties, the Commission finds that the criteria favor the Stipulated Route for the Meredosia-Ipava segment of the project over TNC Alternate Route 1. Therefore, the Commission finds that the Stipulated Route for the Meredosia-Ipava segment of the project is the least-cost route when all costs and benefits are taken into account.

An additional issue presented for this segment appears to be ATXI's desire to build a new substation south of Ipava. The Commission notes that there is a paucity of discussion on this issue in ATXI's Initial or Reply Brief following the hearing. The Commission does note that ATXI witness Dyslin testifies in part as follows:

2. ATXI intends to acquire a new substation site south of Ipava, Illinois. The land ATXI intends to acquire consists of approximately 154 acres and is currently being farmed. This parcel is currently held by a private landowner, from whom ATXI has a signed contract for sale. ATXI anticipates closing on the transaction on or before November 15, 2012; (ATXI Ex. 8.0 at 3)

Staff suggests that the existing substation at Ipava could be expanded to the south or to the north to provide adequate space for the 345 kV termination and tie to existing AIC 345 kV line. Staff notes that ATXI does not propose installing a 345/138 kV transformer at Ipava, so not as much space would be required as at some of the other substation sites that it proposes. Staff suggests there does not appear to be any compelling reason why a new, additional substation site east of the existing AIC substation site would be necessary to tie the proposed 345 kV line to the existing AIC 345 kV line. Staff further states that ATXI does not possess a drawing of or know the dimensions of the existing Ipava substation, and so does not know whether it could terminate its proposed 345 kV line using the existing AIC substation at Ipava.

The Commission finds based on the evidence presented in this proceeding that there is insufficient evidence at this time to authorize the construction of a new substation at Ipava, Illinois. The Commission finds, however, that based on the evidence presented by Staff, the current substation located at Ipava, Illinois is sufficiently sized and capable of expansion such that it could handle the additional facilities required by the this portion of the Illinois Rivers Project.

D. Meredosia – Pawnee

1. ATXI Position

ATXI recommends approval of its Alternate Route (the "Stipulated Route"), which was stipulated to by intervenors MSCLTF and FutureGen as the best option for the portion of the project between Meredosia and Pawnee. ATXI represents that the Stipulated Route is shown in orange on ATXI Exhibit 13.5 (Rev.) and highlighted on Figure 4, and was designated the "Rebuttal Recommended Route" in ATXI's rebuttal testimony. ATXI notes that the Pearce Family also support the Stipulated Route.

ATXI observes that MSCLTF submitted an alternative route proposal, which was subsequently withdrawn in accordance with the Stipulation. Staff witness Rockrohr supports the MSCLTF Route based on the length of that route and its related initial dollar costs. However, ATXI argues that the list of landowners affected by the MSCLTF Route is apparently incomplete since MSCLTF made a request to supplement its landowner list. For that reason alone, its route proposal presents concerns for ATXI. Also, that route co-locates the proposed 345 kV line with an existing 138 kV line, which ATXI states poses reliability concerns.

ATXI notes that Mr. Rockrohr's second preference is for ATXI's Primary Route, as modified by the Pearce Family's alternate route proposal. ATXI asserts that this modification would require the proposed 345 kV line to be placed parallel to an existing 138 kV line, which ATXI prefers to avoid for various reasons. ATXI suggests that approval of the Stipulated Route would alleviate the concerns that led the Pearce Family to propose its modification to ATXI's Primary Route.

ATXI states that FutureGen testified that the Primary Route could potentially interfere with its proposed operations; however, ATXI argues the Stipulated Route would eliminate FutureGen's concerns. ATXI therefore believes the Stipulated Route represents the best balancing of factors and interests in light of the issues described above and the compromise reached through the Stipulation.

ATXI represents that the table below illustrates the support for the routes proposed for this portion of project, as reflected in the parties' respective Initial Briefs:

MEREDOSIA - PAWNEE				
Route	Stipulated/ ATXI Alternate Route	ATXI Primary Route	ATXI Primary Route with Pearce Modifications	MSCLTF Route
Part(ies) Recommending Approval⁷	ATXI, MSCLTF, FutureGen, Pearce Family	None	None	Staff, MSSCLPG, Ruholl Family

Regarding the route proposed by MSCLTF, and subsequently withdrawn, ATXI believes the Commission should be aware that route has not been the subject of a full evaluation by any party and that it is not clear that a full landowner list was submitted with the route's proposal. In their support of the withdrawn MSCLTF route, MSSCLPG and the Ruholl Family list facts regarding ATXI's routes and imply that the withdrawn MSCLTF route is less impactful with respect to each of the factors than the Stipulated Route and ATXI's Primary Route. In general, ATXI suggests that their theory is that because the MSCLTF route is shorter it must have fewer impacts. ATXI opines that this is not necessarily the case – otherwise a straight line from point A to point B would be the best route every time. ATXI notes that the only information in the record concerning the withdrawn MSCLTF route is the approximate length and number of dead-end structures, as estimated by Mr. Rockrohr.

⁷ ATXI suggests that the following parties support ATXI's Primary Route, with or without modifications proposed by the Pearce Family, as a second preference: MSSCLPG, Pearce Family, Ruholl Family and Staff.

a. Length of Line

	Stipulated/ ATXI Alternate Route	ATXI Primary Route	ATXI Primary Route with Pearce Modification	MSCLTF Route
Estimated Length in Miles	75.6	67.7	66.5	57.3

ATXI notes that the Ruholl Family lists the mileage of ATXI's proposed routes, as well as the number of landowners, acres of land, and parcels affected. They also note the length of the withdrawn MSCLTF route. ATXI avers that the length, and the number of dead-end structures, is the only information in the record regarding the withdrawn MSCLTF route. Therefore, ATXI suggests that any implied comparison between the MSCLTF route and ATXI's proposed routes with respect to number of landowners, acres, or parcels of land affected is without basis in the record. Because it is unclear from the record whether MSCLTF provided a complete landowner list, ATXI suggests there is no reliable evidence regarding the number of landowners along the withdrawn MSCLTF route, and no evidence whatsoever regarding the acres of land or parcels affected by that route.

b. Difficulty and Cost of Construction

ATXI represents that the following table indicates the estimated cost of construction for each of the proposed routes for this segment of the Illinois Rivers Project:

	Stipulated/ ATXI Alternate Route	ATXI Primary Route	ATXI Primary Route with Pearce Modification	MSCLTF Route
Estimated Baseline Cost	\$144,205,000	\$129,077,000	\$128,189,000	\$107,423,000

Because the MSCLTF Route parallels an existing 138 kV line, ATXI indicates that coordinated outages may be necessary in order to construct the route, while the Pearce Family's modification may increase the difficulty of construction because it parallels an existing 138 kV line. While the baseline dollar cost for the Stipulated Route is greater than any other proposed route, ATXI notes that the Stipulated Route has the most intervenor support of the routes proposed for this portion of the project. In addition, ATXI indicates that the Stipulated Route would avoid FutureGen's carbon dioxide pipeline and storage facility, thereby alleviating concerns related to interference with underground monitoring equipment at the FutureGen facilities.

ATXI notes that the Ruholl Family argues that there are more than double the homes within 150 feet of ATXI's Stipulated Route; therefore ATXI's Primary Route has a lower cost of construction. ATXI believes the Commission should be aware that the testimony cited in support of this statement was comparing ATXI's Primary and Alternate Routes, and no comparison was made to MSCLTF's withdrawn route, because there is no information regarding the number of homes within any distance of that route.

The Ruholl Family also claims that it would be possible to overlap the easement for this portion of the project with the easements for the 138 kV line at issue, and implies that doing so would reduce the cost of construction. They note that ATXI has testified that, in the event the Commission approves a route for the project that parallels an existing transmission line, "ATXI ... will seek to acquire an overlapping easement so as to reduce the total easement width impacting the property." ATXI notes however, that it is only possible to overlap easements when an existing easement is wider than the minimum required width, so that the minimum clearance distances may be maintained for both lines. ATXI submits that there is no information in the record to indicate that the easements for the existing 138 kV line at issue are wider than the minimum-required 100 feet, thus, there is no basis to assert that it would be possible to overlap the easement for this portion of the project with the easements for the 138 kV line at issue. In fact, contrary to the Ruholl Family's assertion, ATXI claims that construction of the transmission line along the existing 138 kV line may increase the costs of construction and maintenance because it may be necessary to take the 138 kV line out of service during construction or maintenance activities on the 345 kV line.

ATXI notes the Ruholl Family also asserts, with respect to the difficulty and cost of construction, that the withdrawn MSCLTF route results in the least construction and ongoing costs and also impacts the least number of properties. ATXI asserts that there is no support for this statement in the record.

c. Difficulty and Cost of Operation and Maintenance

ATXI suggests there is no record evidence the Stipulated Route would be more difficult to operate and maintain or would be more costly to operate and maintain relative to the other routes proposed. ATXI notes that the MSCLTF Route parallels an existing 138 kV line, which poses reliability concerns, including the fact that the existing lines must be removed from service during maintenance. Additionally, ATXI avers that a single pole failure could result in outages to both lines, such that the line may be more difficult and costly to operate and maintain than ATXI's Primary or Alternate Routes. ATXI believes the same would be true for the modifications proposed by the Pearce Family, to the extent that the modified routes parallel existing transmission facilities. ATXI believes the record otherwise contains no meaningful distinction between the proposed routes regarding the difficulty or cost of operating and maintaining each.

ATXI notes that MSSCLPG argues that placing the new line along the existing 138 kV right-of-way provides no increased maintenance issues. ATXI submits that this

is incorrect, noting that ATXI witness Hackman testified that paralleling is undesirable from an operations perspective, indicating that while maintenance is being performed on one line, the other may need to be taken out of service so that large equipment can access the area. Mr. Hackman also testified that having two lines down at any given point risks the reliability of the transmission system at large.

d. Environmental Impacts

ATXI states that MSSCLPG witness Bergschneider testified to certain alleged environmental and agricultural use impacts he foresees upon his property as a result of the Stipulated Route; however ATXI notes that he admitted that he had not conducted or commissioned any formal studies of the relative impacts of the proposed routes, and agreed that the alleged impacts would occur on properties located across the state, regardless of the route chosen. ATXI also believes that the modifications proposed by the Pearce Family would not decrease the environmental impact of the project. ATXI suggests that there is otherwise no record evidence indicating that any route is superior to the Stipulated Route with respect to the best balance between environmental impacts and other considerations.

While the Ruholl Family offers a summary comparison of the environmental impacts of ATXI's Primary and Alternate Routes; ATXI argues that the Commission should not conclude that the MSCLTF Route has fewer environmental impacts. ATXI states that there is a wealth of information in the record regarding the environmental impacts of ATXI's Primary and Alternate Routes because those routes were subject to a comprehensive analysis, which ATXI undertook in order to provide the Commission with the information necessary to make an informed routing decision; while in contrast, there is no record evidence regarding the environmental impacts of the MSCLTF Route.

e. Impacts on Historical Resources

ATXI recognizes that MSSCLPG witness Dodsworth alleged that his property is "archaeologically significant" and the "focus of documentation" by the Illinois State Archaeological Survey. ATXI notes that it identified one known archaeological site within 75 feet of its Primary Route, and three known archaeological sites within 75 feet of its Stipulated Route; however none of these sites are registered in the National Register of Historical Places and it appears that none are located on property owned by Mr. Dodsworth. However, ATXI submits that these concerns, even if valid, do not suggest that the Stipulated Route should not be adopted. As discussed by ATXI witness Murphy, ATXI will consult with the IHPA to identify historical resources, address any concerns and minimize impacts through pole placement adjustments.

MSSCLPG argues that, with respect to impacts on historical resources, no evidence has been presented herein as to the impact of either ATXI's Primary Route or the MSCLTF Route. ATXI suggests that MSSCLPG is correct that no evidence regarding impacts on historical resources by the MSCLTF Route appears in the record; however, MSSCLPG is incorrect with respect to the routes proposed by ATXI. ATXI

provided evidence regarding the occurrence of historical resources on each portion of the project, including the Meredosia-Pawnee segment.

While MSSCLPG continues to claim that its members own land located along the Stipulated Route that is “archeologically significant,” ATXI submits that these claims are entirely unsubstantiated. ATXI notes that no documentation has been provided to support the archaeological significance of this land, or even to specify which parcel is alleged to be archaeologically significant. ATXI indicates, however, that it will work with landowners to span or avoid any known resources using pole placement, and will continue to consult with the IHPA to conduct field studies and implement appropriate mitigation measures, if necessary.

f. Social and Land use Impacts

ATXI notes that MSSCLPG alleges certain impacts of the Stipulated Route on agricultural land use; however, as MSSCLPG admits, these impacts are not unique to that route and will occur with equal frequency no matter what route is chosen. ATXI opines that such impacts can also be mitigated through pole placement during the line design phase and compensation as discussed above.

While the Ruholl Family argues that a natural gas storage area owned by Panhandle Eastern Pipeline Company, LP would be directly affected by the Stipulated Route, ATXI notes that despite having received notice of this proceeding, Panhandle has not intervened nor presented any evidence of the effect of the project on its storage facilities. ATXI asserts that there is no evidence regarding the exact location of the field, that the gas storage field is operational, that it would be adversely impacted, or that the Stipulated Route does not go around it. Therefore, ATXI submits that there is no basis to conclude that any purported impact would render the Stipulated Route less preferable.

g. Number of Affected Landowners and other Stakeholders and Proximity to Homes and other Structures

ATXI states that approximately 300 individuals own property within 250 feet on either side of the Stipulated Route; while approximately 237 individuals own property within 250 feet on either side of ATXI’s Primary Route. ATXI suggests there is no reliable information regarding the number of landowners impacted by the MSCLTF Route.

ATXI notes that MSSCLPG acknowledges that “no concrete estimates have been produced” as to the number of landowners affected by the MSCLTF Route, although MSSCLPG includes a lengthy quote describing the landowners and existing land uses along ATXI’s Primary and Stipulated Routes. ATXI believes the Commission should not interpret this lengthy discussion to mean that the MSCLTF Route is less impactful than ATXI’s proposed routes. ATXI argues that the impacts of the MSCLTF Route are simply not included in the record of this proceeding.

Similarly, the Ruholl Family summarizes the information provided by ATXI as to the number of landowners and parcels affected by its proposed routes. The Ruholl Family also notes the length of the MSCLTF Route and summarizes Mr. Rockrohr's testimony regarding the number of dead-end structures necessary for each route. ATXI notes that the Ruholl Family conspicuously fails to point to record evidence regarding the number of landowners affected by the MSCLTF Route or that route's proximity to homes and structures. ATXI asserts that this is because there is no evidence in the record on this point; noting that MSCLTF acknowledged that it had been unable to determine contact information for each property owner along its route.

h. Proximity to Existing and Planned Development

ATXI notes that its Primary Route is located near the planned location of the FutureGen carbon dioxide pipeline and storage facility; however, the Stipulated Route alleviates this concern entirely. ATXI suggests that there is no other record evidence concerning the proximity of any of the routes proposed for the Meredosia – Pawnee portion of the project to existing or planned development that would favor adopting another route over the Stipulated Route.

While the Pearce Family alleges that there will be no compensation to property owners along the easement whose property values will be affected, ATXI indicates that its intent is to fairly compensate affected landowners for the impact of the transmission line, so that after the line is constructed, there is no impact upon property resulting in diminution of value beyond that reflected in the compensation paid by ATXI. Further, ATXI states that payment of compensation to landowners is made at the time of or shortly after the time the landowner provides an executed easement agreement to ATXI.

ATXI suggests that the Pearce Family also misunderstands Mr. Trelz's testimony with respect to the project's impacts on property values. While the Pearce Family alleges that Mr. Trelz made a faulty assertion that because no specific analysis has been conducted on their property or on the Illinois Rivers Project in general, their property devaluation should not be considered; ATXI states that Mr. Trelz's testimony merely asserted that the Pearce Family had not provided information specific to the value of their property, and that the project's impact on that property can be fully evaluated only after a final route is chosen by the Commission and the property is appraised by third-party independent experts.

i. Community Acceptance

ATXI suggests that the Stipulated Route has garnered the widest community acceptance, as evidenced by support for the route provided by FutureGen, the Pearce Family, and the 41 individual members of MSCLTF. While MSSCLPG argues that community acceptance for the existing 138 kV right-of-way is already in place; ATXI contends this statement is without merit. ATXI opines that the "community" along that

route has not provided any information about their acceptance (or lack thereof) with respect to installation of another transmission line, and MSSCPLG cites to none in the record. Given the potential concern with the landowner list for this route, potentially impacted landowners may not have been given an opportunity to provide information.

While the Ruholl Family questions whether communities, stakeholders and landowners were given an option to consider existing utility corridors as well as roadways and property and section lines; ATXI states that transmission line rights-of-way, pipelines and other utility rights-of-way are identified as “opportunities” considered for location of the project. ATXI notes that the Ruholl Family also claims that the public prefers utilization of linear corridors with the least financial impact, and further claiming that the MSCLTF Route would appear to be supported by the general public and those affected. ATXI submits that the Ruholl Family did not identify record evidence of the “preferences of the public,” which corridors it alleges will have “the least financial impact,” or the support of “those affected.” As ATXI has stated, the individuals affected by the MSCLTF Route have not provided their views in this proceeding; therefore, the Ruholl Family’s statement that “those affected” appear to support the MSCLTF Route is without basis.

j. Visual Impact

ATXI submits that the visual impacts of a route for this segment, if any, will be substantially the same for any route. ATXI states that there is no record evidence that the Stipulated Route is less preferable considering visual impact than any other route proposed for this portion of the project.

k. Presence of Existing Corridors

ATXI states that the Stipulated Route follows section lines and county roads, while the MSCLTF Route parallels an existing 138 kV line, which may present reliability, operational, and maintenance concerns as compared to the Stipulated Route. ATXI states that the Pearce Family’s proposed modification to ATXI’s Primary Route also parallels an existing 138 kV line, and presents the same concerns.

While MSSCLPG argues that the MSCLTF Route is the only routing option now being considered for the segment from Meredosia to Pawnee which utilizes an existing corridor, ATXI submits that this is incorrect. ATXI’s iterative route selection process began by identifying “opportunities” which include roads, pipeline and utility rights-of-way, property lines and section lines, and railroads. ATXI indicates that routes were selected by eliminating opportunities with a greater potential for impacts to “sensitivities” identified by participants in the public process. As such, ATXI’s proposed routes utilize a range of existing corridors and linear features. ATXI notes that the Stipulated Route in fact follows the following corridors: an existing transmission line, county roads, and section and field lines.

2. MSSCLPG Position

MSSCLPG would submit that the clear least cost choice of routing options presented for the segment of the project from Meredosia to Pawnee would be the MSCLTF Route, which parallels the existing 138 kV line, while the second choice would be the ATXI Primary Route (with modification presented by the Pearce Alternate Route). Of the routing options presented to the Commission for consideration for the segment of the project from Meredosia to Pawnee, MSSCLPG argues that the worst option would be the ATXI Alternate Route. MSSCLPG notes that Staff witness Rockrohr agrees that the MSCLTF Alternate Route would be far the shortest and lowest cost route.

While ATXI advocates selection of its Alternate Route for the segment of the route from Meredosia to Pawnee based at least in part on potential and hypothetical operational problems involved with placing the new line along a parallel path in close proximity to an existing 138 kV line; MSSCLPG argues that these "problems" were debunked when Mr. Rockrohr testified that, from an engineering standpoint, there is nothing unsafe or inherently unreliable about having two transmission lines that do not serve the same function or area routed adjacent to each other. MSSCLPG believes that placing the new line along the existing 138 kV right-of-way provides no increased maintenance issues, and notes that Mr. Rockrohr confirmed that the lines could be constructed in such a manner as to prevent the risk of one line interfering with the operation of another.

ATXI further advocates approval of its proposed Alternate Route based on perceived support for the Alternate Route by various other intervening interests. While it may be true that such other intervenors do not stand opposed to the Alternate Route, MSSCLPG suggests that to state that the Alternate Route has garnered broader support and greater acceptance than has the MSCLTF Route is not supported by fact. While it is true that MSCLTF did execute a stipulation with ATXI for endorsement of the Stipulated Route, MSSCLPG notes that the MSCLTF Route was initially presented herein as a routing option by MSCLTF itself, therefore the MSCLTF Route should resolve any concerns MSCLTF might have for its own property interests. MSSCLPG asserts that the fact that certain parties entered into an agreed stipulation to support a route for this or any other segment, such stipulation or acceptance is in no way an indication that such routing option is the best choice for the greater number. MSSCLPG complains that a true examination of MSCLTF's intentions in this matter has been rendered impossible due to the fact that, despite intervening herein and acting as an active party to this matter, MSCLTF filed no testimony in this matter and thus was not held to the standard of scrutiny afforded by cross-examination at hearing. Whether MSCLTF's failure to present testimony was a tactical decision or an omission, any attempt to fully flesh out MSCLTF's bottom line opinion about the various routing proposals, is left to speculation.

MSSCLPG notes that ATXI contends that the Stipulated Route has received broader support and greater acceptance due to "support for the route" by the FutureGen. MSSCLPG submits that ATXI's contention that FutureGen supports the

Alternate Route is misleading at best as it connotes preference for, or favor toward, the proposed Alternate Route. In fact, MSSCLPG believes that FutureGen is on record as stating that the MSCLTF Route would alleviate FutureGen's concerns in "much the same fashion" as would the ATXI Alternate Route.

MSSCLPG asserts that the remaining intervening parties to this matter whose interests would be affected by any selection made of routing option for the segment of the route from Meredosia to Pawnee are the Pearce Family, the Ruholls, and the Robinettes. MSSCLPG opines that the Ruholls agree with the position taken by MSSCLPG and Staff, while the Pearce Family proposes use of a portion of the existing 138 kV right-of-way as a modification to the route to protect their property interests. MSSCLPG submits that the property which is the interest of the Robinettes would be unaffected by the MSCLTF Route.

a. Length of Line

MSSCLPG notes that of the viable options presented for routing the segment from Meredosia to Pawnee, ATXI's Primary Route runs 67.7 miles, the ATXI proposed Alternate Route runs 75.6 miles, and the MSCLTF Route (following the route of the existing 138 kV line and advocated by MSSCLPG) runs only 57.3 miles.

b. Difficulty and Cost of Construction

MSSCLPG argues that regarding cost of construction, the overwhelming evidence is that the route known as the MSCLTF Route presents the least cost alternative. MSSCLPG states that the Stipulated Route would cost \$144,205,000.00, \$15.1 million more than ATXI's Primary Route, \$16 million more than ATXI's Primary Route with the Pearce Modification, and some \$36.78 million more than the MSCLTF Route. In terms of difficulty of construction, considering that the MSCLTF Route is the shortest of the route options, the least cost option, and would follow an existing right-of-way, MSSCLPG submits that the MSCLTF Route is the superior route. MSSCLPG notes also that ATXI's Primary Route would require an estimated 28 dead-end structures, ATXI's Alternate Route 24, and the MSCLTF Route only 14.

c. Difficulty and Cost of Operation and Maintenance

MSSCLPG submits that as the facts show the MSCLTF Route is the shortest of the routing options and would follow the right-of-way provided by an existing line, it stands to reason that the MSCLTF Route would present the most ease of access for operation and maintenance. MSSCLPG agrees with Mr. Rockrohr, who testified that from an "engineering standpoint," there is nothing unsafe or inherently unreliable about having two transmission lines that do not serve the same function or area routed adjacent to each other. MSSCLPG submits that placing the new line along the existing 138 kV right-of-way provides no increased maintenance issues.

d. Environmental Impacts

MSSCLPG contends that the Stipulated Route endangers both farm drainage fields, as well as recreational opportunities at property along the Stipulated Route.

e. Impacts on Historical Resources

MSSCLPG believes that no evidence has been presented herein as to the impact of either the ATXI Primary Route or the MSCLTF Route, although an MSSCLPH witness testifies that the land located along the Stipulated Route has been found to be quite archaeologically significant, with pottery shards and a Hopewell Indian burial mound found directly in the path of ATXI's Alternate Route. MSSCLPG avers that this land has also been the focus of documentation by the Illinois State Archaeological Survey.

f. Social and Land Use Impacts

MSSCLPG asserts that a shorter and existing right-of-way presents the least impact in terms of social and land use factors. MSSCLPG states that the new line, if constructed along the MSCLTF Route, would follow a route already in use for much the same purpose, thus causing little discernible increase to any social and land use characteristics of the land; while any of the other routing options, if selected, would necessitate construction through previously unfettered land, and would cause all of the social and land use tumult that comes with the construction of a new right-of-way to all of the affected landowners and residents along and upon its path.

g. Number of Affected Landowners and other Stakeholders and Proximity to Homes and other Structures

MSSCLPG notes that no concrete estimates have been produced in this regard as to the MSCLTF Route, however MSSCLPG contends it stands to reason that construction along an existing right-of-way would have little lasting additional impact to the landowners and other stakeholders residing along and upon the existing route. MSSCLPG suggests that an analysis of impact figures presented by ATXI between the proposed Primary Route and Stipulated Route shows a much greater impact on archaeological sites, prime farmland, streams and lakes, and homes than the Primary Route.

h. Proximity to Existing and Planned Development

The property which is the interest of the MSSCLPG would be greatly impacted by any construction of a 345 kV line which traverses the property in question. MSSCLPG notes that FutureGen also has plans to construct a transmission line and storage area in the vicinity of the proposed project as it crosses the Meredosia - Pawnee segment, however FutureGen indicates that the MSCLTF Route would substantially resolve the

FutureGen's concerns presented by the Primary Route proposed by ATXI in its application.

i. Community Acceptance

MSSCLPG submits that community acceptance for the existing 138 kV right-of-way is already in place, while selection of any routing option other than the MSCLTF Route has been and will be met with outcry from the potentially affected community.

j. Visual Impact

MSSCLPG believes that adding the new line to the existing 138 kV line along the same path, the same right-of-way, and in a parallel fashion will have the least impact to the aesthetics of the affected area, while new construction for a new line along a new route where no existing corridor exists will, by its very nature, change the landscape of the affected area.

k. Presence of Existing Corridors

MSSCLPG asserts that the MSCLTF Alternate Route is the only routing option now before the Commission for the segment from Meredosia to Pawnee which utilizes an existing corridor, that created by the existing 138 kV right-of-way.

3. Pearce Family Position

The Pearce Family supports the Stipulated Route as the most viable route for the Meredosia – Pawnee segment, however they disagree with the revised rebuttal testimony of ATXI witness Murphy regarding their first and second alternative routes.

The Pearce Family notes that their first alternative route, a short segment following an existing AIC 138 kV corridor, is shorter with fewer dead-end structures, and impacts the same number of residences on an established transmission corridor, as ATXI's Primary Route. Likewise, the Pearce Family also believes their second alternative route to be viable, noting that this alternative moves the primary route a half section north in the same field as ATXI proposed, then back to its original primary route. The Pearce Family suggests that this modification avoids two residences at the cost of two dead-end structures, noting that ATXI's route modification around the Emergency Watershed Protection Program Floodplain Easement is a similar modification.

The Pearce Family also disagrees with ATXI witness Trelz regarding ATXI's intent to compensate those with whom they will have an easement agreement with. However, the Pearce Family notes that ATXI fails to state that there will be no compensation to property owners along the easement whose property values surely will be affected. In regards to the Pearce Family's property value, Mr. Trelz's faulty assertion that because no specific analysis has been conducted on their property or on the Illinois Rivers Project in general, their property devaluation should not be

considered. The Pearce Family submits that until the power line is constructed, and an appraisal and/or sale are complete, there is no definitive, quantifiable amount of devaluation.

An issue of great importance to the Pearce Family is that their daughter, Emily, has Down syndrome which increases her risk of developing childhood leukemia by 14 times, without constant exposure to a high voltage transmission line. They note that she has had a series of health concerns, some of which are ongoing. She continues to have abnormal blood cell counts. Her parents do not want her to have to fight for her life yet again. A risk of leukemia is something they do not take lightly. As Emily's parents they believe it would be unconscionable for them to ignore the possible health risks to their child. They aver that it would be negligent for them as parents to ignore the fact that ATXI would not route these transmission lines near schools, hospitals, day care centers and retirement homes, but would allow the lines to pollute their daughter's bedroom as she sleeps or the yard she plays in.

4. Ruholl Position

The Ruholls adopt and support the position of MSSCLPG as set forth in the testimony of Paul Bergschneider. As noted by Mr. Bergschneider, Staff also supports constructing this segment parallel to the existing 138 kV line as it would result in the shortest and lowest cost route.

a. Length of Line

The Ruholls note that ATXI's Primary Route is approximately 68.9 miles and affects 258 landowners, and would require 1,244 acres of land and 486 real estate parcels. The Ruholls state that the Stipulated Route has a much greater impact as far as number of acres, landowners and real estate parcels impacted, as it is approximately 75.6 miles and would require 1,382 acres and 627 parcels, as well as affecting 321 landowners. A "second alternative," i.e., a route following the existing 138 kV line from Meredosia to Pawnee, Illinois, as proposed by the MSCLTF is approximately 57.3 miles. According to Staff, the Primary Route would have approximately 28 dead-end structures, the Stipulated Route would have 24 dead-end structures, and the MSCLTF Route would have 14 dead-end structures.

b. Difficulty and Cost of Construction

The Ruholls also adopt and support the position of MSSCLPG as to the costs associated with the Primary Route, Stipulated Route and MSCLTF Route, which shows that the Stipulated Route costs \$15,128,000 more than the Primary Route and \$36,782,000 more than the MSCLTF Route. The Ruholls believe the testimony shows that the Stipulated Route is the most expensive route at a cost of \$144,205,000 and will cost AIC customers substantially more money than any other proposed route for this segment of the Illinois Rivers Project.

The Ruholls also note that according to ATXI, there many more homes within 150 feet along the Stipulated Route. Marginally less tree removal is also anticipated along the Primary Route and the Primary Route is seven miles shorter than Alternate Route, therefore it appears to the Ruholls that the Primary Route has a lower associated cost. Furthermore, if ATXI's transmission line for this project parallels other transmission lines, ATXI testified that it will seek to acquire an overlapping easement so as to reduce the total easement width impacting the property, which the Ruholls believe would lessen the impact as compared to other routes.

The Ruholls also argue that it is also possible to have dual circuit tower structures and run a 138 kV line with a 345 kV line on the same pole, and in fact, ATXI is proposing to design sections of the Illinois Rivers Project for joint utilization utilizing dual circuit structures. The Ruholls believe the new 345 kV electric transmission line could co-exist with the existing 138 kV line on the MSCLTF Route and therefore, remains a viable route for the Meredosia to Pawnee segment. The Ruholls submit that the MSCLTF Route would also work to the satisfaction of FutureGen, noting that a FutureGen witness testifies that based on a preliminary analysis the MSCLTF Route would substantially resolve the FutureGen's concerns presented by ATXI's Primary Route. The Ruholls note that while FutureGen raised several objections to the Primary Route regarding scheduling and EMF interference; the Ruholls believe these objections were adequately addressed by ATXI.

c. Difficulty and Cost of Operation and Maintenance

The Ruholl's note that ATXI's estimated average price for each tangent structure, which would be used to support transmission lines with angles of 1 degree or less, is \$33,000 and for those with angles of 1 to 15 degrees, a "running angle" is \$74,250, more than double that of a tangent structure. The Ruholls state that ATXI's estimated average cost for a dead-end structure, required for angles above 15 degrees, is \$107,250 - more than three times that of a tangent structure. Accordingly, the Ruholls would adopt and support the position of Staff that the Alternate Route is more costly.

d. Impacts on Environmental and Historical Resources

The Ruholls contend that for each portion of the project, ATXI's Primary Route has a lesser overall potential for impact. The Ruholls state that marginally less tree removal is also anticipated along the Primary Route. The Ruholls also believe that the Primary Route contains only one known archaeological site; whereas, the Stipulated Route contains three known archaeological sites and Segment Option 1 contains five known archaeological sites.

e. Social and Land Use Impacts

The Ruholls assert that the Stipulated Route affects one cemetery, two schools, five archaeological sites; versus no cemeteries, no schools, and two archaeological sites along ATXI's Primary Route. The Ruholls also suggest that the Stipulated Route

would affect 208 more acres of prime farmland and 323.1 more total cropland acres when compared to the Primary Route, as well as various other features that should lean toward the Primary Route being found superior. The Ruholls also contend that the Stipulated Route would also impact a coal mine, as well as easements of the Panhandle Eastern Pipeline Company, LP, which has both a natural gas pipeline and a 12,000 acre natural gas storage area that would be affected by the Stipulated Route.

f. Community Acceptance

The Ruholls note that to determine the routing preferences, stakeholders and community members were given several options with regards to routing the proposed line and those included: 1) routing along roads, 2) routing along property lines/section lines, and 3) other preferences. Paralleling existing roadways was identified as being more favorable or preferred over paralleling existing property lines or section lines. However, the parties recognized the inherent conflict associated with paralleling existing roadways while also minimizing the potential for impact to existing residences since homes are more typically located along roads in rural areas.

The Ruholls state that these practices involve the evaluation of the potential to parallel existing rights-of-way and other linear features, such as property or field lines, while also reducing the potential for impacts to land uses or other environmental features that occur along these linear corridors. The Ruholls submit that it is unclear from the record whether the communities, stakeholders, and landowners were given an option to consider existing utility corridors as well. Nonetheless, the Ruholls assert that existing utility corridors are clearly linear and given the preferences of the public to utilize linear corridors with the least financial impact, the MSCLTF Route using the existing 138 kV right-of-way would appear to be supported by the general public and those affected.

g. Presence of Existing Corridors

The Ruholls believe that the existing 138 kV line Alternate Route identified by MSSCLPG that would cost \$107,423,000 is an existing viable corridor.

5. MSCLTF Position

a. Length of Line

Pursuant to the stipulations it entered into with MSCLTF and FutureGen, ATXI is recommending the route originally designated in its Petition as its "Alternate Route" as its Rebuttal Recommended Route for the Meredosia to Pawnee segment. MSCLTF notes that this route is depicted on ATXI Ex. 13.1. MSCLTF states that the length of this Stipulated Route is 75.6 miles.

b. Difficulty and Cost of Construction

According to ATXI's comprehensive route siting analysis, MSCLTF believes that the Stipulated Route is a viable, cost effective route, and assert that it should have fewer dead-end structures than the Primary Route. MSCLTF notes that the cost of the Stipulated Route has been estimated to be \$144,205.00.

c. Difficulty and Cost of Operation and Maintenance

According to ATXI's comprehensive route siting analysis, the Stipulated Route is a viable, cost effective route, and MSCLTF believes that ATXI considered the difficulty and cost of operating and maintaining a transmission line on the Stipulated Route when determining the route to be viable and cost effective.

d. Environmental Impacts

MSCLTF agrees with ATXI's route siting analysis that the Stipulated Route best reduces the potential for environmental impacts. While MSSCLPG asserts that placing the transmission line on the Stipulated Route would present environmental concerns, MSCLTF notes that on cross-examination, MSSCLPG witness Bergeschneider admitted that the MSSCLPG did not have any formal studies conducted which verified this claim., and conceded that when viewed on an individual tract of land basis, the alleged environmental concerns would be present regardless of where the transmission line is located.

e. Impacts on Historical Resources

MSCLTF also notes that MSSCLPG contends that portions of the Stipulated Route would impact historically significant land which has been the subject of documentation by the Illinois State Archeological Survey; however MSCLTF suggests that the cross-examination testimony of Paul Bergeschneider indicates that the "historically significant land" is currently the site of an ongoing farming operation. MSCLTF contends that it does not appear that any of the land along the Stipulated Route possesses sufficient historical significance to warrant an attempt to preserve the land in its historical state. MSCLTF also opines that MSSCLPG failed to introduce the alleged documentation of the land into evidence, therefore the nature of the alleged "documentation" is unknown, and the Commission should not assume that the Illinois State Archeological Survey has documentation which designates any of the land on the Stipulated Route as having unique historical significance. MSCLTF also notes that ATXI has indicated that it will continue to work with the IHPA on whichever route is selected.

f. Social and Land Use Impacts

MSCLTF states that FutureGen has established that the placement of the transmission line along ATXI's Primary Route would negatively impact the development

and operation of the FutureGen carbon dioxide pipeline and storage facility, as well as having the potential for conflicts from overlapping construction schedules and increased community resistance from multiple public works projects impacting the same landowners, as well as possibly impact FutureGen's subsurface monitoring technologies. MSCLTF believes the evidence shows that the only way to adequately prevent the potential disruption to and interference with subsurface monitoring technologies at the FutureGen Project is to avoid FutureGen's carbon dioxide pipeline and storage facility.

While MSSCLPG contends that the placement of the transmission line on the Stipulated Route would compromise the integrity and viability of the land located upon that route, MSCLTF notes that they failed to provide any formal studies which support this contention. Although MSSCLPG also claims that the placement of the transmission line on the Stipulated Route would negatively impact and interfere with the farming operations located on that route; MSCLTF opines that MSSCLPG concedes that it can present no study which supports this contention. MSCLTF asserts that the cross-examination testimony of Mr. Bergeschneider established that those alleged impacts would be equally felt by farmers on the Primary Route should that route be adopted.

g. Number of Affected Land Owners and Other Stake Holders

MSCLTF notes that approximately 302 landowners would be affected by the placement of the transmission line upon the Stipulated Route for the Meredosia to Pawnee segment.

h. Proximity to Existing and Planned Development

MSCLTF avers that approximately 1.3 acres of developed land devoted to a high intensity use would be located within 500 feet of the Stipulated Route, or approximately 0.0% of the overall Stipulated Route. MSCLTF indicates that approximately 18.2 acres of developed land devoted to a medium intensity use would be located within 500 feet of the Stipulated Route, which equates to approximately 0.4% of the overall Stipulated Route. It appears to MSCLTF that approximately 167.4 acres of developed land devoted to a low intensity use would be located within 500 feet of the Stipulated Route, or approximately 3.6% of the overall Stipulated Route.

i. Community Acceptance

The MSCLTF and FutureGen interveners each support the Stipulated Route. MSCLTF believes that the Stipulated Route has also received support from the Pearce Family, who expressed support for ATXI's Alternate Route as their first preference for the Meredosia to Pawnee segment. MSCLTF notes that the Stipulated Route would also avoid property owned by intervenors Splain and Cody. Although these intervenors did not file direct testimony, it is assumed that they would support a route that does not

affect their property. MSCLTF submits that the Stipulated Route addresses the concerns of multiple interveners along ATXI's Primary Route.

j. Visual Impact

MSCLTF assumes that there would be no significant difference in visual impact regardless of the route chosen by the Commission.

k. Presence of Existing Corridors

MSCLTF notes that there is presently an existing 138 kV transmission line which runs from Meredosia, Illinois to Pawnee, Illinois as depicted in ATXI Petition Exhibit A (part 3 of 5).

6. FutureGen Position

a. Length of Line

Pursuant to the stipulations it entered into with FutureGen and MSCLTF, ATXI is recommending the route originally designated in its Petition as its "Alternate Route" as its Rebuttal Recommended Route for the Meredosia to Pawnee segment. FutureGen represents that the length of this Stipulated Route is 75.6 miles.

b. Difficulty and Cost of Construction

FutureGen asserts that ATXI's comprehensive route siting analysis suggested that the Stipulated Route is a viable, cost effective route, which has fewer dead-end structures than ATXI's Primary Route; and while the Ruholls assert that ATXI has addressed FutureGen's conflicts with the project; FutureGen suggests that the Ruholls are mistaken. FutureGen notes that its witness, Kenneth Humphreys, stated that overlapping construction schedules for the Illinois Rivers Project and the FutureGen 2.0 clean coal project could present unavoidable conflicts for the projects since the Primary Route for this segment and the FutureGen 2.0 project's carbon dioxide pipeline and storage facility follow the same route in eastern Morgan County; while the Ruholls suggest that Mr. Humphreys' concerns are unwarranted because ATXI witness Hackman testified that it is always necessary for ATXI to "coordinate with property owners, road commissioners and other ongoing construction processes during the construction of transmission line projects." Although ATXI undoubtedly will coordinate with landowners and other projects, FutureGen believes the overlapping schedule and routes of the Primary Route and the FutureGen 2.0 project would lead to unavoidable, and potentially unresolvable, conflicts. Moreover, as the stipulation between ATXI and the FutureGen indicates, ATXI agreed to pursue the Alternate Route "to resolve certain concerns" raised by FutureGen.

c. Difficulty and Cost of Operation and Maintenance

According to ATXI's comprehensive route siting analysis, FutureGen argues that the Stipulated Route is a viable, cost effective route. FutureGen assumes that ATXI considered the difficulty and cost of operating and maintaining a transmission line on the Stipulated Route when determining the route to be viable and cost effective, and note that FutureGen raised concerns about the impact the Illinois Rivers Project would have on the operations of the FutureGen 2.0 clean coal project if Primary Route is approved for the Illinois Rivers Project, including the impact of EMF on the FutureGen project.

Although the Ruholls claim that ATXI witness Hackman testified that any EMF fields produced should have no impact on the FutureGen 2.0 project, FutureGen disagrees, noting Mr. Hackman did not testify about the potential impact of the EMF on FutureGen's carbon dioxide sensitive monitoring equipment. FutureGen suggests that more importantly, Mr. Hackman testifies that the most effective way to avoid interference with wireless technology and other electronics to put distance between the power lines and the equipment. If the Primary Route is selected for the Illinois Rivers Project, FutureGen notes it will run through the middle of the FutureGen 2.0 project's carbon dioxide storage facility, which means that proximity to monitoring equipment would be unavoidable.

d. Impacts on Environmental and Historical Resources

FutureGen believes that ATXI's comprehensive route siting analysis shows that the Stipulated Route best reduces the potential for environmental impacts. FutureGen also notes that ATXI indicates that it will continue to work with the IHPA to identify and work around any historically significant sites, and will employ appropriate mitigation measures as identified in conjunction with IHPA.

e. Social and Land Use Impacts

FutureGen suggests that the testimony of Mr. Humphreys of FutureGen establishes that the placement of the transmission line along the Primary Route would negatively impact the development and operation of the FutureGen carbon dioxide pipeline and storage facility. In addition to the potential for conflicts arising from overlapping construction schedules and increased community resistance from multiple public works projects impacting the same landowners, FutureGen asserts that the placement of the transmission line on the Primary Route would negatively impact FutureGen's subsurface monitoring technologies.

f. Number of Affected Land Owners and Other Stake Holders

FutureGen believes that evidence shows that approximately 302 landowners would be affected by the placement of the transmission line upon the Stipulated Route for the Meredosia to Pawnee Segment.

g. Proximity to Existing and Planned Development

FutureGen suggests that the evidence shows that approximately 1.3 acres of developed land devoted to a high intensity use would be located within 500 feet of the Stipulated Route, which equates to approximately 0.0% of the overall Stipulated Route. FutureGen states that approximately 18.2 acres of developed land devoted to a medium intensity use would be located within 500 feet of the Stipulated Route, or approximately 0.4% of the overall segment. FutureGen indicates that approximately 167.4 acres of developed land devoted to a low intensity use would be located within 500 feet of the Stipulated Route, or approximately 3.6% of the overall Meredosia to Pawnee segment.

While the Ruholls assert that the Stipulated Route would impact a coal mine whereas the Primary Route would not, FutureGen opines that the record does not indicate how the coal mine would be impacted or describe the extent of the impact. Absent such details, FutureGen believes the Commission should avoid assuming that the impact would be significant. In any event, given the fact that no coal company has intervened in this docket, FutureGen submits that it would be reasonable to assume that such an impact will not be significant. FutureGen suggests that the same argument relates to the Ruholls suggestion that many of the parcels located on the Alternate Route contain easements of the Panhandle Eastern Pipeline Company, LP. FutureGen states that the record does not indicate how many parcels on the Alternate Route are already burdened by Panhandle easements, and suggest that there is no basis for the claim that “many” parcels have pipeline easements, let alone a basis for determining that any impact or conflict would be significant.

h. Community Acceptance

FutureGen indicates that it and MSCLTF each support the Stipulated Route. FutureGen indicates that the Stipulated Route a/k/a ATXI's Alternate Route has also received support from the Pearce Family, who have expressed support for ATXI's Alternate Route as their first preference for the Meredosia to Pawnee segment. FutureGen notes that the Stipulated Route would also avoid property owned by interveners Splain and Cody. Although these intervenors did not file direct testimony, it is assumed that they would support a route that does not affect their property. FutureGen notes that the Stipulated Route addresses the concerns of multiple interveners along ATXI's Primary Route.

i. Visual Impact

FutureGen believes that the visual impact will be substantially the same regardless of the route chosen by the Commission.

j. Presence of Existing Corridors

FutureGen notes that there is presently an existing 138 kV transmission line which runs from Meredosia to Pawnee as depicted in ATXI Petition Ex. A (part 3 of 5).

7. Staff Position

Staff recognizes that ATXI recommends approval of the Stipulated Route as the best option for the portion of the project between Meredosia and Pawnee. Staff agrees that MSCLTF apparently withdrew support for its alternative route proposal, but Staff disagrees that the proposed route itself, once submitted, was, or could be, withdrawn. In fact, Staff continues to support the route proposal that MSCLTF submitted as the shortest and least costly route for this segment.

ATXI claims that there is no record evidence that the Stipulated Route would be more difficult to operate and maintain or would be more costly to operate and maintain relative to the other routes proposed. Staff points out, however, that longer lines cost more to construct and maintain than shorter lines. Furthermore, ATXI's only reason for rejecting MSCLTF's Route is that it parallels an existing 138 kV line, which allegedly poses reliability concerns, including the fact that the existing lines must be removed from service during maintenance and that a single pole failure could result in outages to both lines. Staff asserts that these claims regarding reliability are unsubstantiated. Staff argues that NERC standards treat lines that are parallel on non-overlapping rights-of-way the same as lines that are separated by several miles. For the Meredosia to Pawnee segment, Staff recommends use of the MSCLTF Route as the least costly route, followed by ATXI's Primary Route with the modification proposed by the Pearce Family.

Staff notes that ATXI's primary route is approximately 67.7 miles long, while the secondary route is approximately 75.6 miles long, and MSCLTF propose a route that is approximately 57.3 miles in length. Staff states that the Pearces propose two routes: the first approximately 66.5 miles in length, and the second approximately 67.7 miles in length. Staff also notes that the Robinettes propose a route that is approximately 75.2 miles in length.⁸

Staff indicates there is evidence of mine subsidence occurring at AIC's existing Pawnee Substation. Given that one of the primary purposes of the project is to create a dependable source for the delivery of wind generation both in and out Illinois, Staff

⁸ The Commission notes that although the Robinettes filed an Alternate Route Proposal and direct testimony in this proceeding, it does not appear that the testimony of the Robinettes was moved into evidence. It further does not appear that the Robinettes filed an Initial or Reply Brief.

believes it is reasonable for ATXI to seek a location outside of the area of mine subsidence to terminate its 345 kV transmission line, and the location it has selected, along the existing 345 kV transmission line connecting Pawnee to the Kincaid Generation Plant, is logical.

Staff suggests that constructing this segment parallels an existing 138 kV line, as MSCLTF suggests, would result in by far the shortest and lowest cost route. Staff notes that two interveners expressed support for ATXI's alternate route, but ATXI's cost estimate indicates that constructing the line along ATXI's alternate route would be \$15 million more costly than constructing it along ATXI's primary route. Staff submits that ATXI's primary route, as modified by Pearce's first alternative, would be the next most logical route.

8. Commission Conclusion

To begin, the Commission finds it would be helpful to include in its analysis the table which ATXI prepared which shows the various routes proposed for this segment of the Illinois Rivers Project, and which routes various parties are supporting. As noted previously, an alternate route was proposed by intervenor Robinette; however, the testimony supporting this route was not moved into evidence, nor does it appear that any further evidence supporting adoption of the Robinette route, or more accurately a modification to ATXI's alternate route, has been received into evidence. The chart depicting the positions as reflected in the briefs filed in this proceeding is as follows:

MEREDOSIA - PAWNEE				
Route	Stipulated/ ATXI Alternate Route	ATXI Primary Route	ATXI Primary Route with Pearce Modifications	MSCLTF Route
Part(ies) Recommending Approval	ATXI, MSCLTF, FutureGen, Pearce Family	None	None	Staff, MSSCLPG, Ruholl Family

As indicated, ATXI, MSCLTF, FutureGen and the Pearce Family recommend approval of the Stipulated Route as the best option for the portion of the project between Meredosia and Pawnee. The Commission notes that ATXI and FutureGen suggest that the Stipulated Route would eliminate FutureGen's concerns that the Primary Route might interfere with its proposed operations.

The Commission notes that Staff, the Ruholl Family, and MSSCLPG support the MSCLTF Route. The Commission notes that MSCLTF has withdrawn its support of the route, and ATXI argues that the list of landowners affected by the MSCLTF Route may

be incomplete. It further appears to the Commission that little evidence in support of the MSCLTF Route has been presented by any of the parties. It is difficult from the evidence presented to fairly judge whether the MSCLTF Route would be superior to the Stipulated Route, other than the length of the route. The Commission notes that Staff apparently gives great weight to this factor, and has little to say about the other criteria suggested. The Commission believes that these factors weigh against Commission approval of the MSCLTF Route.

In the alternative, the Commission notes that the Ruholl Family and MSSCLPG advocate approval of ATXI's Primary Route, while Staff's second preference is for ATXI's Primary Route, as modified by the Pearce Family's alternate route proposal. The Commission finds either of these proposed routes to be less preferable than ATXI's Alternate Route because it could interfere with FutureGen's proposed operations in the area. Additionally, the Commission notes that ATXI suggests that its Stipulated Route would eliminate the concerns that led the Pearce Family to propose its modification to ATXI's Primary Route.

The Commission's analysis of the routing criteria discussed in the positions of the parties indicates that on many issues, such as environmental impact, impacts on historical resources, social and land use impacts or visual impact, there is little preference between the Stipulated Route or the MSCLTF Route. While the Commission recognizes that some parties have indicated a route will impact a historical site, absent clear evidence of the fact, the Commission is inclined to give little weight to that assertion. The evidence makes clear that the MSCLTF Route is the shortest of the proposals. ATXI, however, suggests that when considering difficulty and cost of construction, or difficulty and cost of operation and maintenance, the Stipulated Route is preferable to any of the other proposals. The Commission is concerned that ATXI is willing to concede that paralleling a route segment to an existing transmission line is acceptable in some instances, while not preferable in other situations, while failing to adequately identify the differences which cause it to lean one way or the other. The Commission is also concerned that the MSCLTF Route has not been sufficiently developed for consideration in this proceeding.

Having reviewed the evidence of record, and upon consideration of all relevant route selection criteria as described by the parties, the Commission finds that the criteria described above favor the Stipulated Route for the Meredosia-Pawnee portion of the project, over all other proposed routes. Therefore, the Commission finds that the Stipulated Route for the Meredosia-Pawnee portion of the project is the least-cost route when all costs and benefits are taken into account.

Regarding a substation in Pawnee, the Commission notes that, other than Staff, there is little information in any party's briefs on this issue. The Commission does find that ATXI witness Dyslin testified in part, as follows:

ATXI intends to acquire a new substation site west of Pawnee, Illinois. The land ATXI intends to acquire consists of approximately 80 acres and is currently being farmed. This parcel is currently held by a private landowner, with whom ATXI is engaged in negotiations. ATXI anticipates having a signed contract for sale on or before November 15, 2012; (ATXI Ex. 8.0 at 3)

The Commission notes that Staff has indicated in its Initial Brief that there is currently a substation located on the west side of Pawnee; however, this substation has apparently had mine subsidence issues. Staff indicates that ATXI has proposed to construct a new substation at Pawnee, and it appears that Staff is in support of the construction of a new substation, as well as supporting the location of the proposed new substation. The Commission believes that no party has objection to the siting of the proposed new Pawnee substation; therefore, the construction of the new Pawnee substation at this location, as indicated by ATXI in its evidence presented in this proceeding, should be approved.

E. Pawnee-Pana

1. ATXI Position

ATXI states that it identified three viable routes for the Pawnee to Pana portion of the project: a Primary, a first alternate and a second alternate. ATXI notes that Staff recommends, and ATXI agrees, that the Commission should approve ATXI's Alternate Route 2 (the recommended route) along this segment. ATXI indicates that the recommended route is shown in teal, then orange on ATXI Exhibit 13.6 (Rev.), is highlighted on Figure 5, and was designated the "Rebuttal Recommended Route" in ATXI's rebuttal testimony. ATXI Alternate Route 2 is the shortest and least costly route, and impacts the least number of landowners. ATXI states that no other routes were proposed for this portion of the project. ATXI submits that Alternate Route 2 is the best routing option and should be approved by the Commission.

ATXI notes that the only outright opposition to this route is set out in the Initial Brief of Raynolds/Ramey. Without citation to the record or any actual appraisal, analysis or study, they allege "property devaluation" as a result of the transmission line. As indicated by the testimony of Rick Trelz, ATXI intends to fairly compensate affected landowners for the impact of the transmission line, so that after the line is constructed, there is no impact upon property resulting in diminution of value beyond that reflected in the compensation paid by ATXI. ATXI asserts that it is committed to addressing this generalized concern, which may exist for any potentially affected landowner and is not specific to Ms. Raynolds or Mr. Ramey.

ATXI suggests that Staff's concerns are based on the incorrect premise that a Kincaid to Mt. Zion 345 kV connection has not been considered by ATXI or MISO, and it is therefore not clear that ATXI chose the best location for the Mt. Zion substation. ATXI contends that the record is clear that discussions were held regarding MVP

configurations connecting to the Kincaid station during the MISO RGOS and MVP development meetings. ATXI submits that the Kincaid facilities' configuration presents operational and reliability concerns that would impact any decision to connect there. ATXI claims that the MISO MVP process examined numerous system configurations, and ATXI believes it is reasonable to conclude that a Kincaid – Mt. Zion alternative did not emerge as a superior option. ATXI also notes that MCPO witness Dauphinais examined alternative reinforcements to the Decatur area, and only identified his "Oreana 345/138 reinforcements," not a Kincaid connection (or any other alternative) to ATXI's proposal to connect Pana, Mt. Zion, and Kansas.

ATXI complains that deferral of any portion of the project for further consideration would create delay, due to the need to complete another approval process and for MISO to review any changes to key elements of the project. ATXI opines that delay will put the in-service dates for the project at risk and thus presents reliability concerns. ATXI submits that each portion of the 345 kV transmission line is part of the Illinois Rivers Project because it is an integral part of the transmission upgrades needed to promote the development of an effectively competitive electricity market and provide reliability benefits of the project. At the very least, ATXI believes that consideration in a separate docket could place the 2016 in-service dates at risk for the Mississippi River – Quincy, Quincy – Meredosia, Pana – Mt. Zion, and Sidney – Rising portions of the Project, which in turn could jeopardize the timely achievement of the reliability and other benefits of the project. Moreover, ATXI asserts that consideration of any portion in a separate docket could disrupt the sequencing of the construction of the project line segments, noting that MISO and ATXI have determined the preferred construction sequence, as shown on ATXI Exhibit 2.4, to minimize the disruption of the transmission system during construction and commissioning of the project.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

ATXI states that the following table represents the length and cost estimates for each proposed route for this segment of the project:

	ATXI Primary Route	ATXI Alternate Route 1	ATXI Alternate Route 2
Estimated Length in Miles	34.4	38.5	32.3
Estimated Base Cost	\$65,868,000	\$78,780,000	\$65,018,000

ATXI states that there is no record evidence indicating that its Alternate Route 2 would be difficult to construct. To the contrary, as indicated by ATXI witness Murphy, the land crossed by this segment is mostly flat agricultural land with dispersed residential use. ATXI submits that there is no record evidence indicating that its Alternate Route 2 would be more difficult to operate and maintain or that said route would be more costly to

operate and maintain relative to the other routes proposed by ATXI along the Pawnee to Pana segment.

b. Impacts on Environmental and Historical Resources

ATXI states that its Alternate Route 2 is expected to have minimal environmental impact. ATXI contends that there is no record evidence indicating that the potential environmental impact resulting from construction of Alternate Route 2 would be greater than that resulting from construction of the other routes proposed by ATXI along the Pawnee to Pana segment.

ATXI avers as well that there is no record evidence indicating that its Alternate Route 2 from Pawnee to Pana will substantially impact any historical resources. The Alternate Route 2 will not impact any known archeological sites and ATXI is unaware of any other historical resources that would prevent construction of the route. ATXI indicates that it will work with the IHPA to address issues that may arise during the construction process, and will obtain required permits or approvals, if any, prior to construction.

c. Social and Land Use Impacts

ATXI indicates that its Alternate Route 2 reflects an optimum location for the transmission line in that it would limit societal and land use impacts. ATXI states that there is no record evidence indicating that the Alternate Route 2 would create social or land use impacts greater than those created by the other routes ATXI proposed along the Pawnee to Pana segment.

d. Number of Affected Landowners and other Stakeholders and Proximity to Homes, other Structures, and Existing and Planned Development

ATXI notes that there are fewer landowners owning property within 250 feet of ATXI's Alternate Route 2 from Pawnee to Pana than there are landowners owning property within 250 feet of either the Primary Route or Alternate Route 1 along that same segment. ATXI states that Alternate Route 2 will not require displacement of any residences.

ATXI believes that concerns such as those held by Ms. Raynolds and Mr. Ramey are most effectively minimized by selection of ATXI's Alternate Route 2, as this route affects the fewest number of landowners compared to the other proposed routes, as illustrated by the following table.

PAWNEE – PANA			
Route	ATXI Primary Route	ATXI Alternate Route 1	ATXI Alternate Route 2
Potentially Affected Landowners	142	183	127

ATXI also states that there is no record evidence indicating that Alternate Route 2 from Pawnee to Pana is near any existing or planned development.

e. Community Acceptance

ATXI asserts that its Alternate Route 2 from Pawnee to Pana, as well as its Primary Route and Alternate Route 1, resulted from and pursuant to a lengthy public input process, during which numerous public information sessions were held at various locations along the segment. Alternate Route 2 does not directly impact any intervenor in this matter and remains unopposed in testimony or evidence of record.

ATXI notes that the Morrisonville Group is an intervenor in this matter alleging a specific interest along the Pawnee to Pana portion of the project. ATXI states that this intervenor presented no testimony nor did they offer or designate any alternate route. ATXI witness Murphy testified that Alternate Route 2 will not directly impact property owned by members of the Morrisonville Group, noting that although this intervenor group did not file direct testimony, she assumed that they would not oppose a route that did not impact their property.

f. Visual Impact

ATXI believes that visual impacts, if any, will be substantially the same for any route along the Pawnee to Pana segment. ATXI states that there is no record evidence indicating that its Alternate Route 2 is less preferable from a visual impact perspective.

g. Presence of Existing Corridors

ATXI states that its Alternate Route 2 includes certain portions for which paralleling was determined to be appropriate, noting that Alternate Route 2 extends southeast from the Pawnee substation along the north side of an existing 138 kV transmission line for approximately 11 miles. ATXI observes that Alternate Route 2 also parallels 138 kV lines along two additional stretches before terminating at the Pana substation.

2. Raynolds/Ramey Position

Raynolds/Ramey complain that ATXI stated that fewer landowners would be affected by the placement of the transmission line upon ATXI Alternate Route 2 for the Pawnee to Pana segment. However, Raynolds/Ramey are concerned whether there is any notation of how many landowners would be affected on ATXI's Alternate Route 1 compared to ATXI's Alternate Route 2 or Alternate Route 1 compared to ATXI's Primary Route.

Raynolds/Ramey object to ATXI's Alternate Route 2 from Pawnee to Pana. While ATXI claims it will compensate those with whom they will have an easement agreement, Raynolds/Ramey note that ATXI fails to state that there will be no compensation to property owners along the easement whose property values surely will be affected. While ATXI notes that no specific analysis has been conducted on the Raynolds/Ramey property or on the Illinois Rivers Project in general, therefore their property devaluation should not be considered; Raynolds/Ramey submit that until the power line is constructed, and an appraisal and/or sale are complete, there is no definitive, quantifiable amount of devaluation. Raynolds/Ramey argue that this would be too late, and complain that they were not notified of this project by ATXI. They note that the loss of value to their home can not be proven until the loss of equity has occurred, and suggest that there has been no communication with them as land owners on ATXI Alternate Route 2. They contend that only because they as the land owners reached out for information were they told of the ATXI plan, and submit that there is no substantial evidence that this project is beneficial to Illinois, nor any research showing the detrimental effect to landowners on ATXI's Alternate Route 2.

3. Staff Position

Staff notes that ATXI recommends approval of its Alternate Route 2 as the best option for the Pawnee and Pana segment of the project, and Staff agrees that ATXI's Alternate Route 2 would be the best choice if the Commission determines to include this segment in a certificate as part of this proceeding. ATXI's Alternate Route 2 is the shortest route and parallels an existing 138 kV line for approximately half the distance from Pawnee to Pana. However, Staff notes that 345 kV transmission lines already connect Pawnee to Kincaid and Kincaid to Pana, and it is not apparent to Staff that ATXI needs to construct the Pawnee-Pana segment. A Kincaid-Mt. Zion segment for the Illinois Rivers Project instead of ATXI's proposed Pawnee-Pana-Mt. Zion segments could provide the same benefit to the Decatur area as ATXI's proposal, but at a significantly lower cost due to the shorter distance.

Staff asserts that neither ATXI nor MISO studied the Kincaid-Mt. Zion option. Given that Section 8-406.1 of the Act requires that, to grant a certificate, the Commission must find that, based upon ATXI's petition and the evidentiary record, the project is the least cost means of satisfying the objectives that initiated the project, and given the fact that neither ATXI nor MISO studied the Kincaid-Mt. Zion option, which appears to be a lower cost method to satisfy the project's objectives, Staff recommends

that the Pawnee-Pana segment be excluded from any certificate granted in this proceeding. Staff also recommends that the Commission exclude the Pawnee-Pana segment because, if a Kincaid to Mt. Zion line can satisfy the need for a 345 kV source in the greater Decatur area at a lower cost than a Pawnee-Pana-Mt. Zion line, then the Pawnee to Pana line would not be necessary.

4. Commission Conclusion

The Commission notes that ATXI identified three routes for the Pawnee to Pana portion of the project: a Primary, Alternate Route 1, and Alternate Route 2. ATXI recommends that the Commission approve ATXI's Alternate Route 2 along this segment, contending that it avoids several residences and is shorter than either the Primary Route or Alternate Route 1, meaning it will cost less to construct.

The Commission notes that while no other routes were proposed for this portion of the project; intervenors Raynolds/Ramey oppose this route, arguing that if this route is approved, they will not be appropriately compensated for the diminution in value of their property. ATXI suggests that this opposition is based on property-specific concerns that are most effectively minimized by selection of ATXI's Alternate Route 2, because that route affects the fewest landowners as compared to the other routes proposed for this portion of the project. While the Commission understands the concerns of intervenors Raynolds/Ramey, this type of general concern would exist regardless of the route selected and the Commission declines to accept their objection to ATXI's recommended route.

Staff, rather than primarily supporting one of ATXI's proposed routes, or recommending a route of its own, recommends that the Commission decline to choose a route for this portion of the Illinois Rivers Project. Staff suggests that ATXI and MISO have failed to consider whether it would be preferable to have a line from Kincaid to Mt. Zion, which Staff believes might obviate the need for the Pawnee to Pana segment of the project. Staff agrees with ATXI that should the Commission decide to authorize a route for this segment, the best choice would be ATXI's Alternate Route 2.

Staff notes that Section 8-406.1 of the Act requires that, to grant a certificate, the Commission must find that, based upon ATXI's petition and the evidentiary record, the project is the least cost means of satisfying the objectives that initiated the project. Staff argues that given the fact that neither ATXI nor MISO appear to have studied the Kincaid-Mt. Zion option, which Staff indicates appears to be a lower cost method to satisfy the project's objectives, the Commission should not include in any certificate granted in this proceeding permission to construct the route from Pawnee to Pana.

The Commission recognizes that ATXI disagrees with Staff on this issue; however, the Commission is troubled by ATXI's responsive argument. In essence, it appears to the Commission that ATXI argues that ATXI and MISO considered many different route options, and since Kincaid to Mt. Zion was not chosen, it is reasonable to conclude that it was not optimal. In its Reply Brief, ATXI makes the following argument,

"(a)s it is well established that the MISO MVP process examined numerous system configurations..., it is reasonable to conclude that a Kincaid – Mt. Zion alternative did not emerge as a superior option." (ATXI Reply Brief at 61) ATXI also indicates that the Kincaid facilities configurations present operational and reliability concerns that would impact any decision to connect there.

The Commission is surprised that ATXI would argue that Kincaid to Mt. Zion is not feasible, as in essence it must have been considered and rejected because it was not chosen. While ATXI chose to file this proceeding under the expedited process provided in Section 8-406.1 of the Act, it appears to the Commission that one of the very unfortunate consequences of that filing is insufficient time to consider various alternate routes. Additionally, the Commission gives very little weight to the argument that this alternative must have been considered and found wanting. The Commission finds Staff's argument to be persuasive with regard to this portion of the project, and will not find that the proposed ATXI Alternate Route 2 is the least-cost option after consideration of all the evidence presented. The Commission will therefore decline to include as a portion of the Illinois Rivers Project authorization to construct a transmission line from Pawnee to Pana.

F. Pana - Kansas

Following the Pawnee to Pana segment, the Illinois Rivers Project reflects a 345 kV transmission line from Pana to a new proposed substation southwest of Mt. Zion. The transmission line would then run from Mt. Zion to a proposed substation near Kansas. In light of the conclusion concerning the Pawnee to Pana segment, however, there is no need to address the route options for a transmission line between Pana and Mt. Zion at this time. If a direct transmission line between Pawnee and Mt. Zion is found to be appropriate, a link to Pana will not even be necessary.

Earlier in this proceeding, Staff and Moultrie PO questioned the need for a new substation outside of Mt. Zion. Staff has since rescinded its objections and Moultrie PO has entered into a stipulation with ATXI under which it will also not object to a new Mt. Zion substation. A question remains as to the appropriate location for the Mt. Zion substation.

Staff contends that even though the 345 kV line will supply a 345/138 kV transformer near Mt. Zion, a preferable location for the Mt. Zion substation is further south - nearer a line between Pana and Kansas, as sought by the Village of Mt. Zion. Staff understands that the Village of Mt. Zion seeks an alternate substation site south of the site proposed by ATXI, specifically along Henry Road, on the east side of Section 28, rather than along Sulphur Springs Road, on the north side of Section 17, as ATXI proposes. Staff contends that it is more economical for AIC to extend two 138 kV lines further south to the 345 kV line than for ATXI to extend two 345 kV lines north to Mt. Zion. Staff explains that this is due to the fact that structure and hardware for 345 kV lines are more costly, and the required rights-of-way for 345 kV lines are wider and therefore more costly as well. Furthermore, Staff continues to believe that the location

of the new Mt. Zion substation should be determined after simultaneously considering both the 345 kV line routing and the routing for the connecting 138 kV line to avoid difficult routing choices for the 138 kV connections.

As noted above, Staff witness Rockrohr explains that ATXI's exclusion of the 138 kV connections from the Illinois Rivers Project creates potential problems. First, since potential routes for AIC's 138 kV lines are not to be determined in this proceeding, Mr. Rockrohr is concerned that attendees of ATXI's public meetings are likely unaware of the possibility that ATXI or AIC might construct additional 138 kV transmission structures and lines in the near future. Second, the location of ATXI's substations determines not only the proposed 345 kV route, but will also determine the route for any future 138 kV lines to be constructed in order to connect AIC's existing 138 kV system to ATXI's proposed substations. Since the landowners who might be affected by the location of those 138 kV lines and structures may not have known that ATXI's proposals might affect them, Staff fears that there would be no reason for them to attend the public meetings for this proceeding because they are not along ATXI's proposed 345 kV transmission line routes. Staff maintains that it, ATXI, intervening parties, and the Commission should be able to consider information about possible routing for both 345 kV and 138 kV transmission lines, not only the 345 kV lines. Mr. Rockrohr asserts that it is possible that the public could have provided ATXI with important information regarding potential 138 kV routes that could have caused ATXI to select a different substation site entirely. Since, in most cases, ATXI proposes that two transmission line segments connect to each of its proposed substation sites, Staff points out that any change in the location of a substation site would require both segments that connect to the substation site to have routes other than the routes that ATXI is proposing. For these reasons, ATXI's exclusion of the 138 kV connections could lead to some decisions on substation siting and 345 kV line routing in this proceeding that are made with incomplete information, resulting in unnecessarily difficult route selections for the 138 kV connecting lines in future proceedings.

ATXI argues that Staff's proposal is inferior from a reliability standpoint. ATXI states that it performed a preliminary analysis to determine if the proposed relocation of the Mt. Zion substation farther south along a hypothetical Pana substation to Kansas substation 345 kV line, coupled with two 138 kV lines extending northward to the Mt. Zion PPG substation, is a viable option to address the future reliability issues in the Decatur area. ATXI reports that the analysis indicated that a Mt. Zion south substation with two longer 138 kV lines connected to the Mt. Zion PPG substation did not address the future Decatur reliability concerns as effectively as the ATXI proposal. Due to the increased impedance of the long 138 kV lines, ATXI states that the voltage support provided by a Mt. Zion south substation is inadequate to return certain post-contingency voltages above the 95% threshold. The voltage issues would become even more severe than indicated, ATXI continues, when expected additional Archer Daniels Midland Company load is served. For these reasons, ATXI asserts that relocating the proposed Mt. Zion substation farther south as suggested by Staff is not a viable solution due to the future reliability issues in the Decatur area. As for the location of future 138

kV lines connecting to a new Mt. Zion substation, ATXI believes that landowners attending the open houses were generally aware ATXI's future needs.

MISO is concerned about any delay in the construction of the Illinois Rivers Project. According to MISO witness Webb, any delay would be detrimental to providing the intended benefits to Illinois and the MISO region. Mr. Webb testifies that the Mt. Zion substation should be in service in 2016. MISO seems to suggest that because its planning process was very thorough, there could be no other viable options and the resulting project must be approved to meet the time table that it and ATXI has established.

The Commission has considered the competing concerns of the parties regarding the location of a new Mt. Zion substation and finds Staff's argument most persuasive. Although the Commission agrees that a new substation in the Mt. Zion area is necessary, exactly where that substation should be located is less certain. The record reflects that the new substation, wherever it is built, will include a 345/138 kV transformer; therefore, there will be at least one 138 kV transmission line emanating from the new Mt. Zion substation. Specifying the location of the substation based solely on the location of one of the connecting 345 kV lines (that being the line from Kansas) without knowing where other connecting transmission lines will be coming from (the aforementioned 138 kV line and the other 345 kV line from either Pawnee or Pana) would unreasonably restrict future efforts to site those other transmission lines. Therefore the Commission will not approve a particular location for a new Mt. Zion area substation at this time. The Commission recognizes that MISO engaged in significant planning prior to the initiation of this docket and acknowledges MISO's concerns about delay, but can not simply abdicate its authority and responsibility to MISO. Acceptance of the MISO process and results on blind faith would render the Commission's review a meaningless gesture.

Fortunately for ATXI, the uncertainty surrounding the location of a new Mt. Zion substation does not prohibit the Commission from selecting a route for the 345 kV line from Mt. Zion to Kansas. One of the three proposed routes between Mt. Zion and Kansas rises above the other two and warrants selection regardless of the ultimate location of the Mt. Zion substation. The Commission will compare and contrast the three proposed routes below.

1. ATXI Position

Pursuant to its stipulation with Moultrie PO, ATXI seeks approval of a route developed by Moultrie PO between Mt. Zion and Kansas ("MZK Route"). The route is shown on ATXI Ex. 13.7. ATXI chose this route over its own Primary and Alternate Routes, which are also depicted on ATXI Ex. 13.7. In light of the stipulation between it and Moultrie PO, ATXI considers the MZK Route to best represent the balance of the interests of the parties and as best supported by the overall record.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

ATXI reports that the length and construction cost for each route are as follows:

	MZK Route	ATXI Primary Route	ATXI Alternate Route
Estimated Length in Miles	69.2	68.32	66.42
Construction Cost	\$126,511,000	\$129,087,000	\$128,026,000

ATXI considers the differences in length and cost nominal. But of the three, ATXI notes that its preferred MZK Route is the least costly to construct even though it is the longest route. ATXI explains that the lower cost is attributable to the MZK Route being straighter and therefore requires fewer of the more expensive angle structures. In response to PDM Coalition's cost analysis, ATXI points out that PDM Coalition was comparing the wrong numbers.

ATXI states further that there is no record evidence that the MZK Route would be more difficult to operate and maintain or would be more costly to operate and maintain relative to the other routes proposed. To the extent that the Commission considers ATXI's Primary Route, ATXI does not believe that the route's proximity to Tarble's limestone quarry warrants any concern. According to ATXI, Ameren Services has experience with constructing, operating, and maintaining electrical facilities near limestone quarries and has had no problems with lime dust.

With regard to PDM Coalition's claim that ATXI previously considered the MZK Route unviable, ATXI responds that it only considered the MZK Route unviable from an environmental perspective. Overall, after weighing several criteria, ATXI believes the MZK Route to be not only viable but the best option. ATXI suggests that PDM Coalition has taken ATXI witness Murphy's testimony out of context.

b. Impacts on the Environment and Historical Resources

According to ATXI, there is no record evidence that the potential impacts on the environment and historical resources resulting from the MZK Route would be greater than those resulting from the other proposed routes. ATXI asserts that the type of environmental impacts that occur will occur regardless of the route approved by the Commission. ATXI understands there to be one known archaeological site within the easement of the MZK Route, but based on the testimony of Moultrie PO witness Reinecke does not believe that the presence of the site will prevent the line from being constructed. ATXI commits to work with the IHPA to address issues that may arise during the construction process, and will obtain required permits or approvals, if any, prior to construction.

c. Social and Land Use Impacts

ATXI relates that cemeteries, churches, prime farmland, and schools were identified as highly sensitive during the earliest public meetings. According to ATXI, there are the same number of schools and churches within 500 feet of each of the three proposed routes. While all three of the routes primarily impact farmland, ATXI states that the MZK Route impacts the least amount of prime farmland (132.3 and 109.7 fewer acres than ATXI's Primary and Alternate Routes, respectively). ATXI contends further that impacts can be addressed through detailed design of the route, construction mitigation measures, and easement and damage compensation. ATXI concludes that there is no record evidence regarding the societal and land use impacts that supports selection of any route over the MZK Route.

ATXI denies PDM Coalition's claim that ATXI could not meet its obligation under its Agricultural Impact Mitigation Agreement ("AIMA") with the Illinois Department of Agriculture if the MZK Route is adopted. ATXI commits to complying with the AIMA regardless of which route the Illinois Rivers Project follows. ATXI states further that farmland impacts will not be unique along the MZK Route.

If the Commission considers ATXI's Primary Route, ATXI states that it will evaluate the impact of the route on Tarble's limestone quarry operations and make appropriate compensation offers. With regard to Mr. Reed's grass airstrip along ATXI's Primary Route, if the Primary Route is adopted ATXI will make a determination as to whether the placement of the transmission line causes the airstrip to be out of compliance with the regulations of the Federal Aviation Administration ("FAA") or the IDOT Division of Aeronautics. If so, ATXI states that it will discuss and assess alternatives with the airstrip owner.

d. Number of Affected Landowners and other Stakeholders and Proximity to Homes, other Structures, and Existing and Planned Development

Within 500 feet of each route, ATXI reports that the MZK Route impacts the fewest residences: 15 less than ATXI's Primary and 31 less than ATXI's Alternate Route. Within 250 feet of either side of its Primary and Alternate Routes, ATXI relates that there are approximately 199 and 222 landowners and other stakeholders, respectively. The record lacks data on the number of affected property holders within 250 feet of the MZK Route. Upon drawing even closer to each route, the number of residential and nonresidential structures declines further, as reflected in the following table:

	MZK Route	ATXI Primary Route	ATXI Alternate Route
Residential Structures within 0-75 feet of centerline	0	0	0
Residential Structures within 75-150 feet of centerline	1	12	17
Residential Structures within 0-500 feet of centerline	13	28	44
Non-Residential Structures within 0-500 feet of centerline	38	106	147

ATXI observes that none of the three routes would require demolition of any residences. Based on this criterion, ATXI asserts that the MZK Route is the preferred route. ATXI does not believe that consideration of proximity to existing and planned development reveals a preference for any route.

e. Community Acceptance

In light of there being only one party opposed to its stipulation with Moultrie PO, ATXI argues that the MZK Route enjoys greater community acceptance and is therefore the preferred route under this criterion. ATXI understands that Moultrie PO, Brock-Jones, Coles LO, John Reed, and Tarble would accept the MZK Route. ATXI notes that only PDM Coalition expresses opposition to the MZK Route.

In response to PDM Coalition's allegation that the Commission can not have any assurance that the residents of Piatt and Douglas Counties were even aware the Commission would consider a route through their counties, ATXI argues that the record shows ATXI published notice of the Illinois Rivers Project in both Piatt and Douglas Counties. The record also shows, ATXI continues, that it held a total of six public meetings within these counties. Thus, ATXI concludes, PDM Coalition can not now argue the residents in these counties were not aware of the project and did not participate in the public process.

f. Visual Impact

To the extent that there any visual impacts, ATXI maintains that they will be substantially the same for any route. ATXI states further that there is no record evidence that the MZK Route is less preferable with regard to visual impact than any other route proposed for this portion of the Illinois Rivers Project.

g. Presence of Existing Corridors

ATXI states that its Primary and Alternate Routes for this portion of the Illinois Rivers Project emerged, in part, from an evaluation of opportunities and stakeholder input. ATXI's routes use roads, property and section lines, and township boundaries. The MZK Route parallels US Route 36, an existing 138 kV transmission line, and an existing 345 kV transmission line corridor. ATXI does not indicate which of the routes is preferable under this criterion.

2. Moultrie PO Position

In response to PDM Coalition's comments about Moultrie PO's motivation behind developing the MZK Route, Moultrie PO states that its motives are no different than any other intervening landowner's motives. Moultrie PO suggests that all of the intervening landowners would prefer to see the transmission line be constructed on someone else's land and not their own land. Rather than examine the motives of landowners, Moultrie PO recommends that the Commission focus on the merits of each intervenor's route proposals.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

Moultrie PO recognizes that its MZK Route is the longest route (by 0.9 mile), but because the cost for angle structures along the MZK Route is lower, the overall cost of the MZK Route is lower than that of the shorter ATXI Primary and Alternate Routes. In response to PDM Coalition's argument that the MZK Route is actually more costly to construct than ATXI's Alternate Route, Moultrie PO asserts that DPM Coalition is making an "apples to oranges" comparison of cost data in the record. Moultrie PO notes further that ATXI witness Hackman agrees that the MZK Route is constructible despite the presence of existing transmission lines. He testifies that the reduced societal and environmental impacts associated with the MZK Route justify construction along the existing transmission lines. (Tr. at 1021-2023) Accordingly, Moultrie PO is not aware of any difficulties with constructing the MZK Route. In addition, to the best of Moultrie PO's knowledge, there is no evidence that the MZK Route would be more difficult to operate and maintain or would be more costly to operate and maintain relative to the other routes proposed.

b. Impacts on the Environment and Historical Resources

With regard to environmental impacts, Moultrie PO relates that the MZK Route has 20.5 more acres of wooded areas in the 500 feet study corridor area than ATXI's Primary Route, but 8.2 fewer acres of wooded areas in the 500 feet study corridor than ATXI's Alternate Route. Moultrie PO makes no specific pronouncement on which route is preferable from an environmental perspective. With regard to impacts on historical resources, Moultrie PO understands that there are four known archeological sites within the 500 feet study corridor for the MZK Route, one known archeological site within the

500 feet study corridor for ATXI's Alternate Route, and no archeological sites within the 500 feet corridor for ATXI's Primary Route. Moultrie witness Reinecke indicates that only one of the four sites within the 500 feet study corridor for the MZK Route is actually crossed by the MZK Route. In response to PDM Coalition's concerns about a Native American site within the area of the MZK Route, Moultrie PO states that the site has already been degraded by the collection of artifacts and continued farming operations by the owner. Mr. Reinecke concludes that the presence of this site will not prevent the MZK Route from being constructed. Moultrie PO also notes that ATXI's Primary and Alternate Routes are closer to Amish farmsteads and cultural facilities within Moultrie County than its own MZK Route. In this respect, Moultrie PO asserts that the MZK Route represents an improvement over what ATXI proposed.

c. Social and Land Use Impacts

With regard to the more sensitive land uses identified at ATXI's earlier public meetings, Moultrie PO relates that the three routes have the same number of churches and schools within their 500 feet study corridors, the MZK Route and ATXI's Alternate Route both have one less cemetery within the 500 feet study corridors than ATXI's Primary Route, and the MZK Route has 132.3 fewer acres of prime farmland within its 500 feet study corridor than ATXI's Primary Route and 109.7 fewer acres of prime farmland than ATXI's Alternate Route. The only substantive criticism of the MZK Route concerning land use relates to possible interference with aviation activities at the Tuscola Airport. This criticism is based on the testimony of PDM Coalition witness Hruspa. Mr. Hruspa's primary complaint is that a transmission line along the MZK Route would make an approach or landing almost impossible. Moultrie PO witness Fischer contends that this assertion is incorrect and unfounded.

Mr. Hruspa claims that the air traffic pattern must remain south of the airport because of the presence of towers to the north. While this may be true of landings on Runway 27, Moultrie PO contends that the opposite would be true for landings on Runway 9, where the crosswind, downwind, and base segments of an approach would necessarily be to the north of the airport. (See Federal Aviation Regulation ("FAR") 91.126(b)(1)(2)). Moultrie PO states further that a review of the Airport Facilities Directory ("AFD"), an FAA publication that is published and updated every 56 days, reveals that Traffic Pattern Altitude ("TPA") for this airport is 1,465 feet above Mean Seal Level ("MSL") or 800 feet Above Ground Level ("AGL"). (See AFD March 7, 2013-May 2, 2013 edition at 763) The proposed transmission lines have a maximum height of about 140 feet, and would be located about .25 mile from the airport, running parallel to the runway. Mr. Fischer asserts that an aircraft would have to descend below 200 feet AGL about .25 mile from the airport in order to be impacted by the proposed transmission line. As explained by Mr. Fischer, any operations by an airplane .25 mile south of the Tuscola Airport at or below 200 feet AGL would be reckless and unsafe regardless of the presence of the proposed transmission line. Moreover, Mr. Fischer continues, such operations are not permitted. As long as the aircraft using the airport comply with the rules and standards governing flight operations in and around the airport, Mr. Fischer avers that the location of ATXI's proposed transmission line on the

MZK Route will not be a problem. Pilots must complete rigorous training requirements and familiarize themselves with both the aircraft they fly, and all of the FARs related to operating an aircraft. Mr. Fischer also contends that night-time operations will not be a problem and adds that ATXI may be required to put lights on a transmission line's towers located near the airport, making them even more readily identifiable. Moultrie PO witness Reinecke also observes that the hazard requirements established by IDOT in Title 92, Chapter I, Subchapter b, Part 16, Section 16 of the Illinois Administrative Code do not apply to this airport. Even if they did, he notes, the MZK Route would comply with those requirements. Finally, Moultrie PO points out that ATXI indicates that it will work with federal agencies such as the FAA, and comply with all aviation related regulatory requirements. In response to PDM Coalition's claim that Mr. Reinecke failed to address his own concerns about his route's proximity to the Tuscola Airport, Moultrie PO explains that the concerns expressed by Mr. Reinecke were early in his routing process and well before his final analysis of the impact of the MZK Route on the airport was complete. For these reasons, Moultrie PO believes that the MZK Route is preferable under this criterion.

d. Number of Affected Landowners and other Stakeholders and Proximity to Homes, other Structures, and Existing and Planned Development

Within 75 to 150 feet of the centerline, Moultrie PO observes that the MZK Route has 11 fewer residences than ATXI's Primary Route and 16 fewer residences than ATXI's Alternate Route. Within 150 to 300 feet, the MZK Route has one more residence than ATXI's Primary Route and eight fewer residences than ATXI's Alternate Route. Within 300 to 500 feet, Moultrie PO reports that the MZK Route has five fewer residences than ATXI's Primary Route and seven fewer residences than ATXI's Alternate Route. In total, within 500 feet, the MZK Route has 15 (53.6%) fewer residences than ATXI's Primary Route and 31 (70.4%) fewer residences than ATXI's Alternate Route. Moultrie PO also observes that none of the towns along the MZK Route have intervened in this docket. To the best of Moultrie PO's knowledge, no party presented specific evidence addressing existing and planned development along the three routes. Moultrie PO considers the MZK Route preferable under these criteria.

e. Community Acceptance

Because the MZK Route affects fewer sensitive land uses, Moultrie PO contends that the MZK Route is preferable under the community acceptance criterion. Moultrie PO takes exception to PDM Coalition's criticism that the MZK Route lacks public input. Moultrie PO notes that several interveners support its stipulation with ATXI. It also points out that, unlike ATXI, it had no obligation to conduct public hearings but in the end developed the MZK Route using the results of ATXI's public process. Moreover, although ATXI did not propose a route running through Piatt or Douglas Counties, ATXI held public meetings in those counties for the Illinois Rivers Project.

f. Visual Impact

Moultrie PO witness Dauphinais discusses the use of existing linear features to avoid introducing new visual impact where none already exists. With this in mind and as discussed below, Moultrie PO contends that the MZK Route makes use of significant existing linear feature opportunities in a manner that is comparable to ATXI's Primary and Alternate Routes from Mt. Zion to Kansas, thereby minimizing visual impact.

g. Presence of Existing Corridors

Moultrie PO witness Dauphinais discusses the importance of considering the paralleling of existing linear features in terms of the length of the route not paralleling such features. By example, he showed that this is important because the routes being compared can potentially have significantly different lengths causing a significantly longer route to potentially appear to have less impact than a shorter route simply because the longer route also has more total miles of paralleling. He also discusses at length that when evaluating such linear feature paralleling, it is important to work from the most significant type of existing linear feature to the least significant type of existing linear feature. He explains that not all existing linear features are the same with regard to their degree of visual impact, noise impact, environmental fragmentation, and/or agricultural fragmentation. Under such guidelines, Moultrie PO believes that the MZK Route is preferable under this criterion.

3. PDM Coalition Position

PDM Coalition urges the Commission to adopt Staff's position and defer identifying the most appropriate route between Mt. Zion and Kansas until a later time. PDM Coalition is particularly troubled by ATXI's support for its own Alternate Route in its prepared testimony but right before the evidentiary hearing abandons its Alternate Route in favor of the MZK Route designed by Moultrie PO. In support of its views, PDM Coalition relies on many of ATXI's arguments before it entered into a stipulation with Moultrie PO. PDM Coalition asserts that ATXI only entered into the stipulation favoring the MZK Route to silence Moultrie PO's opposition to the construction of a new Mt. Zion substation. The only reason Moultrie PO objected to the Mt. Zion substation, PDM Coalition continues, was to get the transmission line out of Moultrie County. PDM Coalition believes that it is reasonably self-evident that "Moultrie County property owners" would have little interest in whether the residents of Macon County need a substation. What interested Moultrie PO, PDM Coalition insists, was the fact that elimination of the substation would likely mean a direct route from Pana to Kansas south of Moultrie County. The stipulation with ATXI serves the same purpose - it gets the line outside of Moultrie County. PDM Coalition insists that the stipulation has nothing to do with the merits of the Mt. Zion substation, and it has nothing to do with the merits of the MZK Route versus ATXI's Alternate Route. While the stipulation may promote the private interests of ATXI and Moultrie PO, PDM Coalition asserts that it does not promote the public interest. According to PDM Coalition, an analysis of the siting criteria reveals that ATXI's Alternate Route is in fact the best route. PDM

Coalition states further that ATXI makes many arguments pertaining to other segments of the Illinois Rivers Project that logically it should also make in relation to the Mt. Zion and Kansas segment. But because of the stipulation with Moultrie PO, ATXI takes contrary positions in relation to the Mt. Zion to Kansas segment. PDM Coalition does not wish to see the Commission reward such behavior.

a. Length of Line and Difficulty and Cost of Construction, Operation, and Maintenance

In evaluating the length of each route, PDM Coalition points out that the MZK Route is the longest route and criticizes it for taking an "unnecessary detour" to the north. The sole purpose of the MZK Route's four-mile detour to the north on its way to the Kansas substation 12 miles to the south is, according to PDM Coalition, to almost entirely avoid Moultrie County. Although Moultrie PO attributes its routing to an attempt to achieve "geographical diversity," PDM Coalition simply calls this a euphemism for "someplace other than Moultrie County." PDM Coalition notes that ATXI witness Murphy testifies that the land use and geography of Piatt and Douglas Counties is no different than Moultrie County. Because ATXI's Alternate Route is the shortest, PDM Coalition considers it the most favorable in terms of length. PDM Coalition also calculates the cost of the routes differently than ATXI and concludes that the MZK Route (\$129.1 million) is more expensive to construct than ATXI's Alternate Route (\$128.0 million). PDM Coalition also claims that the MZK Route has more angle structures which contribute to its higher cost estimates for that route.

Despite these circumstances and its own position prior to entering into a stipulation with Moultrie PO, PDM Coalition asserts that ATXI now takes a contrary position supporting the MZK Route. PDM Coalition observes that in a May 7, 2013 filing ATXI even referred to the MZK Route as not viable, yet now seeks its adoption. PDM Coalition asserts that ATXI can obfuscate the meaning of viable, but it can not dispute that its own Alternate Route is better than the MZK Route. PDM Coalition states that all of the direct testimony ATXI submitted supports its alternate route. Moreover, PDM Coalition asserts that ATXI's entire route structure is based on the work and testimony of its witnesses. PDM Coalition contends that ATXI should not be able to ask the Commission to accept its testimony with regard to all segments of the line except the Mt. Zion to Kansas segment. According to PDM Coalition, adoption of the MZK Route would be reversible error, consistent with People for the Public Interest v. ICC, 136 Ill.2d 192, 227 (1989), because it would represent the adoption of a settlement contrary to record evidence. PDM Coalition maintains that ATXI can not submit evidence in support of one route and then ask the Commission to approve a different route.

PDM Coalition also observes that ATXI witness Hackman testifies that paralleling transmission lines does not necessarily reduce the cost of land acquisition, construction, or operation and maintenance. He also notes that maintenance of either line may require both lines to be taken out of service due to their proximity. Weather events can simultaneously harm both lines as well. Mr. Hackman adds that paralleling can be undesirable from an operations perspective for these reasons, and having two lines

down can risk the reliability of the system at large. PDM Coalition presumes that it is for these reasons that ATXI chose not to parallel its Primary and Alternate Routes with existing transmission lines in Douglas and Coles Counties. Therefore, from an operation perspective, PDM Coalition considers ATXI's Alternate Route to be better than the MZK Route.

b. Impacts on the Environment and Historical Resources

With regard to environmental impacts, PDM Coalition witness Kamm testifies that the MZK Route will cut through a black walnut grove he planted 25 years ago and require the clearing of forest areas in the floodplain of the Lake Fork River. With regard to historical resources, he states that the MZK Route will cut through a native American site registered with the University of Illinois Archeological Survey that has yielded many artifacts over the years, and will also pass just three miles north of Arthur, Illinois, a well-known Amish community and major tourist destination. PDM Coalition asserts that these concerns would be eliminated by approval of ATXI's Alternate Route.

c. Social and Land Use Impacts

As for land use impacts, PDM Coalition expresses concern over the impact of the MZK Route on the Tuscola Airport. The MZK Route is located approximately 2,070 feet south of Runway 27. PDM Coalition witness Hrupsa, the owner of the Tuscola airport, testifies that a transmission line so located would be directly in the path of the airport's standard left-hand approach pattern, shown on Exhibit A to his affidavit. (PDM Ex. 3 at 2) According to PDM Coalition, Moultrie PO recognizes that the proximity of the MZK Route to Runway 27 may be a problem, yet took no steps to move the route.

The impact of the MZK Route on farmland also troubles PDM Coalition. PDM Coalition reports that the MZK Route cuts through more cultivated crop acres than ATXI's Alternate Route. PDM Coalition recites that ATXI Ex. 4.5, page 1, reflects that ATXI's Alternate Route has 3,374.3 cultivated crop acres in the 500 feet corridor while MCPO Ex. 2.3, page 1, reflects that the MZK Route has 3,812.7 cultivated crop acres in the 500 feet corridor. PDM Coalition calculates that this difference of 438 acres within the 500 feet corridor equates to a required taking of an additional 132 acres within the 150 feet easement area. PDM Coalition also claims that the larger footprint of the MZK Route on farmland means that ATXI can not comply with its AIMA with the Illinois Department of Agriculture. Aerial crop dusting is negatively impacted by the MZK Route as well.

d. Number of Affected Landowners and other Stakeholders and Proximity to Homes, other Structures, and Existing and Planned Development

As for the number of affected landowners, PDM Coalition notes that ATXI identified and notified each landowner affected by ATXI's routes, while the designer of the MZK Route, Moultrie PO witness Reinecke, testified that he did not know how many

parcels and landowners would be affected by his proposal. PDM Coalition also points out that Mr. Reinecke did not know the name of the towns on his route map along US Highway 36 on the Piatt-Moultrie border. PDM Coalition identifies the following towns along the MZK Route: Casner, La Place, Hammond, Pierson Station, Atwood, Garrett, and Tuscola. Although Mr. Reinecke was unable to identify any of these towns by name other than Tuscola, he did confirm that 100% of the towns on US Highway 36 from Macon to Douglas Counties are located primarily on the north side of the road. PDM Coalition observes that Mr. Reinecke admits that he studied a route which ran about 1 mile south of US Highway 36 in Moultrie County (and therefore would have been more distant from the centers of all of these towns), and e-mailed Moultrie PO's attorney on December 19, 2012, to tell him that this south-side route inside Moultrie County appeared to be a better route. This e-mail was admitted into evidence as PDM Cross Exhibit 1.0. Moultrie PO, however, never submitted an alternate route running south of US Highway 36 in Moultrie County. PDM Coalition insists that such evidence shows that the MZK Route was not motivated by a concern for existing developments; it was motivated by a desire to keep the line outside of Moultrie County notwithstanding the presence of several towns in southern Piatt County and western Douglas County.

e. Community Acceptance

PDM Coalition complains that ATXI's Alternate Route benefits from public input whereas the MZK Route does not. Even the case caption, PDM Coalition observes, indicates that siting the line in Piatt or Douglas Counties was not intended. PDM Coalition claims that the Commission can not have any assurance that the residents of Piatt and Douglas Counties were even aware the Commission would consider a route through their counties. In changing its position and now advocating for the MZK Route, PDM Coalition accuses ATXI of throwing not just Piatt and Douglas County residents under the bus, but ATXI's own credibility as well. In PDM Coalition's view, ATXI and MCPO have rather shamelessly trampled the public interest in pursuit of their own private interests--all so ATXI can avoid having to defend its proposed Mt. Zion substation. PDM Coalition states that a route outside of Moultrie County is now "viable" to ATXI only because of the stipulation; the stipulation exists only because Moultrie PO raised objections to the substation; and the objections to the substation were raised only to get the line outside of Moultrie County. PDM Coalition states that the public interest factors nowhere in this equation and finds it inconceivable that the stipulation could be deemed acceptable to the central Illinois community. PDM Coalition notes that both the Piatt County Board and the Douglas County Board passed resolutions opposing any route passing through their respective counties. PDM Coalition insists that no finding of community acceptance can be made for such a detour route, the only purpose of which is to keep the route outside of Moultrie County.

f. Presence of Existing Corridors

PDM Coalition accuses Moultrie PO of ignoring the public's routing preferences with the design of the MZK Route. Rather than site the route along roads and property and section lines, PDM Coalition observes that Moultrie PO proposes to run the new

345 kV line along existing transmission lines for much of its length. PDM Coalition notes that ATXI witness Hackman expresses concern about parallel transmission lines. Had ATXI intended to make use of these existing transmission corridors, PDM Coalition believes that ATXI would have proposed building the new 345 kV line along these corridors.

PDM Coalition takes issue with the characterization of the MZK Route paralleling US Route 36. PDM Coalition points out that the MZK Route is actually a mile from the road and cuts through the middle of 27 miles of farm parcels where there is no road, property line, or even a fence. Thus, for a significant portion of the MZK Route there is no existing corridor.

4. Coles LO, Reed, and Tarble Position

Coles LO, Mr. Reed, and Tarble understand that ATXI's Alternate Route is the shortest route and therefore the most preferable route in terms of length. As for construction cost, they understand that ATXI's Primary Route is the most expensive and therefore the least preferred route. They attribute some of the higher cost of ATXI's Primary Route to the impact on Tarble's limestone deposits and a bald eagle nesting area. In addition to the impact on the limestone quarry, social and land use impacts include impairment of a small grass runway owned by Mr. Reed, impairment of the view from recently built homes, interference with farming operations, reduced land values, and confiscation of prime farmland. Coles LO explains that Mike Popham and his brother Ron Popham each built homes in the area eight years ago and six months ago, respectively. The view from their homes, as well as other area homes, would be marred by construction of the transmission line along ATXI's Primary Route. Coles LO, Mr. Reed, and Tarble state further that the Primary Route would be as close as 250 feet from some of the houses in the area. With regard to community acceptance, they assert that one need go no further than a cursory review of ATXI Ex. 13.7, page 1, to appreciate the level of the opposition to the ATXI Primary Route on this segment. The people who live and make their living along the Primary Route in this segment are most emphatically opposed to its selection, according to Coles LO, Mr. Reed, and Tarble. They support adoption of either ATXI's Alternate Route or the MZK Route.

5. Brock-Jones Position

Brock-Jones owns approximately 240 acres of prime farmland in Coles County along ATXI's Primary Route. Brock-Jones opposes selection of the Primary Route because of the negative impact it would have on its farming operations, including soil compaction, disruption/destruction of drainage tiles, interference with aerial spraying, decreased field efficiency, and impaired weed control around transmission towers. Brock-Jones acknowledges that such impacts would not be unique to its agricultural operations, but contends that the Primary Route will have a greater negative impact on its property because the line would split its farm parcels. To address its concerns, Brock-Jones recommends that the Commission deny ATXI's petition or, at a minimum, adopt either ATXI's Alternate Route or the MZK Route.

6. Staff Position

As noted elsewhere, Staff recommends deferring any decision on the location of the new Mt. Zion substation. Since determining the Mt. Zion to Kansas routing depends upon the location of the new Mt. Zion substation, Staff also recommends that the Mt. Zion to Kansas segment be excluded from any certificate that the Commission grants in this proceeding. If, however, the Commission decides to approve a route between Mt. Zion and Kansas, Staff suggests that the MZK Route is acceptable. Staff cites construction costs as favoring adoption of the MZK Route.

7. Commission Conclusion

Before addressing the routing criteria, the Commission will address PDM Coalition's concerns regarding the path of the MZK Route. PDM Coalition asserts that the true intent of the route advanced by Moultrie PO is obvious: to avoid Moultrie County. The Commission acknowledges the possibility that PDM Coalition is entirely correct. Whether by design or accident, the manner in which the MZK Route circumvents Moultrie County is undeniable. Moultrie PO's proposal can not be said to be any different from the proposals of other intervening landowners: to avoid a 345 kV transmission line on their land and other interests. While PDM Coalition may fear that ATXI's entry into a stipulation with Moultrie PO increases the odds of the MZK Route being adopted, the Commission assures all parties that each proposed route will be evaluated on its own merits regardless of any stipulations. Additionally, as for Moultrie PO's new support for a new Mt. Zion substation under the stipulation, Staff's support for a new substation carries weight regardless of the perception of why Moultrie PO supports the new substation.

With regard to line length, the Commission recognizes that the MZK Route is the longest of the three competing routes, making it the least preferred route in terms of length. But at the same time, the Commission concurs with the analysis of ATXI and Moultrie PO regarding construction costs. ATXI and Moultrie PO accuse PDM Coalition of comparing apples to oranges in its cost analysis. The Commission is inclined to support this characterization and finds that the MZK Route has the lowest overall construction cost despite its length. In terms of the difficulty of construction, operation, and maintenance, the Commission is aware that parallel transmission lines can cause problems, but if sufficient space is provided, such problems can be avoided or mitigated. Parallel lines are not unique to the MZK Route. As noted elsewhere, parallel lines appear along approximately 19% of ATXI's preferred route. That being said, the difficulties associated with construction, operation, and maintenance of the three lines do not appear to vary significantly.

In terms of environmental impact, the Commission finds the environmental impact of the three routes comparable, and therefore this criterion does not favor one route over the others. As for historical resources, the record is not exactly clear how many archeological sites are along the three routes. Of those that may exist, none

appear to impair the ability to construct any of the three lines. The MZK Route does appear to be marginally preferable in that it is roughly two miles further from the historical Amish areas near the proposed routes.

The predominant land use along the competing routes is agricultural in nature. The Commission anticipates that the impact of a transmission line through area farm fields would be comparable regardless of the particular route. The MZK Route affects the least amount of prime farmland while ATXI's Primary Route affects the greatest amount. Because the amount of farmland actually taken out of production depends on the placement of poles, it is not known which route which will directly impact the least amount of farmland. The Commission expects ATXI to fulfill its commitment to minimize the amount of land taken out of production when selecting locations for pole foundations. The Commission also expects ATXI to comply with its AIMA regardless of which route is chosen. PDM Coalition's complaint that ATXI could not comply with the AIMA if the MZK Route is chosen lacks support and carries little weight. Other impacts under this criterion concern two airstrips: the Tuscola Airport along the MZK Route and Mr. Reed's grass airstrip along ATXI's Primary Route. Whether Mr. Reed's airstrip would be usable if ATXI's Primary Route is chosen is not certain. With regard to the Tuscola Airport, while the Commission does not take lightly the concerns of the airport owner, Moultrie PO's witness on this issue is persuasive. Construction of the MZK Route does not appear to be an impediment to the Tuscola Airport's continuing operation. Overall, the Commission finds that this criterion favors the MZK Route.

With regard to the number of residential and non-residential structures affected by the three routes, the MZK Route is the clear front runner. As reflected in the table above, only one residence is within 75 to 150 feet of the MZK Route centerline, while there are 12 and 17 residences within this distance of ATXI's Primary and Alternate Routes, respectively. As one moves further from the centerline of each route, the number of affected structures continue to favor the MZK Route. Existing and planned development does not appear to favor one route over another.

In considering the level of community acceptance, the Commission understands that none of the affected communities desire the construction of the 345 kV line near them. Several affected communities and stakeholders have not intervened. PDM Coalition seems to suggest that such lack of involvement stems from a lack of notice to Piatt County and Douglas County residents. The record reflects, however, that ATXI held six public meetings in these two counties. Residents of Piatt County and Douglas County therefore had same initial notice of the Illinois Rivers Project as the residents of the other affected counties. Upon the filing of the MZK Route, affected landowners received notice from the Commission as well. Nothing prevented them from following this proceeding and intervening upon seeing that their interests may be affected. The level of support for/lack of opposition to the MZK Route at least marginally favors its adoption over ATXI's routes.

The degree of visual impact also favors the MZK Route. Undeniably, an overhead 345 kV transmission line can not be hidden. If one wishes to minimize its

intrusion into the landscape for this segment of the Illinois Rivers Project, the best solution is to find similar linear features. ATXI Ex. 13.7, page 1 of 13, reflects existing transmission lines between Mt. Zion and Kansas. An existing 138 kV transmission line along nearly one quarter of the MZK Route is the most similar linear feature to the proposed 345 KV line. Running the two lines parallel to one another will minimize the 345 kV line's visual impact. This is not to say that a second line in the same area will have no visual impact. But rather so long as space permits, a second line in the same rural area of an existing line will have less visual impact than a transmission line in a rural area previously untouched by such structures. Because the record does not reflect any comparable linear features along ATXI's routes, the visual impact of a new 345 kV line along those routes would be greater. Had more time existed, other similar linear features may have been identified.

The presence of existing corridors is the final criterion addressed by the parties. Existing corridors such as roads and utility facility corridors are often useful to consider when selecting sites for future utility facilities. While it is not clear that ATXI's routes follow any existing utility facility corridors, the MZK Route, as noted above, follows an existing 138 kV line for nearly one quarter of its length. ATXI indicates as well that a 345 kV line corridor had been previously acquired elsewhere along the MZK Route. The record does not reflect whether any of the three routes are immediately adjacent to any other corridors. The Commission finds that this criterion favors the adoption of the MZK Route.

Upon consideration of all of the criteria, the Commission finds the MZK Route to be the least cost route for the Mt. Zion to Kansas segment of the Illinois Rivers Project. But because, as discussed above, the location of the new Mt. Zion substation has not been approved, the MZK Route is only approved from the existing Kansas substation west to the Macon County line. Stopping the line at the Macon County and Piatt County border at this time will provide sufficient flexibility to resume the line along an appropriate route once the location of the new Mt. Zion substation is identified. That portion of segment from the substation to the county border should be determined at the same time the substation location is determined.

G. Kansas - Indiana State Line

1. ATXI Position

For that segment of the Illinois Rivers Project running from the Kansas, Illinois substation to the Indiana state line, ATXI recommends approval of its Alternate Route, as shown in orange on ATXI Ex. 13.8. In ATXI's rebuttal testimony, its preferred route is designated the "Rebuttal Recommended Route." ATXI has entered into a stipulation with intervenors with land interests in this area of Illinois favoring the adoption of the Alternate Route. In addition to ATXI, the parties to this stipulation are Stop Coalition, Tarble, JDL, Edgar Intervenors, Paul Thrift, and John Thompson.

Altogether, five routes were proposed for this segment: ATXI's Primary and Alternate Routes, a modification to the Primary Route by Laura Te Grotenhuis, and two routes proposed by Stop Coalition prior to its entering into the stipulation with ATXI. ATXI recognizes that Staff, the Allen family, and Clark and Edgar CC support Stop Coalition's Route 2, but argues that Stop Coalition's Route 2 is inferior to the Alternate Route and, in any event, is no longer supported by its initial sponsor. Generally, Stop Coalition's Route 2 runs east from ATXI's proposed expansion of the existing Kansas substation site, paralleling an existing 138 kV transmission line for approximately 20 miles, at which point it turns south and joins the Alternate Route to the state line. Stop Coalition Route 2 also appears on ATXI Ex. 13.8. To expand the existing Kansas substation, ATXI intends to acquire an additional 30 acres adjacent to the existing substation.

a. Length of Line

Of the four routes the length of which is known, ATXI's Alternate Route is the shortest, as reflected in the following table:

	ATXI Alternate Route	ATXI Primary Route	Te Grotenhuis Route	Stop Coalition Route 1	Stop Coalition Route 2
Estimated Length in Miles	33.37	36.95	37.1	24.7	33.7

Accordingly, ATXI notes that this criterion favors adoption of its Alternate Route.

b. Difficulty and Cost of Construction

ATXI asserts that there is no evidence that its Alternate Route would be difficult to construct. But because a substantial portion of Stop Coalition's Route 2 runs parallel to an existing transmission line, absent sufficient separation between the rights-of-way for the two lines, ATXI states that it may be more difficult to construct Stop Coalition's Route 2. The record otherwise, according to ATXI, contains no meaningful distinction among the routes proposed as to the difficulty, if any, associated with their construction.

ATXI also raises an issue regarding the construction of its Primary Route, even though no party recommends that route. Notwithstanding the agreement among ATXI, Stop Coalition, and others to support and recommend approval of the Alternate Route, ATXI relates that Stop Coalition continues to oppose construction of the Primary Route. Stop Coalition argues that ATXI can not lawfully construct the Primary Route because the line depicting that route on ATXI's maps transgresses a federally owned floodplain easement in Clark County. ATXI contends that Stop Coalition's opinion is based on misinterpretations of property records, federal law, and Commission precedent. Moreover, ATXI states that Stop Coalition reached its conclusion irrespective of the fact that neither the federal agency that holds the easement, the National Resource

Conservation Service, nor the owner of the property subject to the easement have intervened in this case. ATXI maintains that the floodplain easement is not an absolute legal bar to construction of the Primary Route. Regardless, ATXI believes that it can construct the route, or adjust the placement of poles along the route, so that no structures are within the easement area, there is no interference with the easement area, no new landowners are affected, and no significant cost differentials result. In ATXI's opinion, Stop Coalition has expended significant resources (its own, the Commission's, and ATXI's) pursuing a nonissue. According to ATXI, the federal floodplain easement in Clark County simply reflects a matter of permitting or land rights of the type typically addressed after the Commission has approved a route in a proceeding such as the one at bar. Furthermore, unless the Commission intends to approve the Primary Route, ATXI sees no benefit or reason for the Commission to offer its legal interpretation on a matter that is a nonissue.

ATXI offers the following table depicting the cost of constructing the various routes when that cost is known:

	ATXI Alternate Route	ATXI Primary Route	Te Grotenhuis Route	Stop Coalition Route 1	Stop Coalition Route 2
Estimated Baseline Cost	\$63,919,000	\$68,236,000	>\$68,236,000	not specified	\$62,348,000

ATXI notes in its Reply Brief that the expected cost of the Primary Route overall is between \$72 and \$91 million.

c. Difficulty and Cost of Operation and Maintenance

ATXI asserts that there is no record evidence that the Alternate Route would be difficult to operate and maintain or would be more costly to operate and maintain relative to the other routes proposed. In contrast, ATXI notes that Stop Coalition's Route 2 runs parallel to an existing 138 kV transmission line for approximately 20 miles while the Alternate Route runs parallel to an existing transmission for only 1.5 miles. Absent sufficient separation between the rights-of-ways for the existing and new lines, ATXI states that close proximity presents the potential for operation and maintenance difficulties, and their attendant costs. ATXI adds that both circuits may have to be de-energized to perform maintenance on either. With regard to its Primary Route, ATXI observes that several intervenors expressed concern that the Primary Route may be more difficult, and, consequently, more costly, to operate and maintain due to that route's proximity to limestone quarry operations and a federal floodplain easement in Clark County. ATXI responds that Ameren Services operates and maintains transmission lines adjacent to a variety of land uses and terrains, including quarries and river crossings, and it has not experienced resulting operation and maintenance problems, nor does it foresee any with the Primary Route. But because no party

supports adoption of the Primary Route, ATXI does not believe these concerns warrant much attention.

d. Environmental Impacts

ATXI contends that there is nothing in the record to indicate that any of the identified routes has less of an environmental impact than another. ATXI acknowledges that two intervenors raise environmental concerns pertaining to the Alternate Route upon which ATXI now seeks to build: the Allens and Clark and Edgar CC. The Allens own land bordered on its north edge for approximately 2,000 feet by the Alternate Route, which they oppose based on concern the route will negatively impact woodlands there, including specific species of wildlife seen on that property. Clark and Edgar CC likewise hold property interests in land along the Alternate Route. Its members also oppose the Alternate Route based on concerns it will impact their woodlands, as well as concerns the route will negatively affect farming operations and present and planned economic use of their land. ATXI argues that all of these concerns, assuming they were to materialize, can be addressed through the detailed design of the route, construction mitigation measures, and easement and damage compensation. As an example, ATXI states that mitigation measures related to woodland wildlife could include confirming protected species are present, controlling construction traffic in their vicinity, limiting ground disturbance to the extent feasible, and restoring the right-of-way to its pre-construction condition to the extent feasible. Nonetheless, ATXI asserts that the environmental and land use impacts identified by the Allens and Clark and Edgar CC would occur regardless of the route the Commission approves – if not to them, then to someone else. ATXI states that tree removal, for instance, would not be unique to the property of those intervenors. Furthermore, ATXI points out that the habitat range of the Indiana Brown bat exists relative to the entire Project. ATXI states that specific accommodation of the Allen family and Clark and Edgar CC's concerns simply would shift their concerns to other landowners; it would not eliminate them.

e. Impacts on Historical Resources

ATXI contends that its Alternate Route will not impact any known historical resources. While there is one known archaeological site within the easement area of the Alternate Route and at least one along the Primary Route, ATXI states that none of the sites appear in the National Register of Historic Places. As for Stop Coalition's routes, ATXI contends that the record lacks any analysis of whether any historical resources exist or not along the routes. ATXI will work with the IHPA to address issues that may arise during the construction process, and will obtain required permits or approvals prior to construction.

f. Societal and Land Use Impacts

ATXI believes that the Alternate Route reflects an optimum location for the transmission line in that it would best minimize societal and land use impacts. ATXI states that the primary impact of this route would be to farmland, but contends that

impacts to farmland and individual properties can be addressed through detailed design of the route, construction mitigation measures, and easement and damage compensation. ATXI denies that the impacts attributed to the Primary Route by Stop Coalition are as dire as Stop Coalition suggests.

g. Number of Affected Landowners and Other Stakeholders and Proximity to Homes and Other Structures

ATXI reports that there are approximately 150 landowners and other stakeholders with property on or within 250 feet of either side of the Alternate Route and approximately 140 landowners and other stakeholders with property on or within 250 feet of either side of the Primary Route. ATXI states that neither the Alternate Route nor the Primary Route would require displacement of any residences. Both routes run within 150 feet of a limited number of residential and nonresidential structures. ATXI claims that Stop Coalition's Route 2 would impact more residences and may displace homes.

	ATXI Alternate Route	ATXI Primary Route	Te Grotenhuis Route	Stop Coalition Route 1	Stop Coalition Route 2
Residential 75-150 feet from centerline	6	5	Not specified	Not specified	Not specified
Non-residential 75-150 feet of centerline	11	12	Not specified	Not specified	Not specified

h. Proximity to Existing and Planned Development

ATXI states that there is no evidence that either its Alternate or Primary Route is proximate to any existing or planned development. ATXI reports that Stop Coalition's Route 2 may traverse the planned Wabash Gas Storage Field in Edgar County, which may interfere with operation and maintenance of the transmission facilities. For this reason, ATXI believes this criterion favors the Alternate Route.

i. Community Acceptance

In light of the stipulation with most of those concerned with this segment of the Illinois Rivers Project, ATXI concludes that this criterion favors the Alternate Route. Furthermore, ATXI disputes the conclusions that Clark and Edgar CC draws regarding community acceptance.

j. Visual Impact

ATXI does not believe that this criterion favors one route any more than another.

k. Presence of Existing Corridors

ATXI states that its Alternate Route emerged, in part, from an evaluation of opportunities, including existing corridors, and stakeholder input. As a result of this process, ATXI chose the political boundary between Edgar and Clark Counties as an appropriate path for its Alternate Route. ATXI acknowledges that Stop Coalition's Route 2 runs east from ATXI's proposed Kansas substation site, paralleling an existing 138 kV transmission line corridor for approximately 20 miles, at which point it turns south and joins the Alternate Route to the Indiana state line. Assuming sufficient space between parallel lines, ATXI does not appear to indicate which route it believes this criterion favors.

2. JDL, Stop Coalition, and Tarble Position

JDL, Stop Coalition, and Tarble object to Clark and Edgar CC's suggestion that a decision on the Kansas substation to Indiana state line segment should be deferred. They deny that the stipulation among them and ATXI somehow deprived Clark and Edgar CC of an opportunity for meaningful participation. ATXI detailed its Alternate Route in its November 7, 2012 petition. Stop Coalition offered its proposed routes on January 17, 2013. JDL, Stop Coalition, and Tarble point out that Clark and Edgar CC had the same amount of time to explore the validity and benefits and detriments of the potential routes as every other intervenor in this case. They assert that Clark and Edgar CC's decision not to participate more in this proceeding until just before the evidentiary hearing is not grounds for the Commission to decline to select a route for this segment.

JDL, Stop Coalition, and Tarble also take exception to any speculation about why they entered into a stipulation to support a particular route. In any event, they contend that the record supports adoption of the Alternate Route and ATXI's decision to take heed of the evidence is a tribute to its judgment, not an indictment of its character. They note that parties in Commission matters commonly re-evaluate or alter their positions based on evidence submitted during the course of a proceeding by Staff and Intervenors. That is not, they insist, grounds for the Commission to refuse to decide issues. JDL, Stop Coalition, and Tarble maintain that there is nothing inappropriate about the parties' arm's length negotiated stipulation.

a. Length of Line

JDL, Stop Coalition, and Tarble generally agree with the length calculations for the various proposed routes reflected under ATXI's position. They add that the floodplain avoidance modification to ATXI's Primary Route lengthens that route to 37.29 to 37.33 miles. They observe that overall the Primary Route is 11-12% longer than the Alternate Route. JDL, Stop Coalition, and Tarble do not make a recommendation based on length.

b. Difficulty and Cost of Construction

With the exception of ATXI's Primary Route, JDL, Stop Coalition, and Tarble agree with the construction costs discussed under ATXI's position and find the difficulty of construction of the four remaining routes to be comparable. If ATXI were able to construct its Primary Route, they contend that the cost estimate is understated by at least \$1,817,200 to \$2,081,736. They attribute the understated costs to \$1,267,200 for known Tarble limestone deposits in the path of the Primary Route, \$400,000 to \$664,536 associated with the federal floodplain area, and \$150,000 for Ms. Te Grotenhuis' tiled and terraced fields. They state further that the understated costs could be substantially more if ATXI is required to either buy JDL's radio station or pay to relocate or reconstruct its tower. When these additional costs are added to ATXI's estimate for the Primary Route, JDL, Stop Coalition, and Tarble calculate the cost to construct the Primary Route to be \$70,053,200 to \$70,317,736. When compared to the estimated cost to construct the Alternate Route of \$63,919,000, the original Primary Route costs roughly \$6.13 to \$6.4 million (9.6% to 10%) more than the Alternate Route.

While they support the adoption of ATXI's Alternate Route pursuant to the stipulation, JDL, Stop Coalition, and Tarble insist that the Primary Route is not a viable option in light of the federal floodplain easement in Clark County. They explain that the federal floodplain easement was established as part of a warranty deed purchased by the federal government in the amount of \$576,000 in March 2010. The acquiring federal agency was the Natural Resources Conservation Services ("NRCS"), which is part of the United States Department of Agriculture ("USDA"). A copy of the warranty deed establishing the federal floodplain easement was admitted into evidence as STPL Ex. 1.18. As reflected in STPL Ex. 1.17, ATXI's Primary Route originally was designed to bisect the federal floodplain.

JDL, Stop Coalition, and Tarble report that NRCS advised ATXI before initiating this docket that there were problems with trying to cross the federal floodplain easement land in Clark County. They point out that on October 17, 2012, an NRCS biologist based in NRCS' Clark County office, Dave Hiatt, sent an e-mail to ATXI's spokesperson in which he unequivocally told ATXI that the federal floodplain property in Clark County was not available for use by ATXI for the Illinois Rivers Project. Mr. Hiatt's e-mail read in part:

These easements must be avoided. There is very little to no authority for the NRCS to modify the terms of these conservation easements. The rights acquired under these conservation easements are quite inclusive and will be superior to any rights Ameren might obtain for an overhead power line right-of-way. (STPL Cross Ex. 8)

ATXI witness Murphy acknowledged having received Mr. Hiatt's e-mail. She was responsible for selecting routes for the transmission line. She testifies that she took no action in response to the e-mail. (Tr. at 876)

JDL, Stop Coalition, and Tarble also take issue with ATXI's failure to notify the federal government of its proposal to construct a transmission line across land upon which the federal government has an interest. Had ATXI been more diligent in its work, they contend that the federal government would have received the notice it was due. According to JDL, Stop Coalition, and Tarble, the failure to serve the NRCS, as the federal government's agent, with formal notice of this proceeding is sufficient reason standing alone to justify rejection of ATXI's Primary Route in the Kansas to Indiana state line segment of this project.

After ATXI apparently ignored the October 17, 2012 NRCS e-mail, JDL, Stop Coalition, and Tarble observe that Mr. Hiatt submitted on December 5, 2012 a public comment on the Commission's e-Docket system. Mr. Hiatt's comment reads in full:

My name is Dave Hiatt and I represent the United States Department of Agriculture's – Natural Resources Conservation Service. I am the Wetlands Reserve Program (WRP) and Floodplain Easement (FPE) coordinator. The USDA-NRCS has identified two conservation easements that will be directly impacted by the PRIMARY route of the proposed power line. Our federal policy is that all conservation easements MUST be avoided. Ameren has provided a SECONDARY route. This SECONDARY route does not appear to impact any USDA-NRCS conservation easements. Therefore Ameren MUST utilize the SECONDARY route to construct the powerline.

With no responsive action by ATXI, they point out that the NRCS State Conservationist sent a certified letter dated February 27, 2013 to one of ATXI's counsel of record in this case. The letter advised ATXI's counsel that, in addition to a Wetlands Reserve program ("WRP") easement in Brown County:

An Emergency Watershed Protection Program-Floodplain Easement located in Eastern Clark County has also been identified as being directly impacted by the proposed primary route.

* * *

The authority to modify a WRP easement is very limited. EWPP-FPE easements must be avoided as USDA-NRCS has no authority under this program to modify the terms of the conservation easement. NRCS asserts that the rights the USDA acquired under these two easements programs are superior to rights that Ameren Transmission Company of Illinois might acquire to construct the proposed transmission line. (STPL Cross Ex. 9)

JDL, Stop Coalition, and Tarble note that the February 27, 2013 letter also advised ATXI's counsel that both the Office of General Counsel and National Headquarters had been consulted on the situation. (Id.) When ATXI failed to act, another NRCS official

submitted a public comment on e-Docket on March 1, 2013. The public comment essentially repeated the language that was in the NRCS' certified letter.

JDL, Stop Coalition, and Tarble maintain that the NRCS' officials' e-mail, letter, and public comments are all consistent with the NRCS official published "Infrastructure Policy on Easements," which was admitted into evidence as STPL Ex. 15.0. They relate that this NRCS document specifically provides that it is applicable to Emergency Watershed Protection Program-Floodplain Easements ("EWPP-FPE"), which is what the Clark County federal floodplain easement is. They note further that it also defines the infrastructure projects to which it applies to include "Overload and buried electrical transmission lines." (Id. at 1)

ATXI developed two options for addressing the federal floodplain in late March: (1) build tall structures on either side of the floodplain area and then string the transmission line across so that it would hang more than 100 feet above the ground (ATXI Ex. 12.0 (Rev.) at 33) or (2) divert the transmission line south of the floodplain and then back north to its original route using a "V" shape. (ATXI Ex. 13.0 (3d Rev.) at 65) While the former option may be feasible from an engineering perspective, JDL, Stop Coalition, and Tarble insist that it does not avoid the prohibition of any kind of use of the floodplain area. They contend that doing so would be inconsistent with NRCS' stated plans for the floodplain easement. They state further and explain in their Initial Brief (at 23-24) that the latter option is not available because not all owners of the land affected by the modification have received notice of this proceeding.

c. Difficulty and Cost of Operation and Maintenance

With regard to the difficulty and cost of operation and maintenance, the only route that JDL, Stop Coalition, and Tarble comment on is ATXI's Primary Route. They point out that the Primary Route in the segment between Kansas, Illinois and the Indiana state line is adjacent to the Quality Lime limestone quarry. Quality Lime is a member of Tarble. They contend that the presence of an active limestone quarry will result in limestone dust accumulating on the insulators, which can cause deterioration of the insulators and possibly lead to faults in the transmission line. They assert that only mechanical washing will remove the dust. JDL, Stop Coalition, and Tarble also state that if the transmission line is strung over the floodplain along the Primary Route, maintenance would have to be performed either by helicopter, a sky crane, or by attaching maintenance workers to the transmission line and sliding them up and down the line. They surmise that such maintenance procedures could entail extraordinary maintenance costs. For these reasons, they suggest that this criterion does not favor the Primary Route.

d. Environmental Impacts

With regard to environmental impacts, the only route that JDL, Stop Coalition, and Tarble comment on is ATXI's Primary Route. They assert that construction along the Primary Route would require the redesign of terraces built to control soil erosion and

could destroy other extensive soil erosion measures that Laura Te Grotenhuis had built on her property at a cost in excess of \$150,000. Ms. Te Grotenhuis also testifies that use of the Primary Route could impact USDA conservation practices employed on her property. For these reasons, they suggest that this criterion does not favor the Primary Route.

e. Impacts on Historical Resources

With regard to impacts on historical resources, the only route that JDL, Stop Coalition, and Tarble comment on is ATXI's Primary Route. They note that Margaret Sue Amacher Snedeker testified that the Primary Route passes through the middle of one Centennial Farm she owns and would take part of another Centennial Farm. A Centennial Farm is a farm that has been owned by the same family for a century or more. In this case, the two Centennial Farms have been in Ms. Snedeker's family for 133 years and 167 years, respectively. Ms. Snedeker testified further that the Primary Route in Clark County appears to pass over the graves of her great-great grandparents in the Renner Family Cemetery on her land. For these reasons, they suggest that this criterion does not favor the Primary Route.

f. Social and Land Use Impacts

With regard to social and land use impacts, the only route that JDL, Stop Coalition, and Tarble comment on is ATXI's Primary Route. They complain that the Primary Route will interfere with the extraction of limestone valued at \$1,267,200. JDL also asserts that the Primary Route in Clark County would be within approximately 220 feet of WMMC-FM's 500 feet tall broadcast tower and 70 feet of one of the tower's outer guy wire supports. Lori Spangler, one of JDL's owners, states that WMMC provides important public and community services in Clark County. She fears that construction of the Primary Route in this area could result in closure of the radio station and loss of this community asset, or force the relocation of its broadcast tower. Laura Te Grotenhuis testifies that she is concerned about the effect of stray voltage from the transmission line if it were located on the Primary Route due to nearby metallic structures used in her farming and animal breeding businesses. Margaret Sue Amacher Snedeker expresses concern about the proximity of a transmission line on the Primary Route to numerous homes in her subdivision, and the effects of the proposed transmission on the residents of a subdivision. Perry Baird testifies about his concern that the Primary Route is very close to a single family home owned by the Thelma Worrick Revocable Trust property, for which Mr. Baird serves as the co-trustee, and the potential impact on prime farmland on that property. For these reasons, they suggest that this criterion does not favor the Primary Route.

g. Proximity to Existing and Planned Development

With regard to proximity to existing and planned development, the only route that JDL, Stop Coalition, and Tarble comment on is ATXI's Primary Route. Jerry Tarble testifies that in the past he has previously developed former mining sites into residential

communities, such as the Golf-Lakes Subdivision in Marshall, Illinois. Mr. Tarble contends that he would be unable to develop and market a residential development on property in proximity to a 345 kV line on the Primary Route. For this reason, they suggest that this criterion does not favor the Primary Route.

h. Community Acceptance

With regard to the level of community acceptance, the only route that JDL, Stop Coalition, and Tarble comment on is ATXI's Primary Route. They state that one only need look at the 100 or more intervenors running the entire length of the proposed Primary Route in Clark County to know that the communities lying in its path are adamantly opposed to adoption of this route. They contend that the intense, focused opposition to the Primary Route in Clark County rivals that of any other potentially affected area in the State. For this reason, they suggest that this criterion does not favor the Primary Route.

3. Edgar Intervenors, Thompson, and Thrift Position

a. Difficulty and Cost of Construction, Operation, and Maintenance

The Edgar Intervenors, Mr. Thompson, and Mr. Thrift believe that the construction, operating, and maintenance costs of the Stop Coalition's routes would be more than ATXI's routes. They base this conclusion on their observation that Stop Coalition's routes pass through undulating terrain, more wooded property, and more stream crossings than ATXI's Primary and Alternate Routes, each of which they believe would make a power line more difficult and expensive to construct, operate, and maintain. They also assert that Stop Coalition's routes impact significantly more residential development and land with higher property values than the Clark County routes proposed by ATXI. They surmise that this would make land acquisition more expensive for ATXI and increase the cost of construction over the Primary and Alternate Routes. For the foregoing reasons, they believe that the ATXI Primary Route is superior and the Alternate Route is acceptable.

b. Environmental Impacts

The Edgar Intervenors, Mr. Thompson, and Mr. Thrift contend that Elbridge Township in Edgar County, through which a significant portion of Stop Coalition's routes pass, is more environmentally sensitive than ATXI's Primary or Alternate Routes. They cite the presence of the endangered Indiana Bat, the Brown Bat, and Jefferson Salamander to support their position. For this reason, they believe that the ATXI Primary Route is superior and the Alternate Route is acceptable.

c. Social and Land use Impacts, Number of Affected Landowners and other Stakeholders, Proximity to Development, and Community Acceptance

The Edgar Intervenors, Mr. Thompson, and Mr. Thrift argue that the more northerly routes suggested by Stop Coalition would have a more profound negative impact because Elbridge Township in Edgar County, through which Stop Coalition's routes pass, has more residential development than Clark County, through which ATXI's routes pass. They contend that routing a power line through a more heavily developed area would impose heavier impacts on society and land use, affect a greater number of landowners and other stakeholders, be closer to existing and planned development, and result in lower community acceptance. For these reasons, they believe that the ATXI Primary Route is superior and the Alternate Route is acceptable.

4. Clark and Edgar CC Position

Clark and Edgar CC opposes the selection of ATXI's Alternate Route for segment of the Illinois Rivers Project between Kansas, Illinois and the Indiana state line. In discussing its concerns with the Alternate Route, Clark and Edgar CC suggests that the prelude to the stipulation supporting the Alternate Route raises questions about the sufficiency of the amount of time and study that went into the choice of routes for this segment. Clark and Edgar CC notes that on May 1, 2013, less than two weeks prior to the start of the evidentiary hearing, ATXI, Stop Coalition, and others filed a stipulation wherein the parties agreed to support the adoption of ATXI's original Alternate Route. This being stated, Stop Coalition did not rescind its alternate routes from consideration and continues to argue against ATXI's Primary Route as it relates to the Emergency Watershed Protection Easement which is located thereon. Clark and Edgar CC contends that these events allowed its members very limited time within which to formulate their arguments on the record about the undesirability of ATXI's Alternate Route, and the bona fides of Stop Coalition's alternate routes. Clark and Edgar also observe that in stipulating to ATXI's Alternate Route, both ATXI and Stop Coalition dropped support for their routes of first choice, to enter into a compromise which neither, Clark and Edgar CC surmises, had to believe was their "best effort" from the start. This happenstance, Clark and Edgar CC continues, is further confused by the comments of ATXI witness Murphy, who testified at the evidentiary hearing that her company did not make any technical mistakes or errors in judgment when it designated ATXI's Primary Route as the best choice for this section of the project. (Tr. 848)

In determining whether ATXI has met its burden to demonstrate that the portion of the project which runs through Clark and Edgar Counties is "necessary to provide adequate, reliable, and efficient service to the public utility's customers," as required by Section 8-406.1(f)(1) of the Act, Clark and Edgar CC asserts that the Commission has to be concerned about the manner in which the Alternate Route came to the fore on this expedited schedule. In deciding whether a utility has met its burden in a transmission line case, Clark and Edgar CC states further that the Commission is allowed to use "common sense" to determine what route best serves the public under the applicable

statutes. (See Docket No. 06-0706 June 23, 2010 Order on Reopening at 20) In this instance, Clark and Edgar CC questions whether common sense and the totality of the record indicate that it may be premature to issue a certificate to ATXI for the Kansas to Indiana state line portion of the project. Now that Staff has made a similar suggestion to defer approval on the Pana to Kansas segment of the Illinois Rivers Project, Clark and Edgar CC contends that it is even more appropriate to consider deferring action on the Kansas to Indiana state line segment. In support of denying the requested relief for the Pana to Kansas segment, Staff mentions that ATXI is going to have to file an application for a second certificate of public convenience and necessity to complete this MISO MVP in any regard, and the relevant development dates are not until 2018. As this is predominantly a west to east project, Clark and Edgar CC states that it only makes sense that any final decision concerning the Kansas to Indiana state line segment be withheld until the segments to the west are finalized. This is especially true, Clark and Edgar CC continues, because the development date for the easternmost segment of the project, Kansas to the Indiana state line, is not until 2019. As such, Clark and Edgar CC observes that there is no pressing need for the Commission to issue a certificate for the portion of the project crossing through Clark and Edgar Counties at this time. If, however, the Commission decides to approve a route for this segment, Clark and Edgar CC offers their analysis of various cost factors typically considered by the Commission.

a. Length of Line and Difficulty and Cost of Construction

Clark and Edgar CC acknowledges that the Alternate Route is the shortest by three-tenths of a mile when compared to Stop Coalition's Route 2. But because of the number of dead-end structures on these two routes, Clark and Edgar CC agrees with Staff that Stop Coalition's Route 2 is less expensive to construct by \$1,571,000. Clark and Edgar CC points out that Stop Coalition's Route 1 might be even cheaper to build, as it is almost nine miles shorter than ATXI's Alternate Route. Unfortunately, cost figures for Stop Coalition's Route 1 do not exist in the record. In support of its supposition regarding Stop Coalition's Route 1, Clark and Edgar CC observes that it is the straightest path east, which should result in lower costs because turns in a transmission line are expensive to construct.

The only problem with Stop Coalition's Route 1 that Clark and Edgar CC is aware of was identified by ATXI witness Murphy, who testifies that the further north the transmission line meets the Indiana border, the more lines or other features are going to be required in that State to move the power east. Clark and Edgar CC finds this interesting, as Ms. Murphy also admits that ATXI's Alternate Route simply ends at the Indiana border, and there are presently no proceedings seeking to build anything in that State. Clark and Edgar CC notes that Ms. Murphy indicates that states have cooperated with each other on projects she has worked on in the past, and that Indiana is a MISO state. Clark and Edgar CC argues that what does or does not happen in another state is not relevant to this proceeding before the Commission, so Stop Coalition's Route 1 should remain a viable alternative to consider. Clark and Edgar CC also wonders, however, whether the Commission or MISO could influence the construction of transmission facilities in Indiana.

With regard to suggestion that parallel transmission lines along Stop Coalition's Route 2 might pose construction problems, Clark and Edgar CC points out that 19% of ATXI's preferred route for the Illinois Rivers Project is comprised of parallel lines. Because ATXI apparently has no qualms about parallel lines elsewhere along its preferred route, Clark and Edgar CC questions why ATXI should have concerns about parallel lines along Stop Coalition's Route 2. Clark and Edgar CC urges the Commission to give no weight to such statements by ATXI.

b. Difficulty and Cost of Operation and Maintenance

Clark and Edgar CC believes this criterion favors ATXI's Primary Route or either of Stop Coalition's routes. Clark and Edgar CC points out that ATXI witness Murbarger testifies that maintenance costs depend on how difficult it is to get to a section of the relevant line, and existing roads are important, as it makes it easier to access the lines. (Tr. at 387) The three routes that Clark and Edgar CC favors each include an area where existing lines are paralleled for a significant distance. Clark and Edgar CC reasons that if the existing lines were built with an emphasis on ease of maintenance, collocating new lines now will benefit from the same accessibility. In contrast, Clark and Edgar CC points out that ATXI's Alternate Route cuts across farmland with easy means of access. Clark and Edgar CC also dispute the suggestion that parallel lines along Stop Coalition's Route 2 would hamper operation and maintenance. If parallel lines are acceptable along 19% of ATXI's preferred route, Clark and Edgar CC questions why parallel lines would be problematic along Stop Coalition's Route 2.

c. Environmental Impacts

With regard to environmental impacts, Clark and Edgar CC witness Orin testifies that ATXI's Alternate Route would cause serious environmental destruction to native hardwood forests that have been protected by individual families because of their love of the land and their concern for the environment. He states further that interveners Kent and Janet Stark and their family own woods close to and identical to Baber Woods, which is protected by TNC as a nature preserve. Since 1833 and for seven generations, the Stark family has been steadfast in protecting these woods, and has resisted numerous offers over the years to harvest the forest. Mr. Orin relates that the 150 feet wide clear cut path to accommodate the transmission line would destroy nearly 12 acres of native woodland. Likewise, he continues, the property of interveners Bruce and Tammy Trefz is close to Rocky Branch Nature Preserve, and the Trefz family has also been protective of their native hardwood forests, including many trees that have been identified as over 125 years old. He urges the Commission to give serious consideration to the fact that the existing power line routes have already had right-of-ways cleared and ready for use. He contends that it does not make sense to damage more woodland when a path already exists. Mr. Orin also points out that ATXI witness Murphy indicates that wooded areas were to be treated with the highest level of sensitivity, along with cemeteries, churches, existing drainage features, prime farmland, residential uses, and schools. He insists that there is no evidence in the record that

similar environmental impacts exist on the other possible routes through this area, even in regard to the floodplain issue on ATXI's Primary Route. He concludes that this criterion should significantly militate against the Commission adopting the Alternate Route as the least-cost alternative in this situation.

d. Impacts on Historical Resources

Clark and Edgar CC asserts that there is scant evidence indicating that historical resources are going to be an issue related to any of the relevant routes. Based on ATXI Ex. 4.5, Clark and Edgar CC states that there are two known archeological sites on the Primary Route which total three tenths of an acre, while there is one known archeological site on the Alternate Route which totals nine tenths of an acre. Clark and Edgar CC anticipates that historical resources would have been considered when the existing 138 kV line along Stop Coalition's Route 2 was constructed and contends that there is no evidence indicating that there are historical resources on either of Stop Coalition's routes. Therefore, Clark and Edgar CC believes that this criterion favors Stop Coalition's routes.

e. Social and Land Use Impacts

With regard to social and land use impacts, Clark and Edgar CC finds the record most favorable to Stop Coalition's Route 2. Because there are no other similar features in the area of ATXI's proposed Alternate Route, Clark and Edgar CC witness Orin testifies that the presence of a large transmission line in this area would be disruptive to farming operations. He contends that the damage to existing farming operations and difficulty of farming around power lines is already well-documented. Mr. Orin asserts that the social and land use impacts are significant, and should give the Commission serious concerns about the viability of ATXI's Alternate Route.

f. Number of Affected Landowners and Other Stakeholder and Proximity to Homes and Other Structures

Clark and Edgar CC argues that there may be no difference under this criterion among the relevant routes. Clark and Edgar CC recognizes that ATXI witness Murphy lists 22 residential structures within 500 feet of ATXI's Alternate Route and 23 residential structures within 500 feet of ATXI's Primary Route. It also acknowledges her testimony that Stop Coalition's Route 2 runs near a greater number of existing residences, and may even require displacement of a least two existing residences. In response, Clark and Edgar CC points out that Ms. Murphy also testifies under cross-examination that she did not make a distinction between occupied and non-occupied structures when she made these calculations. (Tr. at 785) Without more information, Clark and Edgar CC contends that the Commission can not really know exactly how many residences will be affected by any of the proposed routes.

g. Proximity to Existing and Planned Development

Clark and Edgar CC seems to suggest that ATXI's concerns about development along Stop Coalition's Route 2 are a red herring. ATXI witness Murphy testifies that this route might be adversely affected by the Wabash Gas Storage Project. She admits, however, Clark and Edgar CC points out, that she did not have any details and conceded that the storage project is not yet in existence.

If ATXI's Alternate Route is chosen, Clark and Edgar CC fear that several future developments planned for the area will be quashed. Clark and Edgar CC witness Orin testifies that interveners Steve and Robin Trapp will close the public business which they run out of their home, as they plan to move if the power line runs through their front yard. Interveners Ben and Abbie Furlong have plans to soon purchase the property they currently rent along ATXI's Alternate Route in order to build an equestrian center for children, including those with disabilities. If the power line is constructed, Mr. Orin asserts that the area would not be considered safe for children, bringing an end to the plans. Interveners Justin and Angie Perry have plans underway for a grass airstrip which is currently being reviewed by the Aeronautics Division of IDOT and the FAA. Mr. Orin contends that the airstrip will not be completed if the power line is constructed across the flight path. He states that these are just three of many examples of how a new 345 kV transmission line would negatively affect economic development along ATXI's Alternate Route.

h. Community Acceptance

With regard to community acceptance, Clark and Edgar CC references a February 5, 2013 comment from the Marshall Community Unit School District in Clark County and a March 19, 2013 comment from the Clark County Farm Bureau on the Commission's e-Docket system. Both commenters object to the construction of the transmission line anywhere in Clark County. Clark and Edgar CC argues that the Commission can use these comments as evidence of the lack of community acceptance of the proposed transmission line in Clark and Edgar Counties. The only possible evidence, according to Clark and Edgar CC, of community acceptance of any portion of the project is demonstrated by the lack of any individual or group intervening in this proceeding that lives or owns property along the majority of Stop Coalition's Route 2, despite the fact that all of the registered landowners along the route received notice from the Commission in February 2013. In fact, it continues, no one has intervened along the unique section of Stop Coalition Route 2. While ATXI witness Murphy could not explain the reason for this happenstance (see Tr. at 785), Clark and Edgar CC suggests that this lack of objection indicates an acceptance of the project, as a preexisting transmission line corridor already runs through the relevant portion of Edgar County. This, Clark and Edgar CC continues, is completely opposite to the situation faced by its members, whose area is completely devoid of similar linear features, and is "virgin" territory, which will be ruined by the adoption of ATXI's Alternate Route. Clark and Edgar CC contends that the lack of formal opposition to Stop Coalition's Route 2 favors its adoption.

i. Visual Impact

Clark and Edgar CC seems to suggest that an easy way to minimize visual impact is to run the proposed transmission line through an area with an existing transmission line. Both of Stop Coalition's routes would suit this method. Clark and Edgar CC even goes so far as to suggest running both lines over a single set of poles for approximately one-third of the entire length of the segment to further reduce the visual impact on the surrounding community.

In contrast, Clark and Edgar CC argues that running any transmission poles through the pristine area where its members live and own property would constitute an immediate eyesore. There simply is no denying, according to Clark and Edgar CC, that transmission poles of this nature are not attractive, regardless of the circumstances in which they are placed. As such, the Commission should take whatever action is necessary to limit the damage done. In this case, Clark and Edgar CC asserts that rejecting ATXI's Alternate Route is the most obvious action which can be taken to achieve this goal, while consideration of the other routes would favor the choice of either Stop Coalition's routes.

j. Presence of Existing Corridors

With regard to the presence of existing corridors, Clark and Edgar CC believes that Stop Coalition's routes are the most favorable routes. From the cross-examination at the hearing, Clark and Edgar CC concludes that there was no clear adversity to the consideration of parallel and even dual circuit routes. Staff witness Rockrohr, Clark and Edgar CC observes, comments that the existing right-of-ways are the least-cost options when they are constructed, so it would make sense to follow them up with a later line. Mr. Rockrohr further testifies, "There is nothing unsafe or inherently unreliable about having two transmission lines that do not serve the same function or area routed adjacent to each other." (Tr. at 236) Mr. Rockrohr also does not see any maintenance issues with parallel lines, and could see no technical problems having two lines in close proximity. Mr. Rockrohr even offers that dual circuits could be viable, depending on the function of each line. (Tr. at 269) ATXI witness Murbarger concedes that 138 kV and 345 kV lines can safely go on the same poles. (Tr. at 373) ATXI witness Hackman, Clark and Edgar CC reports, agrees that reliability would not be concern with parallel lines because the purposes of the two lines are not the same. (Tr. at 981-86 and 993) Clark and Edgar CC notes ATXI witness Murphy's testimony that shared corridors should always be considered as an "opportunity" when planning a new transmission line. (Tr. at 727) Ms. Murphy also admits that common sense supports the idea that it is easier to follow an existing path than blaze a new trail through unburdened territory. (Tr. at 846) She further testifies that 19% of the entire route ATXI now seeks to construct is composed of parallel or dual circuit lines. (Tr. at 930) For these reasons, Clark and Edgar CC maintains that the existing corridors along Stop Coalition's routes should be utilized.

5. Allen Position

Donna Allen opposes the use of ATXI's Alternate Route because she fears that it will detrimentally impact her family's property along the border between Clark and Edgar Counties. She testifies that the relevant property contains heavily wooded old growth timber and highly erodible valleys and creeks throughout. She adds that some of the trees are very large and may break certain State records. Plants in this area include the rare and endangered native Red Trillium and ginseng, which is protected by the Ginseng Harvesting Act, 525 ILCS 20/0.01 et seq. Other environmental concerns she has pertain to the impact on wildlife. Mrs. Allen believes that the endangered Indiana brown bat is common in the area, as well as endangered alligator snapping turtles, pileated woodpeckers, wild turkey, white tail deer, and quail. She adds that pileated woodpeckers, an indicator species for old growth forests, are protected by the U.S. Migratory Bird Act, 16 USC 703, and 50 CFR 10.13. Mrs. Allen invites the Commission to visit her property before making a decision.

She also believes that companies such as ATXI should be encouraged to work with others to develop a comprehensive infrastructure plan. She is troubled as well by expedited nature of this large project and notes that ATXI had years to prepare while she and others have had only a few months to defend their interests. If existing roads and transmission lines are available, Mrs. Allen recommends that they be considered for ATXI's new transmission line corridor.

6. WOW Position

WOW objects to the suggestion by Clark and Edgar CC that the Commission refrain from selecting a route for this segment. WOW interprets Clark and Edgar CC's request to be that the Commission direct ATXI to refile for approval of the final segment of the Illinois Rivers Project after the Indiana Utility Regulatory Commission approves the portion of the line under its jurisdiction. WOW encourages the Commission to avoid this chicken or egg scenario. WOW asserts that ATXI and MISO have shown that the entire line is needed and meets the standards in Section 8-406.1(f), and the line should be approved as submitted.

7. Staff Position

Staff compares the lengths of the five identified routes and recognizes that Stop Coalition's Route 1 is by far the shortest at 24.7 miles long. This route essentially travels straight east from the Kansas substation to the Indiana state line. Staff witness Rockrohr understands that in light of this entry point into Indiana, an Indiana utility would have to construct additional facilities to connect the line to the next substation. Because this Commission lacks authority to require such an effort by an Indiana utility, Staff does not view this option favorably. The next shortest routes are ATXI's Alternate Route (33.37 miles) and Stop Coalition's Route 2 (33.7 miles). Staff notes that in rebuttal testimony, ATXI provided baseline costs that show Stop Coalition's Route 2 would be approximately \$1.571 million less costly to construct than ATXI's Alternate Route. In

light of this advantage and having anticipated lower operation and maintenance costs, Staff recommends adoption of Stop Coalition's Route 2. Staff also views Stop Coalition's Route 2 more favorably when it comes to the presence of existing corridors, observing that Stop Coalition's Route 2 parallels an existing 138 kV transmission line for a longer distance than ATXI's Alternate Route. Staff also notes that it generally prefers routes that pass close to fewer residences, but because it is not aware of a comparison of the routes on this basis, it does not have an opinion based on this criterion. Staff notes, however, that it is not aware of any of any occupied structures along Stop Coalition's Route 2 that would need to be demolished. Staff also questions the logic of expanding the existing Kansas substation. Staff maintains that ATXI could terminate its proposed 345 kV line at the existing substation.

8. Commission Conclusion

The first task in addressing this segment of the Illinois Rivers Project is to determine whether the concerns raised by Clark and Edgar CC warrant deferring the selection of a route at this time. Despite infirmities in the record, the Commission finds that sufficient information exists to determine the most suitable route among those offered and will therefore not defer a decision on this segment. Based on the criteria discussed by the parties, two routes rise as the most advantageous: ATXI's Alternate Route and Stop Coalition's Route 2. Stop Coalition's Route 1 may very well be acceptable as well, but too many unknowns surround this route in order for the Commission to confidently consider it. ATXI's Primary Route also fails to make the list of routes worth considering in light of the problems associated with the federal floodplain easement. The Commission is not convinced of ATXI's view that the Primary Route remains viable under the circumstances.

ATXI's handling of the floodplain easement issue along its Primary Route causes the Commission to pause before choosing between ATXI's Alternate Route and Stop Coalition's Route 2. While the Commission has no reason to doubt the statements of the NRCS, regardless of the truth of those statements, the Commission is surprised and concerned by ATXI's failure to consider them. Approximately three weeks before filing its initial petition, ATXI received notice of a potentially serious problem along its Primary Route. Yet ATXI witness Murphy testifies that she took no action in response thereto. (Tr. at 876) Only after NRCS raised its concerns for a fourth time did ATXI decide it needed to address them. Its solution is an "alternative pole placement" (see Tr. at 890-891) of more than one-quarter mile. In her explanation of the alternative pole placement, ATXI witness Murphy states, "I think we characterized it in a data request response as not a modification but for all intents and purposes it was just alternative pole placements." (*Id.* at 891) If such a change simply represents an "alternative pole placement," the Commission questions how large of a change must occur before it becomes a modification to a route. To assist ATXI in answering this question, a change of more than one-quarter mile should not be considered a simple adjustment of poles. ATXI witness Murbarger testifies that once an easement is established, ATXI has about five feet of flexibility from the centerline concerning pole placement. (see Tr. at 401-402) This latter type of adjustment is more properly described as an alternative pole

placement. ATXI's late, significant modification of its Primary Route and labeling it an "alternative pole placement" appears to be an effort to minimize and avoid taking responsibility for poor judgment in ignoring communications from a federal agency. Whether or not the statements by NRCS are accurate, ATXI had a responsibility to pursue the issue and not ignore it until nearly the end of this process. Furthermore, in exchange for the option to seek expedited treatment of transmission line siting petitions, electric utilities are supposed to put greater emphasis on preparing their proposals and identifying potential route conflicts prior to filing. ATXI did not fulfill this responsibility in this instance. In the future, ATXI would be wise to avoid such mistakes to begin with, admit them if they occur, and accept whatever consequences may follow.

Turning to the pros and cons of ATXI's Alternate Route and Stop Coalition's Route 2, the Commission finds that the difference in length is negligible while the difference in cost favors Stop Coalition's Route 2. As for the difficulty of construction, operation, and maintenance, the main concern seems to be the presence of an existing 138 kV transmission line along a large portion of Stop Coalition's Route 2. In the absence of sufficient space between the two transmission lines, some parties, including ATXI, suggest that construction, operation, and maintenance could be more difficult. Because sufficient space can avoid any such problems, however, the Commission is not concerned by parallel lines under these criteria. With regard to environmental impacts, Stop Coalition's Route 2 may be only marginally more favorable simply because there are more details in the record on this particular issue that favor that route. Regardless of which route the Commission adopts there are bound to be similar environmental impacts. The impact on historical resources and land use are other areas where ATXI's Alternate Route and Stop Coalition's Route 2 are comparable.

The number of occupied homes near each route is a topic on which the Commission wishes it had more information. The record lacks a count of occupied homes near Stop Coalition's Route 2. While ATXI reports six residences within 75 to 150 feet of the centerline of its Alternate Route, the Commission is hesitant to accept this number as accurate in light of ATXI's own testimony that it did not make a ground level assessment of structures along the routes and based its decisions on assumptions made from its aerial survey. ATXI's claims that one or more homes along Stop Coalition's Route 2 may need to be raised is not taken lightly by the Commission. But at the same time, ATXI's insistence that it can make adjustments to accommodate landowners elsewhere along its preferred route causes the Commission to question the likelihood of such an outcome. Why ATXI could not make similar adjustments along the route is unclear to the Commission. Staff also questions the need to demolish any occupied structures. Overall, the Commission simply lacks reliable information concerning this criterion. Perhaps had more time existed, this void in the record would not exist. The record being what it is, the Commission can not say with confidence which route is preferable under this criterion.

Proximity to existing and planned development may be an area where ATXI's Alternate Route is marginally favored. Aside from common local uses shared by both routes, ATXI reports that Stop Coalition's Route 2 may traverse the planned Wabash

Gas Storage Field in Edgar County, which may interfere with operation and maintenance of transmission facilities along that route. Whether the storage field will in fact be built is not clear, and if it is built, it is not clear whether the storage field and a transmission line along Stop Coalition's Route 2 would interfere with one another in any way. The Commission finds that the ambiguity surrounding this issue is what may only make ATXI's Alternate Route marginally more favorable than Stop Coalition's Route 2.

The next criterion, community acceptance, favors Stop Coalition's Route 2. Supporters of both routes all claim that the area community accepts the same route they favor. But perhaps the most compelling information in the record is the lack of intervenors from parcels along that part of Stop Coalition's Route 2 that does not overlap ATXI's Alternate Route. The lack of intervenors from this area indicates to the Commission that the landowners affected by Stop Coalition's Route 2 at least do not object enough to actively oppose a second transmission line in their area. Such acceptance is not mirrored along ATXI's Alternate Route.

The degree of visual impact also favors Stop Coalition's Route 2. Undeniably, an overhead 345 kV transmission line can not be hidden. If one wishes to minimize its intrusion into the landscape for this segment of the Illinois Rivers Project, the choice is between an agricultural and wooded area currently lacking any similar linear features and agricultural and wooded area where a 138 kV transmission line already exists for a great length of the route. The latter is clearly preferable. This is not to say that a second line in the same area will have no visual impact. But rather so long as space permits, a second line in the same rural area of an existing line will have less visual impact than a transmission line in a rural area previously untouched by such structures.

The final criterion discussed by the parties relates to the presence of existing corridors. Again, Stop Coalition's Route 2 is preferable. Whereas ATXI's Alternate Route does not lie within any existing corridor, Stop Coalition's Route 2 parallels an existing 138 kV transmission line for much of its length. The Commission acknowledges that ATXI's Alternate Route follows the border between Clark and Edgar County, but does not consider such an outwardly undetectable political boundary in any way comparable to an existing transmission line corridor.

With regard to ATXI's proposed construction of a new substation adjacent to AIC's existing Kansas substation, the Commission understands the issue to be simply whether space exists in the existing substation to accommodate new equipment. This question should have been resolved through discovery because whether sufficient space exists should be easily discernible. Why this has not occurred here is uncertain. Instead, the Commission is faced with ATXI's position that more space is necessary and Staff's assertion that sufficient space is available now. Perhaps had more time been available to pursue this issue in discovery and otherwise consider such details, this issue could have been avoided. In the interest of choosing the least-cost option for this Project, the Commission declines to grant ATXI approval to construct an additional substation where one already exists. Should new or additional evidence be presented

to the Commission on rehearing or in a separate proceeding demonstrating the necessity of such a substation, the Commission would revisit this issue.

Upon considering the criteria discussed by the parties, the Commission concludes that Stop Coalition's Route 2, excluding a new Kansas substation, imposes the least cost on those affected. ATXI witness Hackman acknowledges that Stop Coalition's Route 2 does not pose any reliability problems from the perspective of parallel lines. Moreover, the parallel lines along Stop Coalition's Route 2 would be no different from 19% of the route with parallel lines that ATXI seeks to build.

H. Sidney - Rising

1. ATXI Position

ATXI continues to prefer its Primary Route between Sidney, Illinois and Rising, Illinois. This route is shown in teal on ATXI Ex. 13.9 and on Figure 8 in ATXI's Initial Brief. In ATXI's rebuttal testimony, its preferred route is designated the "Rebuttal Recommended Route." ATXI observes that Staff witness Rockrohr endorses the Primary Route as "the best choice" for this segment of the Illinois Rivers Project. (Staff Ex. 1.0R at 53)

a. Length of Line

Existing easements cover a majority of the distance of ATXI's Primary Route, which totals 24.2 miles in length. ATXI's Alternate Route is 33.8 miles long. ATXI states that the Raghebs' proposed modification of the Alternate route would decrease its length by less than a mile (32.9 miles), but would require five additional dead-end structures.

b. Difficulty and Cost of Construction

As can be seen from the table below, the estimated baseline cost to construct ATXI's Primary Route is approximately \$25 million less than ATXI's Alternate Route. The Raghebs' proposed modification of ATXI's Alternate Route requires five additional dead-end structures, which would raise the cost to construct that route.

	ATXI Primary Route	ATXI Alternate Route	Ragheb Family Route
Estimated Baseline Cost	\$40.482 million	\$65.122 million	Not specified but > \$65.122 million

c. Difficulty and Cost of Operation and Maintenance

Because ATXI's Primary Route is significantly shorter than its Alternate Route, it will cost less to operate and maintain. All else being equal, however, ATXI acknowledges that the portion of the Primary Route to be constructed on dual-circuit

poles will entail slightly higher costs of operation and maintenance for the line compared to single-circuit poles. But according to ATXI, that cost is offset by the significantly lower cost of construction and other factors such as planned development, as described below.

d. Environmental Impacts

ATXI asserts that no evidence of record suggests that the Primary Route does not strike the best balance between environmental impacts and other considerations. ATXI recognizes that members of Colfax-Scott LPG state general concerns in testimony regarding “environmental preservation” with respect to ATXI’s Alternate Route, but they provide no information to support such concerns either in testimony or in response to data requests. In response to Mr. Lockwood’s concern that the Alternate Route would result in removal of trees on his property, ATXI states that tree removal would not be unique to Mr. Lockwood’s property. ATXI points out, however, that all of these concerns are resolved by adoption of the Primary Route.

e. Impacts on Historical Resources

ATXI contends that its Primary Route will not impact any known historical resources. While there is one known archaeological site with 75 feet of the Primary Route, ATXI states that this site does not appear in the National Register of Historic Places. ATXI will work with the IHPA to address issues that may arise during the construction process, and will obtain required permits or approvals prior to construction.

f. Social and Land use Impacts

Although the testimony on behalf of Colfax-Scott LPG discusses certain impacts of ATXI’s Alternate Route on agricultural land uses, ATXI counters that these impacts are not unique to the Alternate Route and will occur with equal frequency across the state. In any event, ATXI contends that such concerns can be addressed through final line design and compensation. ATXI also points out that adoption of the Primary Route would address Colfax-Scott LPG’s concerns.

g. Number of Affected Landowners and other Stakeholders and Proximity to Homes and other Structures

ATXI reports that approximately 102 individuals own property within 250 feet on either side of the Primary Route while approximately 150 individuals own property within 250 feet on either side of the Alternate Route. There is no record evidence of the total number of landowners that would be affected by the Raghebs’ modification to ATXI’s Alternate Route. ATXI maintains, however, that the modification would place the route in closer proximity to a greater number of existing residences than either the Primary Route or Alternate Route. As best as can be determined, the table below identifies the number of residences closest to the centerline of each route.

	ATXI Primary Route	ATXI Alternate Route	Ragheb Family Route
Residences 0-75 feet from centerline	0	0	Not specified
Residences 75-150 feet of centerline	3	6	Not specified

h. Proximity to Existing and Planned Development

According to ATXI, intervenor's concerns about development warrant adoption of the Primary Route for this segment. The Raghebs, for example, raise the concern that ATXI's Alternate Route would interfere with an ultralight flightpark they plan to construct on their property. ATXI believes, however, that requests for regulatory approvals from the FAA were submitted after this proceeding was initiated. Similarly, ATXI observes that Champaign and the witness testifying on behalf of the Estate of Clinton C. Atkins agree that the Primary Route minimizes impacts on future urban development in that area. Only Savoy opposes part of ATXI's Primary Route, due to alleged impacts on planned future development. ATXI contends that Savoy has not explained how it failed to account for existing easements in its development plans, or why its position on construction of a transmission line in this area has changed since Docket No. 12-0080. ATXI therefore believes that its Primary Route strikes the best balance between concerns related to planned and existing development.

i. Community Acceptance

Because most intervenors with an interest in this portion of the Illinois Rivers Project support the Primary Route, ATXI asserts that this factor favors adoption of the Primary Route.

j. Visual Impact

ATXI maintains that the visual impacts, if any, will be substantially the same for any route. There is no record evidence that the Primary Route is less preferable considering visual impact than any other route proposed for this portion of the project.

k. Presence of Existing Corridors

As noted above, a vast majority of the Primary Route is located on previously-acquired easements. Additionally, a portion of the Primary Route will be located on the same right-of-way as the transmission line approved by the Commission in Docket No. 12-0080. Only Savoy does not support the entire Primary Route. Savoy supports the portion of the Primary Route that runs south from the Rising substation, but supports ATXI's Alternate Route beginning at the point that the line turns to the east towards the Sidney substation. ATXI points out, however, that the Primary Route in this area follows an existing unoccupied corridor of easements that were acquired by an AIC predecessor company in the 1970s. Why Savoy did not account for the possible use of

these easements in its 2008 Comprehensive Plan is unclear to ATXI. ATXI notes that the Comprehensive Plan does not indicate any platted development in the vicinity of ATXI's Primary Route. Furthermore, ATXI states that the Primary Route overlaps significantly with the route approved by the Commission in Docket No. 12-0080. Therefore, ATXI argues that Savoy's concerns do not support modification of the Primary Route.

I. Need for New Substation Construction

In response to Staff's argument that new substations are not needed in Rising and Sidney and that the 345 kV line could be terminated at existing substations in those communities, ATXI contends that it is impractical, if not impossible, for the necessary facility additions and connections to be made within the existing substations. ATXI insists that it is preferable to construct new substations or expand existing ones, rather than just modify the existing facilities, based on space requirements, engineering requirements (including, but not limited to, control cable length, station service design limiting bus crossing and circuit ingress and egress, topology), and potential future development needs of the existing substations. Furthermore, ATXI continues, the existing substations in Rising and Sidney do not have a 345 kV breaker or 345 kV bus, much less the 345 kV breaker-and-a-half positions required to terminate the project's lines. This leads ATXI to conclude that the existing facilities are not sufficient to terminate the line. Moreover, given that ATXI proposes to construct the new substations adjacent to the existing ones in Sidney and Rising, ATXI does not understand why this would concern Staff given the space constraints identified above.

2. Ragheb Position

The Raghebs support ATXI's Primary Route and oppose the Alternate Route along this segment of the Illinois Rivers Project. They note that the Primary Route is 9.6 miles shorter than the Alternate Route, will be \$24.6 million cheaper to construct, presumably be cheaper to operate and maintain due to its significantly shorter length, and utilizes existing utility corridor whereas the Alternate Route does not. They state further that the Primary Route will have the least environmental impact of the proposed routes and observe that the endangered Upland Sandpiper has been identified along ATXI's Alternate Route but not along the Primary Route. The Raghebs also find the Primary Route preferable because it affects fewer landowners due to its shorter length and has no "Intervenor Owned Property" along its route. They report that 20 residential and 33 non-residential structures lie between 0 and 500 feet of the Primary Route, which compares to 78 residential and 83 non-residential structures for the Alternate Route. Citing the witnesses for Champaign and Savoy, the Raghebs believe the Primary Route will have less of an impact on area development, which includes their own plans for an ultralight flightpark on their property. Visual impact, the Raghebs continue, will also be lessened by adoption of the Primary Route because (1) the Primary Route is shorter and (2) three miles of the Primary Route will be collocated with the transmission line approved in Docket No. 12-0080. The Raghebs also emphasize that Staff witness Rockrohr is the only witness in this case that has no direct interest in

the outcome or routing of the project, and he prefers the Primary Route between Sidney and Rising. If for some reason the Primary Route is not selected by the Commission, the Raghebs reiterate their position that they believe the second best route is the Ragheb modification to ATXI's Alternate Route and that ATXI's unmodified Alternate Route is the third best of the three routes.

The Raghebs add that as a result of their field reconnaissance, they agree with Staff that the new, additional substations at Sidney and Rising should be excluded from any relief that the Commission grants. They acknowledge that some existing substations can not accommodate the additional equipment for connecting new 345 kV transmission facilities. The Raghebs understand, however, that the existing Rising substation is not among those substations with such limitations.

3. Colfax-Scott LPG Position

Colfax-Scott LPG is a collective of 21 intervenors consisting of individuals, residents, landowners, farmers, and otherwise interested parties, all with an interest in land along and/or upon the general path of the Sidney to Rising segment of the Illinois Rivers Project. Colfax-Scott LPG favors the adoption of the Primary Route because it is shorter, less expensive and easier to construct, less expensive and easier to operate and maintain, suffers from fewer environmental, social, and land use impacts, and enjoys more community acceptance than the Alternate Route. Unlike the Primary Route, because the Alternate Route lies upon unencumbered farmland, Colfax-Scott LPG finds the latter route more visually intrusive. The presence of existing easements favors the Primary Route as well, according to Colfax-Scott LPG. Fewer affected landowners along the Primary Route compared to the Alternate Route (105 and 154, respectively, based on Exhibit C to the petition) favors the Primary Route, in the opinion of Colfax-Scott LPG.

Colfax-Scott LPG has the most to say regarding existing and planned development. Colfax-Scott LPG rejects the notion that any 345 kV transmission line be constructed along and upon the rich agricultural land underlying the Alternate Route. Colfax-Scott LPG fears that construction along the Alternate Route would compromise not only the integrity and viability of the land itself, but also jeopardize existing methods of irrigation and subsurface tilling, as well as present environmental and safety concerns to the area. According to Colfax-Scott LPG, farmland located in Scott and Colfax Townships in Champaign County is recognized worldwide as some of the best in the world, as it is flat, black, high in organic matter, and located over water aquifers, with shared drainage in place. Colfax-Scott LPG state further that many of the farms that comprise the land at issue have ongoing and very meaningful relationships with larger corporate interests, relationships which are integral to maintaining the fiscal viability of the farms. As an example, Colfax-Scott states that one member's farm is used as a nursery for AgReliant Seed Company. This member fears losing this business relationship if worker safety and aerial spraying emerge as significant concerns for AgReliant Seed Company.

4. Champaign and Savoy Position

a. Proximity to Existing and Planned Development

Champaign and Savoy are primarily concerned with the proximity of any transmission line to existing and planned development within their respective extra territorial jurisdiction ("ETJ"). A municipality's ETJ is the contiguous territory extending one and one-half miles beyond the corporate limits and not included within any other municipality. In the ETJ, the municipality has the power to influence density, height, land use, and other zoning matters. (See Section 11-13-1 of the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.)

Because part of the western portion of the Rising to Sidney segment is located within Champaign's ETJ and its growth corridor, an area included in Champaign's comprehensive development plan, Champaign contends that it is vital that this portion of the line be dual circuited with the AIC 138 kV line approved by the Commission in Docket No. 12-0080. Champaign/Savoy witness Knight testifies that the region in question is an important area for future expansion by Champaign and that the 2011 Comprehensive Plan already incorporates the portion of ATXI's Primary Route for the 345 kV line. By utilizing the same poles and same right of way as AIC's 138 kV line, Champaign believes that the negative impact of the proposed 345 kV line on Champaign's land use plan would be minimized. Champaign observes that in approving the 138 kV line for AIC, the Commission specifically found "that AIC should be directed to use dual circuit structures for the three mile segment of its proposed 138 kV transmission line directly south of Bondville Route 10 substation should the planned Sidney to Rising 345 kV transmission line share the same route as the Project approved here." (Docket No. 12-0080, August 15, 2012 Order at 23) The Order further authorized AIC to acquire a 150 feet easement "in the event it is required to build dual circuit towers, to accommodate the possibility of a future 345 kV line." (Id. at 24) Champaign understands this language to mean that the Commission in Docket No 12-0080 based its approval in part on the belief that the western portion of the proposed 345 kV line starting at the Rising substation, as requested in this docket, would utilize dual circuit transmission line structures so that the 138 kV and 345 kV lines would be within the same 150 feet wide easement. Champaign notes that one of the larger landowners affected by the western portion of the Primary Route, The Atkins Group, agrees with Champaign's position.

Champaign finds the Alternate Route for the western leg of the Rising to Sidney segment unacceptable because of the significant restrictions it would place on development in Champaign's growth corridor. The existing AIC 138 kV transmission line already shares the area with an underground gas transmission pipeline. Champaign strongly prefers that only one utility corridor pass through this area rather than two. Adoption of the Alternate Route would create a second utility corridor. According to Champaign/Savoy witness Dixon, having two parallel corridors would eliminate smaller tracts from being developed because the smaller tracts would be insufficient in size to justify the investment expense of subdivision development. From a

planning perspective, Mr. Dixon contends that it is far better to have one combined wide transmission line corridor than two separate and wide corridors just a short distance apart. Champaign maintains that expanding the right-of-way of AIC's 138 kV line to 150 feet in ATXI's Primary Route for the western leg of the Rising to Sidney segment and dual circuiting the 138 kV and 345 kV lines on the same poles would allow for orderly development in Champaign's growth corridor. Champaign does not oppose the Primary Route as long as it would be located on the same right-of-way as the 138 kV transmission line.

With regard to Savoy's ETJ, the southern leg of ATXI's Primary Route is in Savoy's only growth corridor. Savoy explains that to its north is Champaign. To its east the land is owned or controlled by the University of Illinois. To its southwest is Willard Airport. Savoy opposes the southern leg of ATXI's Primary Route because it would negatively affect the orderly growth of Savoy to the south, which is its only real option for growth. If the line is found to be necessary, Savoy requests that the Commission approve the southern leg of ATXI's Alternate Route rather than the Primary Route. Because the southern portion of ATXI's Alternate Route is farther south than the Primary Route, Savoy reasons that the Alternate Route would not affect Savoy's ETJ or its orderly growth. Savoy proposes that at the point where the western leg jogs east just south of Savoy, ATXI use the Alternate Route, which then parallels I-57 south before turning east. By doing so, the line would be south of the airport and outside of Savoy's ETJ. The only concern about the Alternate Route for the southern leg pertains to the Raghebs' property, which Savoy believes can be resolved by adopting the Raghebs' modification to the Alternate Route.

Savoy states further that AIC and ATXI's decision to not coordinate the 138 kV line in Docket No. 12-0080 and the 345 kV line at issue now confirms the Commission's concern expressed in the earlier docket "that AIC failed to provide complete information about the planned Sidney to Rising 345 kV transmission line to the area landowners and stakeholders." (August 15, 2012 Order at 23) Had AIC and ATXI been forthcoming in Docket No. 12-0080, Savoy contends that the southern legs of the approved 138 kV line and the requested 345 kV line, which negatively impact Savoy's ETJ, could have been double circuited using one right-of-way. Instead, AIC and ATXI now propose to run two high voltage transmission lines through Savoy's only available growth corridor. Savoy adds that in Docket No. 12-0080, there was no mention that AIC had acquired in the 1970s the right-of-way for the alternate route in that case (the Primary Route in this case), so ATXI is disingenuous when it argues that Savoy should have accounted for the 1970s easements in its 2008 Comprehensive Plan. In other words, Savoy reiterates, AIC did not discuss with the Commission the fact that it had easements for the alternate route which it proposed, and then opposed, in Docket No. 12-0080. Savoy also asserts that ATXI now contradicts AIC's position in Docket No. 12-0080 that the issues the Commission should consider in rejecting the alternate route in that case (ATXI's proposed Primary Route here) "included the University of Illinois-Willard Airport, existing residential use areas, and future developments – both proposed and approved as planned." (*Id.* at 11) The Commission agreed with these considerations and rejected the alternate route in Docket No. 12-0080. Therefore, Savoy concludes, the southern

leg of that same route, which ATXI designates as its Primary Route in this docket, should again be rejected.

b. Visual Impact

Champaign opposes ATXI's Alternate Route for the western leg of the Rising to Sidney segment not only because of the physical constraints that it would place on development but also because of the negative visual impact. According to Champaign, the existence of two sets of transmission lines in the vicinity of one another would have an adverse aesthetic effect, which influences development decisions. Mr. Dixon testifies that it will be nearly impossible to screen future development from the 138 kV transmission line. To screen two sets of tall transmission lines, he continues, would be doubly difficult, which is especially problematic if residential growth is desired along the west edge of Champaign and Savoy. Therefore, Champaign requests that the Commission reject the Alternate Route for the western leg of the Rising to Sidney segment.

5. Staff Position

As far as the actual route path between Sidney and Rising, Staff recommends adoption of ATXI's Primary Route. Among the reasons that Staff cites for coming to this conclusion is that the Primary Route is far shorter than alternatives and is correspondingly less difficult and less expensive to construct. Staff notes as well that AIC's legacy utility already acquired land rights for much of this route, so that for some time landowners along ATXI's Primary Route have been aware of the possibility of a transmission line. Staff adds that the Primary Route would be less costly to operate and maintain due to its shorter length. Generally, Staff also favors routes that pass close to fewer residences, which Staff believes to be the case with the Primary Route when compared to alternatives. The presence of an existing corridor for AIC's 138 kV transmission line is another reason that Staff favors the Primary Route.

Staff's view of the proposed substation construction for this segment, however, is not in line with ATXI's view. ATXI proposes to construct a new substation at each end of the Sidney to Rising segment because it generally does not believe the existing area substations can accommodate the new 345 kV transmission facilities. The new substations would be adjacent to the existing AIC substations. ATXI, however, has not convinced Staff that new substations are necessary. Instead, Staff recommends that the Commission find that terminating the new 345 kV line at the existing substations is appropriate. If the Commission disagrees with Staff's view, Staff concedes that the substation locations chosen by ATXI are rational since the function of ATXI's substations is to tie to AIC's existing substations.

6. Commission Conclusion

While some of the criteria addressed by the parties do not favor one route over another (such as environmental impacts and impacts on historical resources), the

remaining criteria support a finding that ATXI's Primary Route should be adopted for this segment of the Illinois Rivers Project as the least cost route. The Primary Route is 9.6 miles shorter than the Alternate Route, will be \$24.6 million cheaper to construct, correspondingly cheaper to operate and maintain, appears to affect fewer landowners and homes, and utilizes existing utility corridor whereas the Alternate Route does not. The proposed double circuit and use of existing utility corridor along the Primary Route will also minimize visual impact and mitigate impact on development. Use of existing corridors should also facilitate access for maintenance purposes. Aside from the view of Savoy, the Primary Route also enjoys greater community acceptance. The Commission appreciates Savoy's concerns about its development options, but can not ignore the weight of the record favoring the Primary Route.

In light of the discussion of the project in Docket No. 12-0080 and the project at hand, the Commission is concerned with the transmission system planning and coordination of ATXI and its affiliates. Had the Commission had a more complete understanding of the two projects when evaluating its options in Docket No. 12-0080 it is possible that different and arguably better routes would have been selected. ATXI and its affiliates are directed to provide in future petitions seeking approval of transmission facilities a more complete picture of the future transmission facilities for the areas in question. For example, if ATXI or an affiliate requests a certificate for a 138 kV line in a given area, it must proactively inform the Commission in its initial filing if it or an affiliate plans to construct a new substation or other transmission line(s) in the area in the relatively near future. The Commission is troubled that AIC and ATXI brought separate petitions and apparently make contradictory arguments regarding the merits of the routes. Failure to heed this directive may result in dismissal of a petition under either Section 8-406 or 8-406.1 upon discovery of the failure.

With regard to the construction of new substations adjacent to the existing substations in Sidney and Rising, the Commission understands the issue to be simply whether space exists in the existing substations to accommodate new equipment. This question should be resolved through discovery because whether sufficient space exists should be easily discernible. Why this has not occurred here is uncertain. Instead, the Commission is faced with ATXI's claims that it needs more space than is present in the existing substations and Staff's argument that sufficient space is available now. Perhaps had more time been available to pursue this issue in discovery and otherwise consider such details, this issue could have been avoided. In the interest of choosing the least-cost option for the Project, the Commission declines to grant ATXI approval to construct new substations when existing substations may serve the same purpose. Should new or additional evidence be presented to the Commission on rehearing or in a separate proceeding demonstrating the necessity of such substations, the Commission would be willing to revisit this issue.

VII. MANAGING AND SUPERVISING THE CONSTRUCTION PROCESS

As discussed above, pursuant to Section 8-406.1(f)(2), before the Commission can grant a certificate of public convenience and necessity, it must find that the public

utility 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. ATXI believes that the record allows the Commission to make this finding. ATXI states that Ameren Services will manage and supervise the construction processes on its behalf. Over decades, ATXI explains further, Ameren Services has managed the construction of hundreds of miles of transmission line. Many of the transmission line construction projects Ameren Services managed and supervised were approved by the Commission, including those approved in Docket Nos. 06-0179, 06-0706, 07-0532, 10-0079, 12-0080, and 12-0154. Moreover, ATXI continues, the particular Ameren Services personnel tasked to manage construction of the Illinois Rivers Project have extensive relevant experience, and those individuals ultimately will oversee all aspects of the project's construction.

Relying on its experience, Ameren Services plans to build the project in portions, utilizing construction processes tailored to the anticipated in-service date of each portion and resource allocation considerations. Ameren Services has determined that using contractors is the most efficient, cost-effective means to construct transmission line projects. As it routinely does, Ameren Services will employ contractors (specifically, union contractors), and will engage them using a rigorous sourcing process that ensures it secures the best bid for the necessary work.

ATXI adds that it has taken, and will continue to take, sufficient action to ensure adequate and efficient construction and supervision of the construction processes for the Illinois Rivers Project. ATXI states that Ameren Services has documented corporate project oversight policies and procedures consistent with American National Standards Institute standards. These policies and procedures, ATXI contends, will govern all phases of the Project. Additionally, ATXI asserts that Ameren Services will construct the project in accordance with all applicable federal and state regulations and orders of the Commission, including 83 Ill. Adm. Code 305, "Construction of Electric Power and Communication Lines" and the National Electrical Safety Code. ATXI states further that Ameren Services will further ensure efficient construction by managing construction costs using a comprehensive technique, widely-used in the industry, that it has found to effectively measure and forecast project performance and progress in an objective manner, fostering the early detection of issues to assure project success.

ATXI observes that no intervenors have questioned its (or Ameren Services') ability to efficiently manage and supervise the Illinois Rivers Project's construction processes, or to ensure adequate and efficient construction and supervision of the project. Only Staff raised a related concern. Because ATXI has only one employee, Staff witness Rockrohr questioned whether ATXI's continued existence and ability to complete the Illinois Rivers Project depended upon Ms. Borkowski retaining her positions as President and Chief Executive Officer of ATXI. Mr. Rockrohr does not refute that Ameren Services personnel are capable of managing and supervising the project, he is not aware of any Commission order finding Ameren Services unable to adequately manage and supervise transmission line construction, and he has no reason

to question that Ameren Services has successfully overseen similar projects. But even in light of ATXI's assurances, Mr. Rockrohr's concerns are not entirely alleviated.

The Commission has considered the record on this issue and finds that ATXI, through Ameren Services, is capable of efficiently managing and supervising the construction process and will take sufficient action to ensure adequate and efficient construction and supervision of the construction. Staff's concerns about ATXI having only one employee have not gone unnoticed. Obviously, in Ms. Borkowski's absence and until a replacement could be named, ATXI would be a company with no employees. Even with Ms. Borkowski, ATXI is primarily a company in name only for it appears to conduct all of its business through affiliate companies. Nevertheless, the Commission has no reason to believe that ATXI is not a properly created legal entity.

VIII. FINANCING THE PROPOSED CONSTRUCTION

Section 8-406.1(f)(3) provides that before the Commission can grant a certificate of public convenience and necessity, it must find that the public utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. ATXI believes that this showing has been made. ATXI relates that the funds required for construction will be available, at least initially, primarily from Ameren Corporation, its parent. While the total expected cost for the project ranges from \$1.092 to \$1.168 billion for the Primary and Alternate Routes respectively, ATXI witness Hughes testifies that "Ameren is well-capitalized and has access to the funding necessary to finance the Project." (ATXI Ex. 6.0 at 7) In support of this assertion, ATXI states that Ameren Corporation has access to debt and equity markets and maintains bank lines of credit amounting to \$2.1 billion. Additionally, the parent has access to other fund sources including, but not limited to, "funds from operation of its subsidiaries, funds from periodic debt or equity issuances, dividends, and cash savings from tax deferrals." (*Id.*) While the Illinois Rivers Project will be funded over several years, even if it was financed immediately, ATXI reports that it would only add 7.2% to 7.6% to the June 30, 2012 capitalization of Ameren Corporation. ATXI therefore concludes that Ameren Corporation clearly possesses the financial wherewithal to fund the Illinois Rivers Project without bearing significant adverse consequences.

ATXI explains further that it has access to Ameren Corporation's funds via intercompany loans and equity infusions. The Commission has already approved two intercompany borrowing arrangements. A short-term arrangement for up to \$125 million under the Unilateral Borrowing Arrangement was approved as part of Docket No. 08-0174. A long-term arrangement under the Long Term Borrowing Agreement for up to \$100 million over a term not to exceed 10 years was approved under Docket No. 12-0017. Going forward, ATXI plans to replace short-term borrowing under the long-term agreement, and will seek to renew the long-term lending arrangement at least every three years and to extend the maximum sum above the \$100 million limit as necessary. ATXI notes that no party has disputed its access to Ameren Corporation's funds.

ATXI adds that it will also have access to additional funds through periodic equity infusions from Ameren Corporation and ATXI's retained earnings. ATXI expects such infusions to occur to the extent necessary to maintain a target capital structure for ATXI of 56% equity to 44% debt, as approved by FERC. ATXI currently has retained earnings and will continue to receive earnings based on the transmission facilities it currently owns and those to be constructed as part of the Illinois Rivers Project. This revenue is and will be generated because even though ATXI does not have any direct retail customers, ATXI's transmission facilities are a part of MISO, which provides service and receives revenue from wholesale and retail customers that MISO then distributes to ATXI via the MISO tariff. This MISO tariff allows ATXI to recover its interest expense associated with its construction debt in the year in which it is incurred, and to earn a rate of return on the equity portion of its capitalization, meaning ATXI will be made whole throughout its construction cycle. ATXI states that these provisions significantly reduce the financial risk associated with the construction of the Illinois Rivers Project. For that reason, ATXI does not anticipate that the project will impose financial stress on it.

Staff's sole witness, an electrical engineer, does not know if ATXI's plan for financing the Illinois Rivers Project allows the Commission to make the requisite finding under Section 8-406.1(f)(3). The Raghebs commented on ATXI's financial ability as well. Based on the fact that ATXI has no standalone credit rating nor sufficient assets and financial size to be rated, and Staff's lack of certainty on the issue, the Raghebs do not feel that ATXI has demonstrated that it is fully capable of financing the proposed construction within the requirements of Section 8.406.1.

The Commission has considered the record on this issue and finds that in the absence of contrary evidence ATXI has sufficiently demonstrated that it is capable of financing the proposed construction without significant adverse financial consequences for itself or its customers.

IX. SECTION 8-503

ATXI also seeks a Commission order authorizing the Illinois Rivers Project be built pursuant to Section 8-503 of the Act. Under Section 8-406.1(i) of the Act, "a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order." Section 8-503 of the Act provides whenever the Commission finds that additions to existing plant are necessary and ought reasonably to be made, or that a new structure or structures ought to be erected, the Commission "shall make and serve an order authorizing or directing that such additions . . . be made, or structure or structures be erected" No party opposes a grant of authority under Section 8-503. In compliance with Section 8-406.1(i), the Commission authorizes ATXI under Section 8-503 to construct the Illinois Rivers Project as set forth in this Order.

X. FINDINGS AND ORDERING PARAGRAPHS

Having given due consideration to the entire record, the Commission is of the opinion and finds that:

- (1) ATXI is a public utility pursuant to the Act;
- (2) the Commission has jurisdiction over ATXI and the subject matter of this proceeding;
- (3) 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;
- (4) the route for the transmission line segment between the Mississippi River and Quincy, Quincy and Meredosia, Meredosia and Ipava, Meredosia and Pawnee, Mt. Zion and Kansas, Kansas and the Indiana state line; and Sidney and Rising should be approved along the routes identified in the prefatory portion of this Order;
- (5) the route for the transmission line segment between Pawnee and Pana and between Pana and Mt. Zion should not be approved in this proceeding;
- (6) the proposed new or expanded substations at Quincy, Meredosia, and Pawnee should be approved at the locations identified in the prefatory portion of this order;
- (7) the proposed new or expanded substations at Ipava, Pana, Mt. Zion, Kansas, Sidney, and Rising should not be approved in this proceeding;
- (8) pursuant to Section 8-406.1(f)(1) of the Act, the Commission finds that the portions of the project approved herein are necessary to provide adequate, reliable, and efficient service to the public utility's customers and is the least cost means of satisfying the service needs of the public utility's customers or that the project will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives;
- (9) pursuant to Section 8-406.1(f)(2) of the Act, the Commission finds that ATXI 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;
- (10) pursuant to Section 8-406.1(f)(3) of the Act, the Commission finds that ATXI is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;

- (11) pursuant to Section 8-406.1(h), the Commission finds that ATXI shall pay a one time construction fee to each county in which the project is constructed within 30 days after the completion of construction; the construction fee shall be \$20,000 per mile of high voltage electric service line constructed in that county, or a proportionate fraction of that fee; the fee shall be in lieu of any permitting fees that otherwise would be imposed by a county;
- (12) pursuant to Section 8-406.1(i) of the Act, ATXI is authorized, pursuant to Section 8-503 of the Act, to construct the high voltage electric service line, the new and expanded substations and related facilities as approved by the Commission in the prefatory portion of this Order; and
- (13) 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 a Certificate of Public Convenience and Necessity is hereby issued to Ameren Transmission Company of Illinois pursuant to Section 8-406.1 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 Ameren Illinois Transmission Company of segments of a 345 kV electric transmission lines over the routes found appropriate at locations approved in Docket No. 12-0598, at locations as shown on the Appendix D attached hereto, as well as new substations at locations approved in Docket No. 12-0598, and (2) the transaction of an electric public utility business in connection therewith, all as herein before set forth.

IT IS FURTHER ORDERED that pursuant to Section 8-503 of the Act, ATXI is authorized to construct the high voltage electric service line, the new and expanded substations and related facilities as approved by the Commission in the prefatory portion of this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the 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.

By order of the Commission this 20th day of August, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman

ATXI Exhibit 6.0

ILLINOIS COMMERCE COMMISSION

DOCKET No. 12-_____

DIRECT TESTIMONY

OF

DARRELL E. HUGHES

Submitted On Behalf

Of

AMEREN TRANSMISSION COMPANY OF ILLINOIS

NOVEMBER, 2012

A-594

ATXI Exhibit 6.0

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ILLINOIS COMMERCE COMMISSION**DOCKET No. 12-_____****DIRECT TESTIMONY OF****DARRELL E. HUGHES****Submitted On Behalf Of****Ameren Transmission Company of Illinois****I. INTRODUCTION AND WITNESS QUALIFICATIONS****Q. Please state your name, business address and present position.**

A. My name is Darrell E. Hughes, and my business address is 1901 Chouteau Avenue, St. Louis, Missouri 63103. I am employed by Ameren Services Company (“Ameren Services”) as a Supervisor Valuation and Cost of Capital – Corporate Finance for Ameren Corporation (“Ameren”) and its affiliates, including Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois”).

Q. Please summarize your educational background and professional experience.

A. A summary of my educational background and professional experience is attached as an Appendix to this testimony..

Q. What are your duties and responsibilities in your present position?

A. In my current position, I have additional responsibilities for supporting the development of financial projections provided to the credit rating agencies, long-term cash forecasting, asset valuations and financial due diligence related to proposed new business initiatives and financing activities.

22 **II. PURPOSE AND SCOPE**23 **Q. What is the purpose of your direct testimony?**

24 **A.** The purpose of my testimony is to discuss the financing required for the Illinois Rivers
25 Project (the “Project”) and to explain how Ameren Transmission Company of Illinois (“ATXI”)
26 can finance the Project without adverse financial consequences for ATXI or its customers.
27 Based on current financial considerations, my analysis indicates ATXI will be able to support all
28 of the financing for the Project during its construction phase without experiencing significant
29 adverse financial consequences for itself or its customers as a result of the financial requirements
30 imposed by construction of the proposed Transmission Line.

31 **Q. Are you sponsoring any exhibits in support of your direct testimony?**32 **A.** No, I’m not.33 **III. FINANCING OF THE PROJECT**34 **Q. Please summarize ATXI’s financing plan for the Project.**

35 **A.** ATXI does not have partnerships or joint owners that would provide funding for this
36 Project. ATXI will primarily rely on Ameren for its source of funds. These funds will include
37 short-term and long-term intercompany loans from Ameren. In addition, Ameren will be making
38 periodic equity infusions into ATXI in support of ATXI’s long-term capital structure target of
39 56% equity and 44% debt.

40 To a lesser extent, ATXI will self-fund a portion of the Project with retained earnings.
41 ATXI does not have any direct retail customers. But ATXI’s transmission facilities are part of
42 the Midwest Independent Transmission System Operator, Inc. (“MISO”) transmission system,
43 and wholesale and retail customers request transmission service from MISO. MISO receives the

44 revenue for the service; and MISO distributes the revenue to ATXI. ATXI has earnings due to
45 the receipt of current MISO tariff revenue and will generate additional retained earnings as the
46 Project is constructed. These funds are a source of equity and will offset the need for debt or
47 equity financing from Ameren.

48 **Q. How will the Project be financed during construction?**

49 **A.** Ameren will lend funds to ATXI under two intercompany borrowing arrangements. The
50 first is a short-term Unilateral Borrowing Agreement, which was approved by the Commission in
51 May of 2008 as part of Docket 08-0174. This agreement provides for up to \$125 million of
52 short-term lending to ATXI. In addition, ATXI has filed a request for approval of a Long-Term
53 Borrowing Agreement, as part of Docket 12-0017. This agreement would also allow Ameren to
54 lend to ATXI funds not to exceed \$100 million over a term not to exceed ten years. Together,
55 these agreements will provide for up to \$225 million of direct lending from Ameren to ATXI, as
56 needed. ATXI intends to periodically replace short-term borrowing from the Unilateral
57 Borrowing Agreement with borrowing under the proposed Long-Term Agreement. As
58 construction proceeds, ATXI will seek to renew the long-term lending arrangement at least every
59 three years, and will seek to extend the maximum size beyond the \$100 million limit, as
60 necessary.

61 In addition, Ameren will provide additional construction funding through periodic
62 equity infusions. Periodic reviews of ATXI financial reports will indicate how the balance of
63 accumulated equity (from retained earnings and paid-in capital) compares to the balance of
64 outstanding debt. ATXI currently expects that, to the extent ATXI does not meet a target 56%
65 equity, 44% debt capital structure, Ameren will infuse additional equity funding necessary to
66 achieve such target.

67 **Q. How will the Project be financed after construction is complete?**

68 **A.** Eventually, ATXI will seek debt from unaffiliated sources. These sources will allow
69 ATXI to pay off debt to affiliates with external debt financings in a similar manner to other
70 utilities regulated in Illinois. Contractually, ATXI has the right to pay off any of its debt from
71 Ameren at any point. The timing and availability of external debt financings will depend on a
72 number of factors. These may include, but are not limited to, a standalone credit rating for
73 ATXI, the relative amount of cash generated by future revenues, the overall amount of debt that
74 ATXI has accumulated, the strength of ATXI's key credit metrics and the future debt market
75 conditions. There are no specific plans for external debt financings at this point, but such
76 financings would most likely occur after ATXI achieves total capitalization exceeding \$500
77 million. Current construction estimates indicate this would occur in the 2015 to 2016 timeframe.
78 ATXI recognizes that any future external financings will be subject to review and/or approval by
79 the Commission in the manner and to the extent required by law.

80 **Q. Has ATXI determined the expected cash flow required to finance the Project?**

81 **A.** Yes. The total expected Project cost for the Primary Route is approximately \$1.092
82 billion, and for the Alternate Route is \$1.168 billion. The Project will be placed in service in
83 phases, with the earliest in-service dates expected in 2016 and the final portion of the
84 Transmission Line to be placed in service by the end of 2019. The following alternative
85 construction costs (without Allowance for Funds Used During Construction, or "AFUDC") are
86 estimated by year:

Year	CF %	Primary Route	Alternate Route
2012	2.2%	\$24,200,000	\$25,800,000
2013	6.9%	\$75,100,000	\$80,400,000
2014	21.3%	\$232,200,000	\$248,300,000
2015	21.2%	\$231,900,000	\$248,100,000
2016	23.6%	\$257,800,000	\$275,700,000
2017	16.4%	\$178,800,000	\$191,300,000
2018	6.9%	\$75,000,000	\$80,200,000
2019	1.5%	\$16,600,000	\$17,700,000
Total:	100.0%	\$1,091,600,000	\$1,167,500,000

87 **Q. Please describe the capital structure of ATXI.**

88 **A.** The capital structure is comprised of debt from all sources, which include lending under
89 the previously discussed intercompany borrowing arrangements with Ameren and any external
90 debt that ATXI may issue on its own. The equity will consist of retained earnings from on-going
91 operations, plus accumulated paid-in capital from equity infusions made by Ameren. The capital
92 structure will be rebalanced with periodic infusions (at least annually) of equity to maintain a
93 long-term target capital structure of 56% equity and 44% debt. This capital structure was
94 approved by the Federal Energy Regulatory Commission (the “FERC”) in response to Ameren
95 Services’ Petition for Declaratory Order on Incentive Rate Treatments as part of Docket EL10-
96 80-000. In this Order, ATXI (formerly Ameren Illinois Transmission Company, or AITC) was
97 authorized to use a hypothetical capital structure of 56% equity and 44% debt in connection with

construction of the Project (as well as others) until the beginning of the calendar year following the date by which all projects were placed in-service, or no later than 2022.

Q. Please describe ATXI's current financial situation.

A. As of September 30, 2012, ATXI had a \$14.3 million short-term loan from Ameren and approximately \$31.1 million of equity from paid-in capital and retained earnings. Out of the total \$45.4 million of capitalization, Ameren has provided \$39.3 million of the funds. The remaining \$6.1 million has come from retained earnings. Ameren bears the majority of the financial risk during construction until such a time as ATXI can obtain its own external debt. ATXI is not required to file financial statements with the Securities and Exchange Commission ("SEC") and, for that reason, all financial results of its operations are consolidated at the corporate level. The impact of the Project's construction (at least in the early years) will be evident, from a public financial reporting perspective, only at the Ameren level.

Q. Since Ameren is providing financial support to ATXI, please describe Ameren's current financial situation.

A. Ameren has issuer credit ratings of Baa3 from Moody's with a stable outlook, BBB- from Standard & Poor's ("S&P") with a stable outlook, and BBB from Fitch with a stable outlook. As of June 30, 2012, the total consolidated capitalization amounts to \$14.587 billion with total outstanding debt of \$6.887 billion. Ameren has access to the debt markets and equity markets to provide funding for the Project. In addition, Ameren currently maintains bank lines of credit amounting to \$2.1 billion. Such credit is expected to be available during the construction of the Project. Ameren also uses commercial paper to the extent it is available. This could fund portions of the Project. As of June 30, 2012, Ameren had a total of \$30 million of commercial paper issued. The anticipated amount of funding necessary to support this Project

121 ranges from \$1,092 million to \$1,168 million. Most of this could be financed using Ameren's
122 credit facilities, but Ameren intends to utilize other sources of cash. These sources may include,
123 but are not limited to, excess funds from operations of its subsidiaries, funds from periodic debt
124 or equity issuances, dividends, and cash savings from tax deferrals. In total, Ameren is well-
125 capitalized, and Ameren has access to funding necessary to finance the Project.

126 Regarding costs of debt, ATXI will be charged the same rate that Ameren is charged on
127 current or future debt issued at the corporate level. The terms in both the Unilateral Borrowing
128 Agreement and the proposed Long Term Agreement dictate that ATXI will pay Ameren's
129 interest costs. There is no "add-on" that would inflate costs to a level greater than what Ameren
130 would incur to finance the Project itself. Therefore, ATXI enjoys the benefit of debt rates of a
131 much larger company with established debt ratings during the early years of construction.

132 **Q. How does access to and cost of capital change as the Project is completed?**

133 **A.** It should improve. ATXI does not have a standalone credit rating from the credit rating
134 agencies, and some period of time will be necessary before ATXI acquires sufficient assets and
135 financial size to be rated. This will most likely take at least three years, but may take longer.
136 Once ATXI acquires its own rating, it is possible that external financing may be acquired at more
137 competitive rates than Ameren's. To facilitate bond index eligibility, external debt is generally
138 issued after companies need \$250 million or more of long-term financing. ATXI may be able to
139 access external markets for amounts less than this. ATXI has not assessed the cost or availability
140 of external debt at the present time. It is simply too early, but this option will be part of long-
141 term financial planning at ATXI.

142 In summary, ATXI's financial situation and plan ensures competitive interest costs for its
143 short and long-term financings during construction. If the Project was financed immediately,
144 the Project would only add 7.2% to 7.6% to the June 30, 2012 capitalization of Ameren. While
145 Ameren funds the early portions of the Project, the eventual acquisition of a strong, investment
146 grade credit rating by ATXI could ensure additional access to standalone debt at rates that
147 compare favorably to what Ameren could get on its own.

148 **Q. How will ATXI service the debt incurred during construction and establish a stand-**
149 **alone debt rating?**

150 **A.** The approved MISO tariffs will provide ATXI a source of revenue to meet its interest
151 obligations as the Project is constructed. ATXI's MISO tariffs allow it to recover the interest
152 expense associated with the construction debt in the year in which the interest expense is
153 incurred. This allows ATXI to service the debt on an ongoing basis, and it will produce a lower
154 overall construction cost. Because the construction will be reflected in tariff recoveries on a
155 current basis, ATXI will not accrue AFUDC. This type of rate treatment allows the
156 accumulating amount of construction work in progress ("CWIP") to earn a rate of return. In
157 typical utility construction projects, interest expense has to be capitalized. This means interest
158 expense is not funded by customers as it is incurred, but is added to the project cost and
159 compounds on itself. This compounding effect can greatly increase the cost of a large
160 construction project that stretches over multiple years. This Project is certainly one that will
161 stretch over several years, and AFUDC could be significant without CWIP recovery in rate base.
162 Thus, while a utility that accrues AFUDC is not made financially whole until the project is
163 complete, ATXI will be made whole throughout its construction cycle. For that reason, the
164 Project should not impose financial stress on ATXI, or for that matter, on Ameren. The recovery

of current period interest expense is a cash flow beneficial to credit metrics, and thus supportive of strong credit ratings. In addition, ATXI will earn an equity return on the equity portion of its capitalization. This equity return allows for the generation of retained earnings at ATXI, which provides a partial source of funds for on-going construction, and improves cash flow to interest rate comparisons that are reviewed by the rating agencies.

Q. What about any impact on ATXI's financial condition after the Project goes in-service?

A. ATXI will start to recover depreciation of the Project's assets. This additional revenue is an additional source of cash flow relative to interest expense and the amount of debt on the balance sheet. This cash flow provides additional support to credit metrics, and these factors, as well as those mentioned above, could facilitate the ability of ATXI to obtain its own credit rating. As described earlier, a strong, investment grade ATXI credit rating would open sources of external debt for ATXI and may lower its cost ultimately.

Q. Will ATXI be reimbursed by any individual customer or group of customers for its actual or estimated costs for the Project?

A. No. This Project will not receive any funding in whole or in part from individuals or customers. The Project is being completed for reasons described by the other ATXI witnesses.

IV. CONCLUSION

Q. What is your conclusion regarding ATXI's ability to finance the Project?

A. I conclude that ATXI can finance the Project without adverse financial consequences to the utility or its customers.

ATXI Exhibit 6.0
Page 10 of 10

186 **Q.** **Does this conclude your direct testimony?**

187 **A.** Yes, it does.

A-605

ATXI Exhibit 6.0 - Appendix**APPENDIX****STATEMENT OF QUALIFICATIONS****DARRELL E. HUGHES**

I graduated with a Bachelor of Science degree in electrical engineering from Washington University in St. Louis, Missouri in 1975. Upon graduation, I was employed by Union Electric Company in the engineering services division of the information technology group. I held a variety of positions providing specialized support for transmission and distribution system analysis and design. I was promoted to Staff Assistant, Computer Services in 1982. I subsequently earned a Masters of Business Administration from Webster University in St. Louis, Missouri in 1991. After several promotions, I accepted the position of Senior Corporate Development Specialist in Corporate Finance for Ameren Services in 2000. I provided financial review and guidance to senior management regarding business initiatives proposed by all Ameren business lines. I completed financial projections and due diligence for Ameren's subsidiaries in the acquisition of new long term debt in 2002. In 2003, I assumed additional responsibilities as Supervisor Valuation and Cost-of-Capital. In this role, I support Ameren's capital budgeting and project evaluation activities.

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Grain Belt Express LLC	}	
	}	
Application for an Order Granting Grain Belt Express	}	
LLC, as a Qualifying Direct Current Applicant, a	}	
Certificate of Public Convenience and Necessity	}	
pursuant to Sections 8-406(b-5) and 8-406.1 of the	}	
Public Utilities Act to Construct, Operate and Maintain	}	Case No.: 22-0499
a High Voltage Direct Current Electric Service	}	
Transmission Line as a Qualifying Direct Current	}	
Project and to Conduct a Transmission Public Utility	}	
Business in Connection Therewith and Authorizing	}	
Grain Belt Express LLC Pursuant to Sections 8-503 and	}	
8-406.1(i) of the Public Utilities Act to Construct the	}	
High Voltage Direct Current Electric Transmission Line.	}	

**INTERVENOR CONCERNED CITIZENS AND PROPERTY OWNERS'
FIRST DATA REQUEST TO ALL PARTIES**

NOW COMES Intervenor Concerned Citizens & Property Owners (hereinafter referred to as "CCPO") by and through their attorneys, Edward D. McNamara, Jr. and Joseph H. O'Brien of McNamara & Evans, and Kara J. Wade, Kristen M. Flood, and Clayton Walden of Taylor Law Offices PC, and hereby submits its First Data Request directed to all other active parties to this proceeding.

Responses should be directed to the below named attorneys via email.

INSTRUCTIONS

"Commission." The term "Commission" means the Illinois Commerce Commission.

"Documents." The term "Documents" includes any and all memoranda, correspondence, reports, surveys, comparisons, tabulations, charts, books, pamphlets, computer runs or analyses, studies, workpapers, portions of texts, regulatory commission orders, rules, regulations and/or testimony,

calendar; check; circular; coding form; communication (intra- or intercompany); computer printout; computer-readable form; contract; copy, data base; diary; display; draft of any document; drawing; e-mail; film; film transparency; flyer; forecast; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; magnetic media of all kinds (including, but not limited to, disks, tapes, or other media) containing computer software with supporting indices, data, documentation, flow charts, comments, object code, source code, and computer programs relating thereto; manual; map; minute; newspaper or other clipping; note; notebook; opinion; pamphlet; paper; periodical or other publication; photograph; price list; print; printed circuit board; promotional literature; receipt; record; recorded Read-Only-Memory (ROM); recording; report; solicitation; statement; statistical compilation; stenographic notes; study; summary (including any memoranda, minutes, notes, records, or summary of any (a) telephone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference); telegram; telephone log; travel or expense records; video recording; video tape; voice recording; voucher; worksheet or working paper; writing or other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information required may be obtained.

“CCPO” means Concerned Citizens & Property Owners, an intervenor and active party to this proceeding.

Timing of Responses.

Please provide responses to this Data Request as they become available.

Claims of Privilege.

If any document is withheld under any claim of privilege, furnish a list identifying each document for which privilege is claimed, together with the following information: date, author(s), recipient(s) of copies, subject matter of the document, and the basis upon which such a privilege is claimed.

Format.

Please state each question and response on a separate page.

Duty to Supplement.

This data requests is continuing, and requires prompt supplementation when additional information responsive to the request becomes available. If information responsive to this data request becomes known subsequent to providing the original answers, demand is hereby made that such information be supplied immediately.

Dated this 19th day of August, 2022.

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DATA REQUEST OF ALL PARTIES

CCPO-ALL 1.01: Please provide a copy of each data request or other request for information, either received from or delivered to any party in this proceeding, and your response to any data request received. Please provide the request(s) or response(s) to CCPO simultaneously with service of the request(s) or response(s) on any/all other parties.

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

GRAIN BELT EXPRESS LLC,	)	
	)	
Application for an Order Granting Grain Belt	)	
Express LLC, as a Qualifying Direct Current	)	
Applicant, a Certificate of Public Convenience	)	
and Necessity pursuant to Sections 8-406(b-5)	)	Docket No. 22-0499
and 8-406.1 of the Public Utilities Act to	)	
Construct, Operate and Maintain a High	)	
Voltage Direct Current Electric Service	)	
Transmission Line as a Qualifying Direct	)	
Current Project and to Conduct a Transmission	)	
Public Utility Business in Connection Therewith	)	
and Authorizing Grain Belt Express LLC pursuant	)	
to Sections 8-503 and 8-406.1(i) of the Public	)	
Utilities Act to Construct the High Voltage Direct	)	
Current Electric Transmission Line.	)	

**INTERVENOR ILLINOIS AGRICULTURAL ASSOCIATION a/k/a ILLINOIS FARM
BUREAU'S FIRST DATA REQUEST TO ALL PARTIES**

NOW COMES Intervenor, ILLINOIS AGRICULTURAL ASSOCIATION a/k/a the Illinois Farm Bureau (hereinafter "Farm Bureau"), by and through its attorneys, Brown, Hay & Stephens, LLP, and hereby submits its First Data Request directed to all other active parties to this proceeding.

Responses should be directed to the below named attorneys via e-mail.

INSTRUCTIONS

"Commission." The term "Commission" means the Illinois Commerce Commission.

"Documents." The term "Documents" includes any and all memoranda, correspondence, reports, surveys, comparisons, tabulations, charts, books, pamphlets, computer runs or analyses, studies, workpapers, portions of texts, regulatory commission orders, rules, regulations and/or testimony, calendar; check; circular; coding form; communication (intra-or intercompany); computer printout; computer-readable form; contract; copy, data base; diary; display; draft of any

document; drawing; e-mail; film; film transparency; flyer; forecast; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; magnetic media of all kinds (including, but not limited to, disks, tapes or other media) containing computer software with supporting indices, data, documentation, flow charts, comments, object code, source code, and computer programs relating thereto; manual; map; minute; newspaper or other clipping; note; notebook; opinion; pamphlet; paper; periodical or other publication; photograph; price list; print; printed circuit board; promotional literature; receipt; record; recorded Read-Only-Memory (ROM); recording; report; solicitation; statement; statistical compilation; stenographic notes; study; summary (including any memoranda, minutes, notes, records, or summary of any (a) telephone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference); telegram; telephone log; travel or expense records; video recording; video tape; voice recording; voucher; worksheet or working paper; writing or other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information required may be obtained.

“Farm Bureau” means Illinois Agricultural Association a/k/a Illinois Farm Bureau, an intervenor and active party to this proceeding.

Timing of Responses

Please provide responses to this Data Request as they become available.

Claims of Privilege

If any document is withheld under any claim of privilege, furnish a list identifying each document for which privilege is claimed, together with the following information: date, author(s), recipient(s) of copies, subject matter of the document, and the basis upon which such a privilege is claimed.

Format

Please state each question and response on a separate page.

Duty to Supplement

This data request is continuing, and requires prompt supplementation when additional information responsive to the request becomes available. If information responsive to this data request becomes known subsequent to providing the original answers, demand is hereby made that such information be supplied immediately.

Dated this 22nd day of August, 2022.

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

By: /s/Charles Y. Davis
One of Its Attorneys

BROWN, HAY & STEPHENS, LLP

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cdavis@bhslaw.com
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DATA REQUEST TO ALL PARTIES

FARM BUREAU-ALL 1.01: Please provide a copy of each data request or other request for information, either received from or delivered to any party in this proceeding, and your response to any data request received. Please provide the request(s) or response(s) to Farm Bureau simultaneously with service of the request(s) or response(s) on any/all other parties.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon:

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via electronic transmission on this 22nd day of August, 2022.

/s/Charles Y. Davis

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

GRAIN BELT EXPRESS LLC	)	
	)	
Application for an Order Granting Grain Belt	)	
Express LLC, as a Qualifying Direct Current	)	
Applicant, a Certificate of Public	)	
Convenience and Necessity pursuant to	)	
Sections 8-406(b-5) and 8-406.1 of the Public	)	
Utilities Act to Construct, Operate and	)	
Maintain a High Voltage Direct Current	)	Docket No. 22-0499
Electric Service Transmission Line as a	)	
Qualifying Direct Current Project and to	)	
Conduct a Transmission Public Utility	)	
Business in Connection Therewith and	)	
Authorizing Grain Belt Express LLC Pursuant	)	
Sections 8-503 and 8-406.1(i) of the Public	)	
Utilities Act to Construct the High Voltage	)	
Direct Current Electric Transmission Line.	)	

**NAFSICA ZOTOS
FIRST DATA REQUEST TO ALL PARTIES**

Now comes Intervenor NAFSICA ZOTOS ("Zotos"), by her attorneys, LAW OFFICES OF PAUL G. NEILAN, P.C., and, pursuant to 83 Ill. Adm. Code Section 200.360, submits her First Data Request directed to all active parties in the above-captioned Docket.

INSTRUCTIONS

"Commission." The term "Commission" means the Illinois Commerce Commission.

"Documents." The term "Documents" includes any and all memoranda, correspondence, reports, surveys, comparisons, tabulations, charts, books, pamphlets, computer runs or analyses,

studies, workpapers, portions of texts, regulatory commission orders, rules, regulations and/or testimony, calendar; check; circular; coding form; communication (intra- or intercompany); computer printout; computer-readable form; contract; copy, data base; diary; display; draft of any document; drawing; e-mail; film; film transparency; flyer; forecast; graph; index; instruction; instruction manual or sheet; invoice; job requisition; letter; license; magnetic media of all kinds (including, but not limited to, disks, tapes or other media) containing computer software with supporting indices, data, documentation, flow charts, comments, object code, source code, and computer programs relating thereto; manual; map; minute; newspaper or other clipping; note; notebook; opinion; pamphlet; paper; periodical or other publication; photograph; price list; print; printed circuit board; promotional literature; receipt; record; recorded read-only-memory (ROM); recording; report; solicitation; statement; statistical compilation; stenographic notes; study; summary (including any memoranda, minutes, notes, records, or summary of any (a) telephone or intercom conversation or message, (b) personal conversation or interview, or (c) meeting or conference); telegram; telephone log; travel or expense records; video recording; video tape; voice recording; voucher; worksheet or working paper; writing or other handwritten, printed, reproduced, recorded, typewritten, or otherwise produced graphic material from which the information required may be obtained.

“Grain Belt Express” means Grain Belt Express LLC, the Applicant in this Docket.

Responses. Emailed and/or electronic (e.g., pdf format) responses are preferred. Zotos requests that responses to this data request be supplied as they become available.

Privilege. If any document is withheld under any claim of privilege, please furnish a list identifying each document for which privilege is claimed, together with the following information: date, author(s), recipient(s) of copies, subject matter of the document, and the basis

upon which such a privilege is claimed.

Continuing Data Request. This data request is continuing. If new or additional information responsive to this data request becomes known or available subsequent to providing the original or previously supplemented answers, Zotos hereby requests that such information be promptly supplied.

DATA REQUEST

NZ 1.01 Please serve on the following person all responses to all data requests or other discovery procedures issued by either Grain Belt Express, Staff of the Commission, or other parties to this Docket:

Paul G. Neilan
pgneilan@energy.law.pro

If it is not possible to send email/electronic copies, please use the following address:

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Dated: August 29, 2022

Respectfully submitted,

LAW OFFICES OF PAUL G. NEILAN, P.C.

By _____ /s/ **Paul G. Neilan**_____

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

GRAIN BELT EXPRESS LLC)

)
Application for an Order Granting Grain Belt
)
Express LLC, as a Qualifying Direct Current
)
Applicant, a Certificate of Public
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Convenience and Necessity pursuant to
)
Sections 8-406(b-5) and 8-406.1 of the Public
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Business in Connection Therewith and
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Authorizing Grain Belt Express LLC Pursuant
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Sections 8-503 and 8-406.1(i) of the Public
)
Utilities Act to Construct the High Voltage
)
Direct Current Electric Transmission Line.)

Docket No. 22-0499

PROOF OF SERVICE

The undersigned, Paul G. Neilan, an attorney, hereby certifies that on August 29, 2022, the foregoing **Nafsica Zotos - First Data Request to All Parties** was served by email on the persons listed in the attached Service List.

Dated this 29th day of August, 2022

By /s/ **Paul G. Neilan**

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SERVICE LIST - DATA REQUESTS**Illinois Commerce Commission Docket No. 22-0499****Grain Belt Express LLC**

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Grain Belt Express LLC
Response to Illinois Commerce Commission Staff's Data Requests
Docket 22-0499
Petition for a Certificate of Public Convenience and Necessity Pursuant to Sections 8-406(b-5) and 8-406.1 of the Public Utilities Act

Data Request

MGM 1.02. Please provide any and all bases for the Company's claim that "Grain Belt Express is capable of financing the construction of the Project without significant adverse financial consequences to Grain Belt Express or its customers, as specified by § 8-406.1(f)(3) of the PUA." (Application, 56.)

Response

Prepared By: Rolanda Shine
Title: Vice President
Phone Number: 312-224-1400
Date: October 11, 2022

The Application at paragraphs 94–100 demonstrates that the Company is capable of financing the construction of the Project without significant adverse financial consequences to the Company or its customers, as specified in § 8-406.1(f)(3) of the PUA. Those paragraphs are adopted and incorporated entirely in response to this Data Request MGM 1.02.

The Company witness Rolanda Shine also testified at length in her Direct Testimony about the Company's ability to finance the Project, including Phase II of the Project, without significant adverse financial consequences to the Company or its customers as specified by § 8-406.1(f)(3). Rolanda Shine's testimony is attached to the Application as Exhibit 4.0 and is adopted and incorporated entirely as the Company's response to this Data Request MGM 1.02.

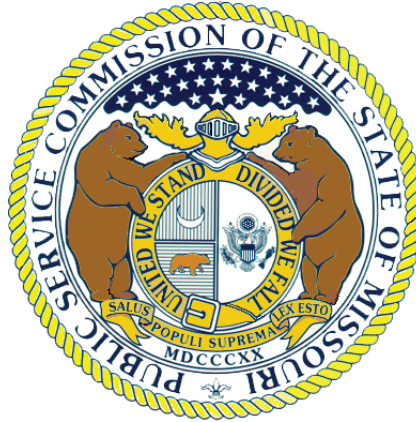
The Grain Belt Express Project is a merchant transmission project, meaning that it will be paid for by the customers who elect to take transmission service from the Project when in operation. Therefore, as opposed to transmission projects that place the financial risk on regional ratepayers, the Company takes the financial risk to bring the Project to market and its investment is recouped from the customers taking transmission service.

Verification

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in response to the above data request are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

Signed: /s/Rolanda Shine
Print: Rolanda Shine
Title: Vice President
Date: October 11, 2022

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 345kV Transmission Line)

File No. EA-2016-0358

REPORT AND ORDER ON REMAND

Issue Date: March 20, 2019

Effective Date: April 19, 2019

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) **File No. EA-2016-0358**
 Current Transmission Line and an Associated Converter)
 Station Providing an Interconnection on the Maywood –)
 Montgomery 345kV Transmission Line)

REPORT AND ORDER ON REMAND

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¹ The following parties did not participate in the remand evidentiary hearing or file a brief: Walmart Stores, Inc., Missouri Industrial Energy Consumers, IBEW Unions Local 2 and 53, Missouri AFL-CIO, and the Missouri Retailers Association.

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SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER ON REMAND

I. Procedural History

On August 30, 2016, Grain Belt Express Clean Line LLC (“Grain Belt”) filed an application with the Missouri Public Service Commission (“Commission”), pursuant to Section 393.170.1, RSMo², 4 CSR 240-2.060 and 4 CSR 240-3.105(1)(B), for a certificate of convenience and necessity (“CCN”) to construct, own, operate, control, manage and maintain a high voltage, direct current transmission line and associated facilities within Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe and Ralls Counties, Missouri, as well as an associated converter station in Ralls County.

The Commission issued notice of the application and provided an opportunity for interested persons to intervene. The Commission granted intervention to the following parties: Missouri Landowners Alliance and Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners (collectively, “Landowners”); Missouri Joint Municipal Electric Utility Commission (“MJMEUC”); Missouri Farm Bureau Federation; Missouri Department of Economic Development; Matthew and Christina Reichert; Randall and Roseanne Meyer; Charles and Robyn Henke; R. Kenneth Hutchinson; Rockies Express Pipeline LLC; Sierra Club; Natural Resources Defense Council; The Wind Coalition; Clean Grid Alliance (f/k/a Wind on the Wires); Infinity Wind Power³; Walmart Stores, Inc.; Missouri Industrial Energy Consumers; Renew Missouri Advocates; International Brotherhood of Electrical Workers Locals 2 and 53; Consumers Council of Missouri; Missouri Retailers Association; and Missouri AFL-CIO. The Commission granted the petitions of Energy for Generations, LLC and SSM Health Care Corporation to file amicus curiae briefs.

² All statutory references are to the Missouri Revised Statutes (2016), as revised, unless otherwise noted.

³ On November 20, 2018, the Commission granted a motion to substitute ENGIE North America, Inc. (“ENGIE”) as a party in this proceeding for Infinity Wind Power.

The Commission conducted local public hearings for members of the general public in each of the eight counties where the proposed transmission line would be located.⁴ The Commission held an evidentiary hearing on March 20-24, 2017.⁵ The parties submitted initial, reply, and supplemental post-hearing briefs. After the filing of two post-hearing motions⁶, oral arguments were conducted on August 3, 2017.⁷ On August 16, 2017, the Commission issued a Report and Order denying Grain Belt's application for a CCN after concluding that the Commission lacked the statutory authority to issue the CCN based on a decision by the Missouri Court of Appeals for the Western District ("ATXI")⁸ because Grain Belt had not obtained the necessary county assents under Section 229.100, RSMo. However, four Commissioners also signed a concurring opinion stating that they would have granted Grain Belt's application had it not been for the Western District's ATXI decision, which the Commission found compelled denial of the application based on lack of statutory authority.

On appeal, the Missouri Court of Appeals for the Eastern District determined that the Commission erred in finding it could not lawfully grant a line CCN to Grain Belt under Section 393.170.1, RSMo, due to Grain Belt's lack of county assents, but transferred the case to the Supreme Court of Missouri.⁹ The Supreme Court of Missouri concluded that the Commission had erred in finding it could not lawfully grant a CCN to Grain Belt,

⁴ Transcript, Vols. 2-9. The public hearings were conducted in Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls counties.

⁵ Transcript, Vols. 10-19. The Commission admitted the testimony of 54 witnesses and 135 exhibits into evidence during the evidentiary hearing.

⁶ Missouri Landowner Alliance's Motion to Dismiss Application filed on July 4, 2017 and Grain Belt's Motion for Waiver or Variance of Filing Requirements filed on June 29, 2017.

⁷ Transcript, Vol. 20. At the oral arguments, the Commission admitted four additional exhibits into the record and took official notice of Section 393.170, RSMo 1949.

⁸ *Matter of Ameren Transmission Co. of Illinois*, 523 S.W.3d 21, 27 (Mo. Ct. App. 2017), *reh'g denied* (Apr. 27, 2017), *transfer denied* (Apr. 27, 2017), *transfer denied* (June 27, 2017), and *abrogated by Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm'n*, 555 S.W.3d 469 (Mo. 2018).

⁹ *Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm'n*, No. ED 105932, 2018 WL 1055858, at *5 (Mo. Ct. App. Feb. 27, 2018).

abrogating that portion of the ATXI opinion regarding county assents, and remanded this case back to the Commission to determine whether Grain Belt's proposed transmission line project is necessary or convenient for the public service.¹⁰

During the remand evidentiary hearing held on December 18-19, 2018¹¹, the parties presented evidence relating to the following unresolved issues previously identified by the parties:

1. Does the evidence establish that the Commission may lawfully issue to Grain Belt the certificate of convenience and necessity it is seeking for the high-voltage direct current transmission line and converter station with an associated AC switching station and other AC interconnecting facilities?
2. Does the evidence establish that the high-voltage direct current transmission line and converter station for which Grain Belt is seeking a certificate of convenience and necessity are necessary or convenient for the public service, within the meaning of that phrase in Section 393.170, RSMo?
3. If the Commission grants the CCN, what conditions, if any, should the Commission impose?
4. If the Commission grants the CCN, should the Commission exempt Grain Belt from complying with the reporting requirements of Commission rules 4 CSR 240-3.145, 4 CSR 240-3.165, 4 CSR 240-3.175, and 4 CSR 240-3.190(1), (2) and (3) (A)-(D)?

¹⁰ *Grain Belt Express Clean Line, LLC v. Pub. Serv. Comm'n*, 555 S.W.3d 469, 474 (Mo. 2018), *reh'g denied* (Aug. 21, 2018).

¹¹ Transcript ("Tr."), Vols. 22-24. The Commission admitted the testimony of 12 witnesses and 16 exhibits into evidence during the remand evidentiary hearing.

The parties submitted initial and reply post-hearing briefs following the remand evidentiary hearing, and the case was deemed submitted for the Commission's decision after the filing of briefs when the Commission closed the record.¹² On February 15, 2019, the Landowners filed a motion to offer an additional exhibit into the record of the case, and this motion is discussed below.

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

A. Project Description

1. Grain Belt is a limited liability company organized under the laws of the State of Indiana. Grain Belt is a wholly-owned subsidiary of Grain Belt Express Holding LLC, a Delaware limited liability company, which is a wholly-owned subsidiary of Clean Line Energy Partners LLC ("Clean Line").¹³

2. Grain Belt filed its application for a CCN pursuant to Section 393.170.1, RSMo, and Commission administrative rules.¹⁴

3. The Staff of the Missouri Public Service Commission ("Staff") is a party in all Commission investigations, contested cases and other proceedings, unless it files a

¹² "The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument." Commission Rule 4 CSR 240-2.150(1).

¹³ Ex.100, Skelly Direct, p. 3.

¹⁴ Ex. 100, Skelly Direct, p. 4.

notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.¹⁵ Staff participated in this proceeding.

4. The transmission line proposed to be constructed by Grain Belt in the application is an approximately 780-mile, overhead, multi-terminal +600 kilovolt (“kV”) high-voltage, direct current (“HVDC”) transmission line and associated facilities (collectively, the “Project”).¹⁶

5. The Project would traverse the states of Kansas, Missouri, Illinois and Indiana, including approximately 206 miles in Missouri.¹⁷ The Project would deliver 500 megawatts (“MW”) of wind-generated electricity from western Kansas to customers in Missouri, and another 3,500 MW to states further east.¹⁸

6. The Missouri portion of the Project would be located in the Missouri counties of Buchanan, Clinton, Caldwell, Carroll, Chariton, Randolph, Monroe, and Ralls.¹⁹

7. The Project would have three converter stations. One converter station would be located in western Kansas, where wind generating facilities would connect to the Project via alternating current (“AC”) lines. The two other converter stations in eastern Missouri and eastern Illinois would deliver electricity to the AC grid through interconnections with transmission owners in the systems of Midcontinent Independent System Operator, Inc. (“MISO”) and PJM Interconnection, LLC (“PJM”), respectively.²⁰ Power delivered at the PJM interconnection could be delivered to all the states along the Eastern coast.²¹

¹⁵ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

¹⁶ Ex. 100, Skelly Direct, p. 3.

¹⁷ Ex. 100, Skelly Direct, p. 4.

¹⁸ Ex. 108, Galli Direct, p. 4.

¹⁹ Ex. 100, Skelly Direct, p. 4.

²⁰ Ex. 108, Galli Direct, p. 4-7; Ex. 104, Berry Direct, p. 4-5.

²¹ Tr. Vol. 12, p. 481.

8. Grain Belt proposes to construct the Missouri converter station and associated AC interconnecting facilities in Ralls County. This converter station will be located near Union Electric Company d/b/a Ameren Missouri's Montgomery-Maywood 345 kV transmission line, which will facilitate the interconnection to the energy market operated by MISO in eastern Missouri and other Midwestern and southern states.²²

9. The Missouri converter station will have bi-directional functionality, allowing Missouri utilities an additional means to earn revenue from off-system sales of up to 500 MW of excess power into the PJM energy markets.²³ Energy injected at the Missouri converter station will be regulated by MISO to ensure reliability.²⁴

10. The HVDC technology of the Project is the most cost-effective and efficient way to move large amounts of electric power over long distances and can transfer significantly more power with lower line losses over longer distances than comparable AV lines.²⁵ The HVDC design will provide a congestion-free delivery source of power, unlike using an interconnected AC system to move power.²⁶

11. The Project's development, construction, and operations costs would be borne by the investors in Grain Belt and the transmission customers. The Project's costs would not be recovered through the cost allocation process of any regional transmission organization approved by the Federal Energy Regulatory Commission ("FERC").²⁷

²² Ex. 100, Skelly Direct, p. 4; Ex. 108, Galli Direct, p. 4, 6; Ex. 119, Puckett Direct, p. 14.

²³ Ex. 100, Skelly Direct, p. 8.

²⁴ Tr. Vol. 12, p. 509.

²⁵ Ex. 108, Galli Direct, p. 7-8.

²⁶ Ex. 108, Galli Direct, p. 9.

²⁷ Ex. 100, Skelly Direct, p. 7; Ex. 104, Berry Direct, p. 8.

12. The Project is a participant-funded, “shipper pays” transmission line. Grain Belt would recover its capital costs by entering into voluntary, market-driven contracts with entities that want to become transmission customers of the Project.²⁸

13. Grain Belt would offer transmission service through an open access transmission tariff that would be filed with and subject to the jurisdiction of FERC under the Federal Power Act and FERC regulations. Grain Belt customers would consist principally of wind energy producers in western Kansas and wholesale buyers of electricity, such as utilities, competitive retail energy suppliers, brokers, and marketers.²⁹

14. The Project would not provide service to end-use customers or provide retail service in Missouri, so the Project would be rate-regulated by FERC and not by the Commission.³⁰

15. Under FERC requirements, Grain Belt must broadly solicit interest in the Project, the rates negotiated must be just and reasonable and without undue discrimination or preference, and the service must not impair regional reliability and operational efficiency.³¹

16. FERC has specifically found Grain Belt’s process to select customers and allocate capacity to be “not unduly discriminatory”.³²

17. The Project will cross the property of approximately 570 landowners in Missouri.³³

²⁸ Ex. 100, Skelly Direct, p. 12; Ex. 104, Berry Direct, p. 8; Ex. 111, Kelly Direct, p. 4.

²⁹ Ex. 100, Skelly Direct, p. 23-24; Ex. 104, Berry Direct, p. 6; Ex. 111, Kelly Direct, p. 4-5.

³⁰ Ex. 100, Skelly Direct, p. 24; Ex. 322.

³¹ Transcript, Vol. 22, p. 2039-40.

³² Ex. 322, 147 F.E.R.C. ¶61,098, p.10, paragraph 23 (May 8, 2014).

³³ Tr. Vol. 12, p. 438.

18. Grain Belt has acquired 39 easements for the transmission line from Missouri landowners.³⁴

19. Grain Belt uses a standard form of agreement when acquiring easement rights from Missouri landowners. The agreement includes the right to construct, operate, repair, maintain, and remove an overhead transmission line and related facilities, along with rights of access to the right-of-way for the transmission line.³⁵

20. The easement agreement limits the landowner's legal rights and use of the easement property, including prohibiting any landowner activity that would interfere with Grain Belt's use of the easement.³⁶

B. Need for the Project

21. MJMEUC is a joint action agency and a public and corporate body of the State of Missouri authorized by legislation to: (1) construct, operate, and maintain transmission and generation facilities for the production and transmission of electric power for its members, (2) purchase and sell electric power and energy, and (3) enter into agreements with any person for the transmission of electric power. It is organized to promote efficient wheeling, pooling, generation, and transmission arrangements to meet the power and energy requirements of municipal utilities.³⁷

22. MJMEUC has 68 Missouri municipal utility members, and Citizens Electric Corporation, a rural electric cooperative with more than 21,000 customers, is an advisory

³⁴ Tr. Vol. 24, p. 2143, 2145.

³⁵ Ex. 113, Lanz Direct, p. 15-16, Schedule DKL-4.

³⁶ Ex. 113, Lanz Direct, Schedule DKL-4, Sections 4, 9, and 13.

³⁷ Ex. 475, Kincheloe Rebuttal, p. 3.

member of MJMEUC. Together, MJMEUC's members serve some 347,000 retail electric customers in Missouri, and their combined peak load is approximately 2,600 MW.³⁸

23. The Missouri Public Energy Pool ("MoPEP") is a group of 35 Missouri cities for which MJMEUC provides full requirements for wholesale energy, capacity, and ancillary services.³⁹

24. MJMEUC's wholesale customers, including MoPEP, have a demand for affordable renewable energy, as some are leaders within Missouri in providing renewable energy to their customers.⁴⁰

25. MoPEP is oversubscribed in its ability to offer renewable energy and cannot meet the needs of its city members until it adds additional renewable resources.⁴¹

26. While MJMEUC owns generation that supplies some of its members' energy needs, MJMEUC has primarily used purchase power agreements and transmission service agreements with other utilities to provide energy to its members.⁴²

27. On June 2, 2016, MJMEUC entered into a transmission service agreement with Grain Belt. Under the agreement, MJMEUC agreed to purchase a minimum of 100 MW and up to 200 MW of firm transmission capacity rights on the Project from Grain Belt's western converter station in Ford County, Kansas to the converter station in Missouri for the benefit of its existing full-requirements pool members and other members. In addition, MJMEUC agreed to purchase 25 MW of capacity (with the option to purchase another 25 MW) from the Missouri converter station to the Sullivan Substation in PJM. This allows

³⁸ Ex. 475, Kincheloe Rebuttal, p. 3.

³⁹ Ex. 475, Kincheloe Rebuttal, p. 4; Schedule DK-1.

⁴⁰ Ex. 475, Kincheloe Rebuttal, p. 5; Tr. p. 1113.

⁴¹ Tr. Vol. 16, p. 1112.

⁴² Ex. 475, Kincheloe Rebuttal, p. 2.

MJMEUC utilities the ability to directly make off-system sales into the PJM market and derive additional financial benefits.⁴³

28. MJMEUC subsequently executed a power purchase agreement with Iron Star Wind Project, LLC (“Iron Star”) which would allow Kansas wind energy to flow across Grain Belt’s transmission line and into MISO where MoPEP and individual MJMEUC members can deliver that renewable energy to their customers.⁴⁴ On February 20, 2018, Iron Star was acquired from Infinity Wind Power by ENGIE North America, Inc., but that transaction did not change any of the terms or conditions of the power purchase agreement with MJMEUC.⁴⁵

29. In 2021, MoPEP’s contract with Illinois Power Marketing Company providing 100 MW of coal energy and capacity to MoPEP will expire.⁴⁶ MJMEUC’s agreements with Grain Belt and Iron Star would help MoPEP to replace the energy from Illinois Power Marketing Company with more affordable renewable energy.⁴⁷

30. In December 2016, MoPEP committed to purchase 60 MW of wind energy over the Grain Belt transmission line.⁴⁸

31. The following Missouri cities have also contracted to purchase Kansas wind energy delivered over the Grain Belt transmission line: City of Kirkwood-25MW; City of Hannibal-15MW; City of Columbia-35MW; and City of Centralia-1MW. These contracts, when combined with the MoPEP agreement, commit at least 136 MW of wind energy available to MJMEUC through its transmission service agreement with Grain Belt.⁴⁹

⁴³ Ex. 115, Lawlor Direct, p. 2-3; Schedule MOL-1.

⁴⁴ Ex. 475, Kincheloe Rebuttal, p. 2; Ex. 476, Grotzinger Rebuttal, Schedule JG-4HC.

⁴⁵ Ex. 878, Riley Supp. Direct, p. 2-3.

⁴⁶ Ex. 475, Kincheloe Rebuttal, p. 4.

⁴⁷ Ex. 475, Kincheloe Rebuttal, p. 4-5.

⁴⁸ Tr. Vol. 16, p. 995-996, 1004-1005; Ex. 478.

⁴⁹ Tr. Vol. 16, p. 990-991, 995-996; Ex. 479; Tr. Vol. 24, p. 2114.

32. MJMEUC is contractually obligated under the power purchase agreement with Iron Star to take electric power and pay for it, assuming the Project is built and available for service.⁵⁰

33. On November 12, 2018, MJMEUC and Grain Belt entered into an Interim Agreement and Amendment to their transmission service agreement. The amendment reduced the transmission price for MJMEUC of the second tranche of electric energy to the same price as the first 100 MW of electric energy. This means that the entire 200 MW transmission service agreement price is \$1,167/Mw-month, which is a 30% decrease in the price of the second 100 MW tranche (previously \$1,667/Mw-month), and a 17.6% decrease in the overall cost of the full 200 MW transmission service agreement.⁵¹

34. MJMEUC witness John Grotzinger testified credibly that with regard to MoPEP's 60 MW of energy contracted to be generated by Iron Star and delivered to MoPEP through the transmission service agreement with Grain Belt, MoPEP cities will save over \$11 million annually compared to its existing contract for Illinois coal resources.⁵²

35. Mr. Grotzinger testified credibly that under the original Grain Belt transmission service agreement with MJMEUC, if MJMEUC were to use the entire 200 MW of energy it would save approximately \$10 million per year for MJMEUC's wholesale customers in transmission charges alone, compared to SPP to MISO transmission rates.⁵³

36. Considering the entire 200 MW of energy provided to MJMEUC through the amended Grain Belt transmission service agreement, the transmission cost savings from the Grain Belt Project versus a traditional SPP to MISO point-to-point service agreement

⁵⁰ Tr. Vol. 16, p. 1001-1002.

⁵¹ Ex. 480, Grotzinger Supp. Direct, p. 1-2, Schedule JG-9; Tr. Vol. 24, p. 2115.

⁵² Ex. 480, Grotzinger Supp. Direct, p. 3, Schedule JG-13.

⁵³ Ex. 476, Grotzinger Rebuttal-HC, p. 4-5, Schedule JG-3; Tr. Vol. 16, p. 1108.

are approximately an additional \$2.8 million annually. Those additional savings are derived from (1) the additional decrease in costs of the amended Grain Belt transmission service agreement, and (2) the costs of SPP to MISO point-to-point transmission service having risen from \$2,880/Mw-month to the current rate of \$3,800/Mw-month, which is more than three times as much as the Grain Belt transmission service agreement.⁵⁴

37. The annual cost savings to MJMEUC member cities that participate in the Project will be dollar for dollar and will likely be passed through to their residential and industrial customers in the form of rate relief or invested in deferred maintenance to their electrical distribution systems.⁵⁵

38. Grain Belt has a transmission service agreement with an Illinois load-serving entity called Realgy, which has agreed to buy 25 MW of transmission service for delivery to Missouri and 25 MW to PJM.⁵⁶

39. Grain Belt held an open solicitation process in 2015 and 2016 to gauge the demand from energy generators in western Kansas to fill the Project's line capacity to deliver wind energy to both MISO and PJM. The total capacity requested by the energy generators to both MISO and PJM delivery points of the Project was 20,825 MW, almost five times the total available capacity of the Project.⁵⁷

40. Wal-Mart Stores, Inc. operates 158 retail units and four distribution centers and employs 44,356 associates in Missouri. In fiscal year ending 2016, Wal-Mart Stores,

⁵⁴ Ex. 480, Grotzinger Supp. Direct, p. 2, Schedule JG-10.

⁵⁵ Tr. Vol. 16, p. 1000-1001.

⁵⁶ Tr. Vol. 14, p. 914, 965.

⁵⁷ Ex. 104, Berry Direct, p. 24-25.

Inc. purchased \$7.3 billion worth of goods and services from Missouri-based suppliers, supporting 59,953 supplier jobs.⁵⁸

41. Wal-Mart Stores, Inc. has established aggressive and significant renewable energy goals, including: (1) to be supplied 100 percent by renewable energy, and (2) by 2025, to be supplied by 50 percent renewable energy. Additionally, Wal-Mart Stores, Inc. has set a science-based target to reduce emissions in its operations by 18 percent by 2025 through the deployment of energy efficiency and consumption of renewable energy.⁵⁹

42. Wal-Mart Stores, Inc. has a demand for the additional renewable power that would be delivered by the Grain Belt Project into Missouri and PJM. In Missouri, Wal-Mart Stores, Inc. would work with Missouri utilities to develop programs to purchase significant quantities of grid-connected renewable energy. In the competitive retail markets east of Missouri, Wal-Mart Stores, Inc. would be able to directly contract for renewable power delivered by Grain Belt's Project to serve Wal-Mart Stores, Inc.'s facilities in those markets.⁶⁰

43. Wind power transmitted to Missouri would be of interest to commercial and industrial customers, such as Missouri Industrial Energy Consumers and the Missouri Retailers Association.⁶¹

44. A number of large industrial, manufacturing, and consumer companies, such as General Mills, Target, General Motors, Proctor & Gamble, and Owens Corning, require

⁵⁸ Ex. 900, Chriss Rebuttal, p. 3.

⁵⁹ Ex. 900, Chriss Rebuttal, p. 3.

⁶⁰ Ex. 900, Chriss Rebuttal, p. 6-7.

⁶¹ Ex. 800, Dauphinais Rebuttal, p. 4-5.

access to renewable energy as part of their corporate energy strategies and support the Grain Belt Project for that purpose.⁶²

C. Applicant's Qualifications and Financial Ability

45. Grain Belt currently has no employees.⁶³

46. Jonathan Abebe is a former employee of Clean Line and now is responsible for Grain Belt's transmission, engineering, and interconnection activities.⁶⁴ Mr. Abebe has over 14 years of experience in the electric transmission industry, ranging from power system planning, power system outage planning, asset management, and project development.⁶⁵

47. Hans Detweiler is not now employed by Clean Line, but is currently acting as the lead developer of the Grain Belt Project.⁶⁶ While previously working for Clean Line, Mr. Detweiler led or advised on the development of all of Clean Line's electric transmission projects. In this role he was responsible for permitting, land acquisition, routing, and numerous other project development activities.⁶⁷

48. Grain Belt has cash on hand, but not enough to complete either the development phase or construction of the Project.⁶⁸

49. On November 9, 2018, Grain Belt Express Holding LLC entered into a Membership Interest Purchase Agreement ("Purchase Agreement") with Invenergy

⁶² Tr. Vol. 10, p. 255-259; Ex. 100, Skelly Direct, Schedule MPS-3; Tr. Vol. 22, p. 1962-1963.

⁶³ Tr. Vol. 22, p. 1836, 1838, 1921.

⁶⁴ Ex. 143, Abebe Supp. Direct, p. 1; Tr. Vol. 22, p. 1887, 1890.

⁶⁵ Ex. 143, Abebe Supp. Direct, p. 2.

⁶⁶ Tr. Vol. 22, p. 1965, 1970.

⁶⁷ Ex. 144, Detweiler Supp. Direct, p. 1.

⁶⁸ Tr. Vol. 22, p. 1921-1922.

Transmission LLC (“Invenergy”), an affiliate of Invenergy, LLC, in which Invenergy will purchase Grain Belt.⁶⁹

50. Also on November 9, 2018, Grain Belt Express Holding LLC and Invenergy entered into a Development Management Agreement (“Development Agreement”) for Invenergy to provide development funding for the Project through the projected closing date of the Purchase Agreement.⁷⁰

51. Invenergy (and its affiliate) is a U.S.-based company founded in 2001 and is North America’s largest privately held company that develops, owns, and operates large-scale renewable and other clean energy generation, energy storage facilities, and electric transmission facilities across North America, Latin America, Japan and Europe. Invenergy’s expertise includes a complete range of fully integrated in-house capabilities, including: project development, permitting, transmission, interconnection, energy marketing, finance, engineering, project construction, operations and maintenance. To date, Invenergy has developed more than 20,046 MW of large-scale wind, solar, natural gas, and energy storage facilities. This includes more than 10,896 MW of projects in operation, with more than 9,150 MW contracted or in construction.⁷¹

52. Following the closing of the Purchase Agreement, Invenergy will fund the development costs of the Project as its owner. At the end of the development phase of the Project, Invenergy will use project funding to construct the Project.⁷²

53. Construction of the Project will not begin until all the financing necessary to build the Project has been obtained.⁷³

⁶⁹ Ex. 142, Berry Supp. Direct, p. 3; Ex. 145, Zadlo Supp. Direct, p. 3-4, Schedule KZ-3C; Tr. Vol. 22, p. 1906-1907.

⁷⁰ Ex. 142, Berry Supp. Direct, p. 3; Ex. 145, Zadlo Supp. Direct, p. 3-4, Schedule KZ-4C.

⁷¹ Ex. 145, Zadlo Supp. Direct, p. 6.

⁷² Ex. 142, Berry Supp. Direct, p. 4.

54. Invenergy is not obligated to close on the Purchase Agreement unless (1) this Commission has approved the transaction proposed in the Purchase Agreement and has granted Grain Belt a certificate of convenience and necessity for the Project, and (2) the Kansas Corporation Commission has granted at least a 5 year extension of its certificate to Grain Belt and approved the change in ownership in the Purchase Agreement.⁷⁴

55. Under the Development Agreement, Invenergy is contractually obligated to manage the business and affairs of the Project, and shall perform all services related to the development, ownership, and maintenance of the Project. Invenergy has care, custody, and control over the Project in all day-to-day activities, and has authorization to execute documents and act on behalf of Grain Belt.⁷⁵

56. Invenergy is spending money now on development of the Project, and expects to spend up to \$2 million over the next nine months on regulatory matters.⁷⁶ Invenergy projects that it will spend approximately \$50 to \$100 million on development of the Project before it can obtain funding from institutional investors.⁷⁷

57. Invenergy's senior management executives, each with more than 25 years of experience in the energy generation industry, have worked together for more than two decades. Invenergy's project management team has extensive experience in construction of energy generation projects, contract negotiation, material procurement, right-of-way issues, utility interconnections, and construction of electrical transmission and substations.⁷⁸

⁷³ Tr. Vol. 10, p. 279.

⁷⁴ Ex. 145, Zadlo Supp. Direct, p. 3-4, Schedule KZ-3C.

⁷⁵ Ex. 145, Zadlo Supp. Direct, Schedule KZ-4C.

⁷⁶ Tr. Vol. 22, p. 2072-2074.

⁷⁷ Tr. Vol. 22, p. 2067.

⁷⁸ Ex. 145, Zadlo Supp. Direct, Schedule KZ-5.

58. Since 2001, Invenergy has built all required transmission and distribution lines, generator step-up transformers, and substations for its facilities in numerous regions, including within the regions managed by SPP, MISO and PJM. Invenergy developed, permitted and constructed this infrastructure across various terrains, state and local jurisdictions, and in vastly differing environmental and regulatory conditions. This experience has resulted in over 392 miles of high-voltage transmission lines, over 1,748 miles of distribution lines, 59 substations, and 73 generator step-up transformers.⁷⁹

59. Invenergy and its affiliates have in excess of \$9 billion in total assets and \$3 billion in total equity on a consolidated basis (as of December 31, 2017).⁸⁰

60. Over the last 17 years, Invenergy has raised more than \$30 billion of financing in connection with the successful development of more than 20,046 MW in projects in the United States, Canada, Europe, Central America, and Japan. Invenergy maintains strong relationships with more than 60 financial institutions worldwide, including international and domestic banks, multilateral development banks, export credit agencies and pension funds. In the U.S. alone, Invenergy has financed and executed on projects in 23 states.⁸¹

61. Invenergy will fund the Project's capital needs during the development stage by using its cash on hand, and possibly equity capital from other investors. Invenergy's cash balance as of December 31, 2017, was approximately six times greater than Clean Line's cash balance as of the same date, and the book value of its equity is twenty times greater than Clean Line's equity.⁸²

⁷⁹ Ex. 145, Zadlo Supp. Direct, p. 9.

⁸⁰ Ex. 146, Hoffman Supp. Direct, p. 3.

⁸¹ Ex. 146, Hoffman Supp. Direct, p. 3.

⁸² Ex. 211, Staff Revised Supp. Rebuttal Report, p. 7; Tr. Vol. 24, p. 2096-2097.

62. Inenergy plans to fund construction of the Project through credit agreements with lenders for debt financing obligations and equity contribution agreements with investors for equity commitments.⁸³

63. Inenergy has demonstrated that it has the ability to raise capital for large energy projects through access to its vast network of private debt and equity investors.⁸⁴

D. Economic Feasibility of the Project

64. The American transmission grid is divided into regional transmission systems for operational and rate-making purposes. Generally speaking, each region corresponds to the footprint of a utility or regional transmission organization, such as MISO, SPP, and PJM, that operates the regional transmission system. Electricity is transmitted at the same flat rate, called a “postage stamp rate,” between all locations within a regional transmission system, regardless of how far the electrons have actually traveled. Within each transmission region, the transmission system operator is responsible for maintaining a balance between power and load by dispatching resources to meet demand.⁸⁵

65. When the boundary of one regional transmission system abuts the boundary of another regional transmission system, this is called a “seam.” Because there are usually a limited number of transmission connections across a seam boundary, regional seams can create congestion, limit the efficient use of electric infrastructure near the seam boundary, and cut off utilities from cost-effective generation resources, even those located geographically nearby, but on the other side of the seam. Transmitting energy across seams usually results in additive transmission costs, i.e. rate pancaking, where the transmission customer pays the postage stamp rate for both regions. The presence of

⁸³ Ex. 211, Staff Revised Supp. Rebuttal Report, p. 7-8.

⁸⁴ Ex. 211, Staff Revised Supp. Rebuttal Report, p. 10-11.

⁸⁵ Ex. 111, Kelly Direct, p. 15.

multiple transmission seams within Missouri has resulted in increased costs to consumers.⁸⁶

66. The Grain Belt Project is an interregional transmission line because it will extend from Kansas to Indiana and cross the seams of three regions, SPP, MISO, and PJM.⁸⁷

67. An interregional transmission line allows for low cost energy to be imported from a region with an excess of generation resources to a region with higher demand. The Grain Belt Project provides this benefit by moving wind power from Kansas (where there is an abundance of wind) into Missouri, MISO, and PJM, which will increase the supply of low-cost power in those markets.⁸⁸

68. The interregional transmission line itself produces consumer benefits by providing an alternate pathway for electricity between and within regions. This additional path can reduce transmission congestion, which leads to lower congestion costs for utilities and reduces these utilities' cost to serve their load.⁸⁹

69. Transmission customers can import or export power on the Project without incurring a "pancaked" transmission rate. Rate pancaking happens when power is transmitted across a regional seam using ordinary transmission. In that case, the customer has to pay the transmission charge in region one (region one's postage stamp rate), and the transmission charge in region two (region two's postage stamp rate). With a dedicated interregional line, however, the customer simply pays the transmission rate for that line, rather than each region's postage stamp rates. Avoiding pancaked rates decreases the

⁸⁶ Ex. 111, Kelly Direct, p. 15-16.

⁸⁷ Ex. 111, Kelly Direct, p. 16.

⁸⁸ Ex. 111, Kelly Direct, p. 16.

⁸⁹ Ex. 111, Kelly Direct, p. 18.

costs of importing and exporting power, which enables more, and more economically efficient, import and export of electricity between regions.⁹⁰

70. The total cost of the Project will be approximately \$2.35 billion, with the portion to be located in Missouri projected to cost \$525 million.⁹¹ These amounts do not include the \$550 million cost of network upgrades required to interconnect the Project to the electric transmission grid, of which \$21 million is estimated for upgrade costs in Missouri.⁹²

71. Grain Belt and Invenergy will pay for the costs of the development, construction, and operation of the Project, and will recover these costs by selling transmission service to wind generators and load-serving entities that use the line.⁹³

72. Since the Project will employ a participant-funded or “shipper pays” model under which the costs of the Project are imposed on shippers who use the Project, none of those costs will be recovered through the cost allocation process of MISO, PJM, or SPP. Accordingly, none of these costs will be passed through to Missouri ratepayers and will not result in an increase in the transmission component of their retail rates. Missouri retail customers will only incur costs related to the Project to the extent that their local utility voluntarily chooses to purchase transmission capacity on the Project or purchases power transmitted on the Project by a third party.⁹⁴

⁹⁰ Ex. 111, Kelly Direct, p. 19.

⁹¹ Ex. 100, Skelly Direct, p. 19; Tr. Vol. 22, p. 2006-2007.

⁹² Ex. 100, Skelly Direct, p. 19; Ex. 143, Abebe Supp. Direct, p. 5.

⁹³ Ex. 104, Berry Direct, p. 3, 8; Ex. 100, Skelly Direct, p. 31-32; Ex. 145, Zadlo Supp. Direct, p. 7-11.

⁹⁴ Ex. 104, Berry Direct, p. 8; Ex. 100, Skelly Direct, p. 17; Ex. 111, Kelly Direct, p. 4-5.

73. Compared to wind energy from Kansas delivered to Missouri with the Grain Belt Project, wind energy generated in MISO and delivered to Missouri is substantially more expensive due primarily to transmission congestion costs.⁹⁵

74. PJM operates the largest wholesale energy market in the world with 71 million customers.⁹⁶

75. Power prices in PJM are generally \$10.00/MWh higher than prices that would be paid for the 500 MW of energy sold over the Project into the MISO market in Missouri.⁹⁷

76. There is a very strong corporate demand for renewable energy in PJM, which contributes to Grain Belt being able to charge higher prices for that energy in PJM.⁹⁸

77. Western Kansas has some of the highest wind speeds in the country, routinely reaching between 8.5-9.0 meters per second at 80 meters above the ground, a typical hub height for wind turbines. Wind speeds in western Kansas are substantially higher than states to the east, such as Missouri, Illinois, and Indiana. Higher wind speeds lead to a higher capacity factor, meaning that the wind generator runs at a higher average percentage of its maximum power output.⁹⁹

78. Because wind power varies proportionally to wind velocity by the third power, a Kansas wind site with an average of 8.8 meters/second produces almost double the power of a site in Missouri with a 7.0 meter/second average. This exponential effect substantially reduces the cost of wind energy produced by facilities located in areas with higher average wind speeds.¹⁰⁰

⁹⁵ Tr. Vol. 14, p. 929-933.

⁹⁶ Tr. Vol. 14, p. 938.

⁹⁷ Tr. Vol. 14, p. 915, 963.

⁹⁸ Tr. Vol. 14, p. 915-916.

⁹⁹ Ex. 104, Berry Direct, p. 25-26, Schedule DAB-4.

¹⁰⁰ Ex. 104, Berry Direct, p. 26.

79. The State of Kansas offers two tax incentives, a ten-year property tax exemption and a sales tax exemption, that reduce the tax burden on generators in western Kansas and allow them to produce energy at lower cost.¹⁰¹ Further, construction costs in Kansas are lower than in many other regions of the country, and continue to drop.¹⁰² Because of these advantages, western Kansas wind farms can generate electricity at a lower cost than wind farms located farther east in Missouri, Illinois, Indiana, and other target markets for the Grain Belt Project.¹⁰³

80. Grain Belt witness David Berry compared the Project's delivered cost of wind energy to Missouri to the cost of other energy alternatives by performing a levelized cost of energy analysis, which is the best financial technique to compare different energy generation sources.¹⁰⁴

81. Mr. Berry testified credibly that the Project's total delivered cost of energy is less than other renewable or conventional energy alternatives, such as Missouri wind energy, Missouri utility-scale solar energy, and combined-cycle gas energy generation.¹⁰⁵ This result remained true after Mr. Berry tested the analysis using a range of assumptions for natural gas prices and the cost of carbon dioxide emissions.¹⁰⁶

82. By building a single transmission project of 4,000 MW that serves the renewable energy needs of wholesale customers in both MISO and PJM, the Grain Belt Project would achieve an economy of scale that is significantly less expensive than a project that served the needs of Missouri alone.¹⁰⁷

¹⁰¹ Ex. 104, Berry Direct, p. 27.

¹⁰² Ex. 142, Berry Supp. Direct, p. 4-6.

¹⁰³ Ex. 104, Berry Direct, p. 27.

¹⁰⁴ Ex. 104, Berry Direct, p. 27.

¹⁰⁵ Ex. 104, Berry Direct, p. 28-30; Tr. Vol. 22, p. 1956-1958.

¹⁰⁶ Ex. 104, Berry Direct, p. 30-31.

¹⁰⁷ Ex. 104, Berry Direct, p. 34.

83. Michael Goggin testified credibly that Mr. Berry's assumption of a capacity factor of 55% for western Kansas wind in Berry's analysis was reasonable due to larger and taller wind turbines from technology improvements resulting in higher energy capture.¹⁰⁸

84. Landowners' witness Joseph Jaskulsky's analysis and conclusions relating to economic feasibility were not as credible as those of David Berry because Mr. Jaskulsky's testimony contained errors, and he did not conduct an analysis of either the levelized cost of energy, levelized avoided cost of energy, loss of load expectation, or production cost model.¹⁰⁹

85. Landowners' witness Paul G. Justis' analysis and conclusions relating to economic feasibility were not as credible as those of David Berry because Mr. Justis' testimony contained numerous errors and incorrect assumptions.¹¹⁰

86. With regard to the interconnection process of the Project with SPP, the western terminus of the Project will interconnect to the ITC Great Plains ("ITC") 345 kV system in SPP in Ford County in southwestern Kansas, near Dodge City. On September 6, 2013, the SPP's Transmission Working Group approved the Criteria 3.5 studies inclusive of additional analysis that assessed the Project at the tap of the ITC 345 kV line. Following the completion of Criteria 3.5 studies, Grain Belt and ITC entered into a Facilities Study Agreement on September 30, 2014. On March 19, 2015, ITC completed the Facilities Study, which identified the required attachment facilities, as well as about \$21 million of improvements needed to physically interconnect the Project's Kansas converter station to ITC's 345 kV system in Ford County, Kansas. On October 17, 2016, an Interconnection

¹⁰⁸ Tr. Vol. 16, p. 1141, 1150-1151, 1172-1173.

¹⁰⁹ Tr. Vol. 18, p. 1451, 1468-1469.

¹¹⁰ Tr. Vol. 18, p. 1431-1436, 1594-1596; 1604-1607; Ex. 420; Ex. 105, Berry Surrebuttal-HC, p. 4-27.

Agreement was executed by ITC, SPP, and Grain Belt for the Project's Kansas converter station. Grain Belt and ITC are currently in the process of updating the Interconnection Agreement.¹¹¹

87. Regarding the interconnection process of the Project with PJM, PJM is engaged in performing a supplemental System Impact Study, but at the present time there has been no increase in the estimated costs that will be required to upgrade the transmission system to accommodate the 3,500 MW injection in PJM at the Illinois/Indiana border. On December 8, 2017, PJM released an updated study estimating the costs of network upgrades at \$464 million for a new 765 kV transmission line and \$1 million for a wavetrapp at a substation.¹¹²

88. Regarding the interconnection process of the Project with MISO, at the present time there has been no increase in the estimated costs that will be required to upgrade the transmission system to accommodate the 500 MW injection in MISO at the converter station planned for Ralls County, Missouri. Grain Belt estimates that approximately \$21 million will be allocated to Missouri upgrades in MISO.¹¹³

89. Grain Belt has withdrawn from the MISO generator interconnection queue to await the proper time to refile when the PJM studies have been completed. Although Grain Belt is not currently active in the MISO interconnection process, it plans to enter the final study stage of MISO's interconnection process (known as the Definitive Planning Phase or "DPP") after (1) the PJM interconnection studies have sufficiently progressed and (2) Grain Belt is able to meet the readiness milestones for the MISO interconnection process.

¹¹¹ Ex. 143, Abebe Supp. Direct, p. 3-4.

¹¹² Ex. 143, Abebe Supp. Direct, p. 4-5.

¹¹³ Ex. 143, Abebe Supp. Direct, p. 5.

Coordination of the MISO study process with that of PJM will allow for the results of the PJM studies to be incorporated into the scope of the DPP.¹¹⁴

90. Invenergy has extensive experience with the MISO queue, having developed 23 projects totaling approximately 5,160 MWs in MISO.¹¹⁵

91. On October 12, 2018, FERC approved MISO's proposed set of connection procedures and a connection agreement for Merchant High Voltage Direct Current ("MHVDC") transmission projects. MISO's proposal to revise its Generator Interconnection Procedures in Attachment X of its tariff to include an injection rights construct for the use of MHVDC connection customers was also approved. Under this new tariff MISO is now able to grant injection rights to generation facilities connecting to the Project's Kansas converter station. This development provides additional commercial certainty for the Grain Belt converter station in Ralls County, Missouri.¹¹⁶

92. Invenergy's internal studies estimate that MISO upgrade costs to integrate Grain Belt's Missouri converter station to be in the range of \$20-40 million, which, even at the high end, are not expected to significantly impact the economic feasibility of the Project.¹¹⁷

93. When Grain Belt conducted its open solicitation, it offered a price that was higher than both the MJMEUC "first-mover" price and the normal Missouri rate, and it received bids that were 6½ times the capacity available on the project.¹¹⁸

94. The wind industry will not need the federal production tax credit after 2023 because of continuing technology improvements.¹¹⁹

¹¹⁴ Ex. 143, Abebe Supp. Direct, p. 5-6; Tr. Vol. 22, p. 1898-1899.

¹¹⁵ Ex. 147, Zadlo Supp. Surrebuttal, p. 5.

¹¹⁶ Ex. 143, Abebe Supp. Direct, p. 5-6.

¹¹⁷ Ex. 147, Zadlo Supp. Surrebuttal, p. 5; Ex. 100, Skelly Direct, p. 261-262.

¹¹⁸ Tr. Vol. 14, p. 940-941.

E. Public Interest

95. Grain Belt identified the proposed route of the transmission line Project through Missouri by performing a routing study, which was conducted by an interdisciplinary team of experts in transmission line route planning and selection, impact assessment for natural resources, land use assessment and planning, cultural resource identification and assessment, impact mitigation, and transmission engineering, design, and construction.¹²⁰

96. In determining a proposed route from a variety of alternatives, Grain Belt obtained information and input from the general public, local officials, and government agencies.¹²¹

97. The alternative routes were assessed and compared with respect to their potential impacts on natural resources (water resources, wildlife and habitats, special status species, and geology and soils), human uses (agricultural use, populated areas and community facilities, recreational and aesthetic resources, and cultural resources), and with respect to any noted engineering or construction challenges (transportation, existing utility corridors, other existing infrastructure, and the Mississippi River crossings).¹²²

98. The final proposed route of the Project represents the best route to minimize the overall effect of the Project on the natural and human environment while avoiding unreasonable and circuitous routes, unreasonable costs, and special design requirements.¹²³

¹¹⁹ Tr. Vol. 10, p. 264-265; Tr. Vol. 22, p. 1877-1878.

¹²⁰ Ex. 119, Puckett Direct, p. 2-3.

¹²¹ Ex. 119, Puckett Direct, p. 5-7.

¹²² Ex. 119, Puckett Direct, p. 8.

¹²³ Ex. 119 Puckett Direct, p. 10.

99. Grain Belt subsequently updated and adjusted the proposed route by making 16 revisions to accommodate affected landowners.¹²⁴

100. The Grain Belt Project would lower adjusted energy production costs in Missouri under future energy scenarios developed by MISO. Adjusted production cost is a metric to estimate the cost for load-serving entities to supply power to their end-use customers.¹²⁵

101. The generation of electricity from wind energy results in no emissions, in contrast to traditional fossil fuel-fired generation. Grain Belt's Project will provide an additional option for utilities to reduce their emissions of criteria air pollutants (e.g., sulfur dioxide), hazardous air pollutants (e.g., mercury), and carbon dioxide by purchasing cleaner renewable power for delivery on the transmission line in lieu of using existing or constructing new fossil fuel-fired generation assets.¹²⁶

102. The renewable energy delivered by the Project will reduce emissions in the Eastern Interconnection by displacing thermal generation, which emits sulfur dioxide, nitrogen oxides, and carbon dioxide, and will decrease water usage, all to the benefit Missouri's environmental and public health.¹²⁷

103. The Project would have a substantial and favorable effect on the reliability of electric service in Missouri.¹²⁸

104. The construction phase of the Project will support 1,527 total jobs over the three years of construction and create \$246 million in personal income, \$476 million in

¹²⁴ Ex. 119, Puckett Direct, p. 10-13, Schedule JGP-2.

¹²⁵ Ex. 106, Copeland Direct, p. 4, 18, Schedule JNC-2.

¹²⁶ Ex. 525, Meisenheimer Rebuttal, p. 9.

¹²⁷ Ex. 106, Copeland Direct, p. 4; Ex. 675, Goggin Rebuttal, p. 27-28; Ex. 100, Skelly direct, p. 7.

¹²⁸ Ex. 117, Pfeiffer Direct, p. 5; Ex. 118, Pfeiffer Surrebuttal, p. 12.

gross domestic product, and \$9.6 million in state general revenue for the state of Missouri.¹²⁹

105. The economic impact of the Project in its first year of operation will support 91 total jobs and create \$17.9 million in personal income, \$9.1 million in gross domestic product, and \$720,000 in state general revenue for the state of Missouri.¹³⁰ Approximately \$14.97 million in easement payments will be made in the first year of Project operation.¹³¹

106. In subsequent years of operation, the economic impact of the Project will support 28 total jobs and create \$2.6 million in personal income, \$4.2 million in gross domestic product, and \$111,000 in state general revenue on an annual basis.¹³²

107. Grain Belt estimates that it will pay approximately \$7.2 million annually in total county property taxes to the eight Missouri counties through which the transmission line crosses.¹³³ Randolph County alone would receive more than approximately \$720,000 in new tax revenue in the first year of operation of the Project.¹³⁴

108. Grain Belt has signed preferred supplier agreements to purchase materials or components from three Missouri businesses.¹³⁵ Invenergy has agreed, upon acquisition of the Project, to evaluate any existing contracts that Grain Belt has in place and determine how they align with its plan to advance the Project.¹³⁶

109. Grain Belt developed the Missouri Landowner Protocol as part of its approach to right-of-way acquisition for the Project. The Landowner Protocol is a comprehensive policy of how Grain Belt Express interacts, communicates, and negotiates with affected

¹²⁹ Ex. 526, Spell Rebuttal, p. 3.

¹³⁰ Ex. 526, Spell Rebuttal, p. 3.

¹³¹ Ex. 115, Lawlor Direct, Schedule MOL-7, p. 2.

¹³² Ex. 526, Spell Rebuttal, p. 3.

¹³³ Ex. 526, Spell Rebuttal, p. 3; Ex. 115, Lawlor Direct, p. 15, Schedule MOL-7.

¹³⁴ Ex. 123, Tregnago Direct, p. 4.

¹³⁵ Ex. 115, Lawlor Direct, p. 16-17.

¹³⁶ Ex. 145, Zadlo Supp. Direct, p. 11-12.

landowners and includes: the establishment of a code of conduct, its approach to landowner and easement agreement negotiations, a compensation package, updating of land values with regional market studies, tracking of obligations to landowners, the availability of arbitration to landowners, the Missouri Agricultural Impact Mitigation Protocol, and a proposed decommissioning fund.¹³⁷

110. For those landowners whose property the Project will cross, Grain Belt will offer three types of compensation: an easement payment, structure payments, and crop or damages payments.¹³⁸ Grain Belt's compensation package is superior to that of most utility companies.¹³⁹

111. If Grain Belt obtains an easement from a landowner, the property will still belong to the landowner and can be utilized for activities such as farming, recreation, and other activities that do not interfere with the operation of the transmission line. After construction of the facilities, the landowner will retain the ability to continue agricultural production on the entirety of the easement area except for the relatively small footprint of the structures, which typically occupy less than 1% of the total easement area.¹⁴⁰

112. If Grain Belt and a landowner have reached agreement on the form of easement but are unable to reach agreement on the appropriate compensation, then at the landowner's request, Grain Belt will submit the issue of landowner compensation to binding arbitration under Missouri law. The option of binding arbitration typically costs less, has

¹³⁷ Ex. 113, Lanz Direct, p. 3-4, Schedules DKL-1 through DKL-4.

¹³⁸ Ex. 113, Lanz Direct, p. 6-8.

¹³⁹ Tr. Vol. 12, p. 440.

¹⁴⁰ Ex. 113, Lanz Direct, p. 8-9.

more simplified procedures, and results in a final decision more quickly than circuit court litigation.¹⁴¹

113. If the Project should be retired from service, Grain Belt has committed to establish a decommissioning fund to pay for the following wind-up activities: 1) dismantling, demolishing and removing all equipment, facilities and structures; 2) terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located; 3) securing, maintaining and disposing of debris with respect to the Project facilities; and 4) performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property within the easements to its original condition.¹⁴² Such a fund would be the first of its kind in the country.¹⁴³

114. Out of the 206 miles that the Project will traverse in Missouri, no more than nine acres of land would be taken out of agricultural production as a result of the structures installed for the Project in cultivated lands.¹⁴⁴

115. Much of the land in Missouri the Project will traverse is not suited for center pivot irrigation, which is the primary agricultural concern when constructing transmission lines because of the permanent nature of such irrigation systems. The proposed route for the Project does not directly impact the operation of any existing center pivot irrigation systems.¹⁴⁵

¹⁴¹ Ex. 113, Lanz Direct, p. 11-12.

¹⁴² Ex. 113, Lanz Direct, p. 12-13.

¹⁴³ Tr. Vol. 12, p. 452.

¹⁴⁴ Ex. 101, Arndt Direct, p. 14.

¹⁴⁵ Ex. 101, Arndt Direct, p. 15; Ex. 102, Arndt Surrebuttal, p. 17.

116. While there are no federal or Missouri requirements regarding agricultural impact mitigation practices for constructing overhead transmission lines, Grain Belt has created the Missouri Agricultural Impact Mitigation Protocol, which establishes standards and policies to avoid, minimize, or mitigate any negative agricultural impacts that may result due to transmission line and converter facilities construction and operation.¹⁴⁶

117. Grain Belt witness Richard J. Roddewig testified credibly that based on published research and Mr. Roddewig's own research, transmission lines do not have a significant adverse impact on farmland prices and values.¹⁴⁷

118. The scientific weight of evidence does not support the conclusion that electric and magnetic fields cause any long-term adverse health effects, and the levels of electric and magnetic fields associated with the Project do not pose any known risk to human health.¹⁴⁸

F. Conditions and Waivers

119. Grain Belt and Staff agreed to seven categories of conditions to a CCN issued by the Commission.¹⁴⁹

120. Grain Belt and Rockies Express Pipeline LLC agreed to a number of conditions that are reflected in Grain Belt's responses to Rockies Express' data requests.¹⁵⁰

121. Grain Belt has agreed to incorporate the Missouri Landowner Protocol into the easement agreements with landowners and follow the protocol as a condition to the CCN.¹⁵¹

¹⁴⁶ Ex. 101, Arndt Direct, p. 7; Schedule JLA-2, p. 3.

¹⁴⁷ Ex. 120, Roddewig Surrebuttal, p. 9, Schedule RJR-1, p. 12; Tr. Vol. 14, p. 696-697, 700-701.

¹⁴⁸ Ex. 103, Bailey Direct, p. 24.

¹⁴⁹ Ex. 206; Tr. Vol. 12, p. 466.

¹⁵⁰ Ex. 205.

¹⁵¹ Ex. 114, Lanz Surrebuttal, p. 5; Tr. Vol. 12, p. 411; Tr. Vol. 10, p. 158.

122. Grain Belt and Invenergy agreed that Invenergy Transmission, LLC and Invenergy Investment Company, LLC shall cooperate with Staff in providing reasonable access to Invenergy's un-redacted consolidated financial records (including *in camera* review of notes to financial statements) until completion or official abandonment of the Project.¹⁵²

123. Grain Belt and Staff agreed that if Grain Belt acquires any involuntary easements in Missouri by means of eminent domain and does not obtain the necessary financial commitments within five years of the date such easement rights are recorded, Grain Belt agrees to return possession of the easement to the landowner within 60 days and record the dissolution of the easement without requiring any reimbursement of payments by the landowner.¹⁵³

124. Grain Belt and Invenergy agreed that if there are any material changes in the design and engineering of the Project from what is contained in the application, Grain Belt will file an updated application subject to further review and determination by the Commission.¹⁵⁴

125. Grain Belt and Invenergy agreed that if outstanding regional transmission organization studies raise any new issues, then the Commission must be satisfied with how Grain Belt resolves the issues.¹⁵⁵

126. Grain Belt agreed in paragraph 76 of its application to file with the Commission a copy of its annual report that is filed with FERC.

¹⁵² Tr. Vol. 22, p. 1964, 2024.

¹⁵³ Initial Post-Hearing Brief on Remand of Applicant Grain Belt Express Clean Line LLC, p. 30.

¹⁵⁴ Tr. Vol. 22, p. 2025-2026.

¹⁵⁵ Tr. Vol. 22, p. 2025.

III. Conclusions of Law and Discussion

A. Statutory Authority

The first issue is whether the Commission may lawfully issue a CCN to Grain Belt. Grain Belt has applied for a line certificate under Section 393.170.1, RSMo.¹⁵⁶ The Landowners assert that the Commission does not have the statutory authority to issue such a CCN because Grain Belt is not an electrical corporation or a public utility providing a public use or service.

Section 386.020(15), RSMo, defines an “electrical corporation” as “...every corporation, [or] company...owning, operating, controlling or managing any electric plant...” Electric plant is defined in Section 386.020(14), RSMo, as “all real estate... and personal property...used or to be used for or in connection with or to facilitate the...transmission...of electricity for...power...”. Grain Belt’s 39 easements that it has signed with Missouri landowners are interests in real estate¹⁵⁷, and its cash on hand for project development is personal property.¹⁵⁸ The words “to be used for or in connection with” in the statutory definition mean that the electric plant in question may be future or intended electric plant. That real estate and personal property are to be used for or in connection with Grain Belt’s Project, so the Commission concludes that they meet the definition of electric plant. Grain Belt owns its cash on hand and controls or manages the easement property under the easement agreement it executes with landowners, because those agreements grant Grain Belt certain rights to use the property and limit the landowner’s use. Therefore, the

¹⁵⁶ Section 393.170.1, RSMo, states that “No gas corporation, electrical corporation, water corporation or sewer corporation shall begin construction of a gas plant, electric plant, water system or sewer system, other than an energy generation unit that has a capacity of one megawatt or less, without first having obtained the permission and approval of the commission..”

¹⁵⁷ *Kansas City Power & Light Co. v. Riss*, 312 S.W.2d 846, 847 (Mo. 1958); *Beery v. Shinkle*, 193 S.W.3d 435, 440 (Mo. Ct. App. 2006).

¹⁵⁸ *In re Armistead*, 362 Mo. 960, 964, 245 S.W.2d 145, 147 (1952); *State ex rel. Reid v. Barrett*, 234 Mo. App. 684, 118 S.W.2d 33, 37 (1938)..

Commission determines that Grain Belt is an “electrical corporation” within the meaning of Section 386.020(15), RSMo, and subject to the jurisdiction of the Commission.

Missouri courts have stated that for a company to qualify as a public utility, the company must be devoted to a public use for the general public.¹⁵⁹ The evidence showed that when the Project is constructed and begins operation, it will transmit energy from wind farms in Kansas to wholesale customers in Missouri. In the case of MJMEUC, those customers are Missouri cities and towns that serve as electric providers to approximately 347,000 Missouri citizens. The hallmark of a public utility is the offering of utility service to the public without discrimination. Grain Belt will offer indiscriminate transmission service through an open access transmission tariff that will be filed and subject to the jurisdiction of FERC. While the Commission only has authority over facilities that are devoted to public use, an entity that constructs and operates a transmission line bringing electrical energy from electrical power generators to public utilities that serve consumers is a necessary and important link in the distribution of electricity and qualifies as a public utility.¹⁶⁰ The Commission concludes that Grain Belt’s Project will serve the public use, and Grain Belt qualifies as a public utility.

Landowners also argue that this Commission does not have jurisdiction because Grain Belt will only provide wholesale transmission service in Missouri, not retail service, and those customers may pay different rates for capacity, as Grain Belt will be subject to regulation by FERC and not subject to rate regulation by this Commission. Landowners

¹⁵⁹ *State ex rel. M.O. Danciger & Co. v. Pub. Serv. Commission of Missouri*, 275 Mo. 483, 205 S.W. 36, 39 (1918); *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 320 Mo. 1146, 1153, 9 S.W.2d 589, 591 (1928).

¹⁶⁰ *State ex rel. Buchanan County Power Transmission Co. v. Baker*, 9 S.W.2d at 592. While the Buchanan County transmission company was determined not to be a public utility because it transmitted electricity to a private company for private use, the court clearly implied that if the electricity had been transmitted to a public utility for public use the transmission company would also be considered to be a public utility.

also state that Grain Belt is not subject to this Commission's jurisdiction because it will be engaged in the interstate transmission of electricity, citing Sections 386.250(1)¹⁶¹ and 386.030¹⁶², RSMo.

The fact that FERC regulates wholesale electric rates does not mean that this Commission lacks the authority to issue a CCN for construction of the Grain Belt Project. The basic division of regulatory authority between the federal government and the states has existed since the Federal Power Act was enacted in 1935.¹⁶³ This law established authority for the federal government to regulate wholesale sales and transmission of electricity in interstate commerce, but also left the states with authority to regulate other matters not specifically granted to the federal government.¹⁶⁴ States retain the authority to regulate such matters as retail sales of electricity, electric generation, and facilities used for transmission of electricity in the state.¹⁶⁵ Since the Grain Belt Project will transmit energy to a converter station located in Missouri to provide that energy to Missouri citizens, neither FERC regulations nor Sections 386.250(1) and 386.030, RSMo, operate to deprive this Commission of the jurisdiction to decide this CCN case. In the Supreme Court of Missouri's opinion remanding this case, the Court noted that the Grain Belt project was an interstate transmission line, but then remanded the case to determine if the Grain Belt project meets

¹⁶¹ Section 386.250(1), RSMo, states that "The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter: (1) To the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same;..."

¹⁶² Section 386.030, RSMo, states that "Neither this chapter, nor any provision of this chapter, except when specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress."

¹⁶³ 16 U.S.C. §§791a – 824w; Jeffery S. Dennis, *et al.*, *Federal/State Jurisdictional Split: Implications for Emerging Electricity Technologies*, Energy Analysis and Environmental Impacts Division, Lawrence Berkeley National Laboratory, p. 3 (December 2016).

¹⁶⁴ 16 U.S.C. §824(a).

¹⁶⁵ 16 U.S.C. §824(b)(1).

the criteria for granting a CCN, suggesting that, if so, the Commission has the authority to issue it. The Commission concludes that it has the legal authority to issue a CCN to Grain Belt for the construction of the Project.

Since Grain Belt brought the application, it bears the burden of proof.¹⁶⁶ The burden of proof is the preponderance of the evidence standard.¹⁶⁷ In order to meet this standard, Grain Belt must convince the Commission it is “more likely than not” that its allegations are true.¹⁶⁸

B. Need for the Project

When making a determination of whether an applicant or project is convenient or necessary, the Commission has traditionally applied five criteria, commonly known as the Tartan factors, which are as follows:

- a) There must be a need for the service;
- b) The applicant must be qualified to provide the proposed service;
- c) The applicant must have the financial ability to provide the service;
- d) The applicant’s proposal must be economically feasible; and
- e) The service must promote the public interest.¹⁶⁹

¹⁶⁶ “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

¹⁶⁷ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

¹⁶⁸ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

¹⁶⁹ *In re Tartan Energy*, Report and Order, 3 Mo.P.S.C. 3d 173, Case No. GA-94-127, 1994 WL 762882 (September 16, 1994).

When determining whether the project is necessary or convenient for the public service, the “term ‘necessity’ does not mean ‘essential’ or ‘absolutely indispensable’, but that an additional service would be an improvement justifying its cost”.¹⁷⁰

The Project is needed primarily because of the benefits to MJMEUC and its customers, who have committed to purchase 136 MW of wind power utilizing transmission service purchased from Grain Belt. The transmission service agreement between Grain Belt and MJMEUC allows MJMEUC to purchase up to 200 MW of transmission capacity from the Grain Belt project. MJMEUC plans to use cheaper wind power from Grain Belt to replace the 100 MW of energy and capacity it currently purchases from Illinois Power Marketing, which contract will expire in 2021. MJMEUC calculates that their MoPEP members will save over \$11 million annually under the transmission service agreement with Grain Belt compared to its existing contract for those Illinois coal resources. These annual cost savings to MJMEUC member cities that participate in the Project will likely be passed through to their residential and industrial customers in the form of rate relief or invested in deferred maintenance to their electrical distribution systems.

The transmission service agreement has recently been amended to lower the price of the second 100 MW tranche to that of the first 100 MW tranche, resulting in additional annual savings (for 200 MW) to MJMEUC of approximately \$2.8 million compared to a traditional SPP to MISO point-to-point service agreement. Evidently, the elected decision makers for MJMEUC’s member cities recognized a need for these savings, and there was also evidence that wind power transmitted to Missouri would have been of interest to

¹⁷⁰ *State ex rel. Intercon Gas, Inc. v. Pub. Serv. Commission of Missouri*, 848 S.W.2d 593, 597 (Mo. Ct. App. 1993).

commercial and industrial customers, such as Walmart, Missouri Industrial Energy Consumers, the Missouri Retailers Association, and other national companies.

Of course, MJMEUC and Missouri industrial customers are not the only energy customers we must consider in this analysis. In a state whose regulated utilities participate in two regional transmission organizations, it is appropriate to consider the Project's effect on other market participants. There was substantial evidence of demand for this project, both on the production and delivery side, within the relevant regional markets. For instance, Grain Belt presented evidence of a commitment by an Illinois load-serving entity to purchase 50 MW of the project's transmission service. On the production side, during open solicitations in 2015 and 2016, transmission service requests for the line far exceeded the total available capacity of the project. Clearly, there is a demonstrable need for the service the Grain Belt Project offered both in Missouri and in the regions that affect Missouri energy markets.

C. Applicant's Qualifications and Financial Ability

Grain Belt currently has no employees and does not have sufficient cash on hand to complete either the development phase or construction of the Project. However, Invenergy entered into a Membership Interest Purchase Agreement with Grain Belt Holding to acquire all of the assets comprising the Grain Belt Project, and a Development Management Agreement that provides development funding by Invenergy through the projected closing date of the sale. Invenergy is spending money now on development of the Project, and expects that it will spend \$50 to \$100 million on development before it can obtain funding from institutional investors. Under the Development Agreement, Invenergy is contractually obligated to manage the business and affairs of the Project, and performs all services

related to the development, ownership, and maintenance of the Project. Invenergy has care, custody, and control over the Project in all day-to-day activities, and has authorization to execute documents and act on behalf of Grain Belt. Due to these contractual obligations, it is proper and necessary for the Commission to consider Grain Belt and Invenergy together in evaluating the Tartan factors.

Invenergy's management team has extensive experience in developing, constructing and operating transmission and energy infrastructure projects. Invenergy has an impressive record of development and construction of energy projects, including hundreds of miles of transmission lines, substations and transformers. Invenergy's financial condition is very strong, as Invenergy and its affiliates have in excess of \$9 billion in total assets and \$3 billion in total equity on a consolidated basis. Invenergy has demonstrated that it has the ability to raise capital for large energy projects through access to its vast network of private debt and equity investors, having raised more than \$30 billion of financing in connection with the successful development of more than 20,046 MW in projects in the United States, Canada, Europe, Central America, and Japan. The Commission concludes that Grain Belt and Invenergy together have the qualifications and financial ability to develop, construct, and operate the Project.

D. Economic Feasibility of the Project

Grain Belt's Project is economically feasible because it links customers in Missouri who desire to purchase low-cost wind power from western Kansas with wind generation companies like Iron Star who propose to supply that energy, all under a business model under which Grain Belt assumes the financial risk of building and operating the

transmission line. Moreover, the cost of the project will not be recovered from Missouri ratepayers through either SPP or MISO regional cost allocation tariffs.

Grain Belt also presented a credible levelized cost of energy analysis from witness David Berry to show that the cost to bring wind energy from western Kansas to Missouri and eastward using the Grain Belt project is the lowest-cost resource option compared to Missouri wind, combined cycle gas, and Missouri utility-scale solar generation. While the MJMEUC and Iron Star contract demonstrates the economic feasibility of the Project compared to MISO wind, it is the 3500 MW portion of the project to be sold in PJM that demonstrates the financial viability of the project overall, since power prices for PJM are generally \$10/MWh higher than prices paid for the energy sold into the MISO market in Missouri. When Grain Belt conducted its open solicitation, it offered a price that was higher than both the MJMEUC “first-mover” price and the normal Missouri rate, and it received bids that were 6½ times the capacity available on the project, which is a substantial indication of economic feasibility.

The economic feasibility of the Grain Belt Project is also demonstrated by (a) a very strong corporate demand for renewable energy in PJM where users will pay a higher price; (b) the cost of generating wind energy in western Kansas continues to drop; (c) wind speeds in western Kansas are substantially higher than Missouri, Illinois, Indiana, and Iowa; (d) Kansas wind generators can produce energy at a lower cost because of two Kansas tax incentives and the low cost to construct wind farms; and (e) the wind industry will not be dependent on the federal production tax credit after 2023 because of continuing technology improvements. For all of the reasons stated above, the Commission concludes that the Grain Belt Project is economically feasible.

E. Public Interest

Public policy must be found in a constitutional provision, a statute, regulation promulgated pursuant to statute, or a rule created by a governmental body. The public interest is a matter of policy to be determined by the Commission.¹⁷¹ It is within the discretion of the Commission to determine when the evidence indicates the public interest would be served.¹⁷² Determining what is in the interest of the public is a balancing process.¹⁷³ In making such a determination, the total interests of the public served must be assessed.¹⁷⁴ In Missouri, state energy policy can be found in laws such as the Renewable Energy Standard¹⁷⁵, established by vote of the Missouri public in 2008, and the Energy Efficiency Investment Act¹⁷⁶, promulgated by the Missouri legislature in 2013, as well as the Comprehensive State Energy Plan, an initiative implemented by the Missouri Division of Energy in 2015. Consistent with these state policies, this Commission has in the past expressed strong support for the “development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere”.¹⁷⁷

¹⁷¹ *State ex rel. Public Water Supply District v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980). The dominant purpose in creation of the Commission is public welfare. *State ex rel. Mo. Pac. Freight Transport Co. v. Public Service Commission*, 288 S.W.2d 679, 682 (Mo. App. 1956).

¹⁷² *State ex rel. Intercon Gas, Inc. v. Public Service Com'n of Missouri*, 848 S.W.2d 593, 597 -598 (Mo. App. 1993). That discretion and the exercise, however, are not absolute and are subject to a review by the courts for determining whether orders of the P.S.C. are lawful and reasonable. *State ex rel. Public Water Supply Dist. No. 8 of Jefferson County v. Public Service Commission*, 600 S.W.2d 147, 154 (Mo. App. 1980).

¹⁷³ *In the Matter of Sho-Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order issued September 17, 1993, 1993 WL 719871 (Mo. P.S.C.).

¹⁷⁴ *Id.*

¹⁷⁵ Section 393.1030, RSMo.

¹⁷⁶ Section 393.1075, RSMo.

¹⁷⁷ *In the Matter of the Application of KPC&L Greater Missouri Operations Company for Permission and Approval of a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities in Western Missouri*, File No. EA-2015-0256, Report and Order issued March 2, 2016, p. 15. See also, *In the Matter of the Application of The Empire District Electric Company for Approval of Its Customer Savings Plan*, File No. EO-2018-0092,

The Grain Belt Project will lower energy production costs in Missouri under future energy scenarios developed by MISO and will have a substantial and favorable effect on the reliability of electric service in Missouri, particularly through its effect on wind diversity in the region. Geographic diversity in wind resources inevitably helps to reduce system variability and uncertainty in regional energy systems. In addition, the Project will provide positive environmental impacts, since displacement of fossil fuels for wind power will reduce emissions of carbon dioxide, sulfur dioxide, and nitrogen oxide, and reduce water usage in Missouri.

The construction phase of the Project will support 1,527 total jobs over three years, and create \$246 million in personal income, \$476 million in gross domestic product, and \$9.6 million in state general revenue for the state of Missouri. The Project will also result in significant property tax benefits to affected counties, a total of approximately \$7.2 million in the first year of operation. In that first year, Randolph County alone will receive more than \$720,000 in additional tax revenue. In the first year of operation, the project will result in approximately \$14.97 million in easement payments to landowners and create 91 jobs, \$17.9 million worth of personal income, and \$9.1 million in gross domestic product.

Any negative impacts of the Project on the land and landowners will be mitigated by (a) a landowner protocol to protect landowners; (b) superior compensation payments; (c) a binding arbitration option for easement negotiations; (d) a decommissioning fund; and (e) an agricultural impact mitigation protocol to avoid or minimize negative agricultural impacts. Agricultural impacts will also be reduced because no more than nine acres of land in Missouri will be taken out of agricultural production as a result of Project structures, and the

Report and Order issued July 11, 2018, p. 20; *In the Matter of Union Electric Company d/b/a Ameren Missouri's Voluntary Green Program/Pure Power Program Tariff Filing*, File No. EO-2013-0307, Report and Order issued April 24, 2013, p. 14.

proposed route does not directly impact the operation of any existing center pivot irrigation systems.

It is the Commission's responsibility to balance the interests of all stakeholders, including the affected landowners, to determine what is in the best interest of the general public as a whole. The evidence in the case demonstrated that the Grain Belt Project will create both short-term and long-term benefits to ratepayers and all the citizens of the state. In the Commission's view, the broad economic, environmental, and other benefits of the Project to the entire state of Missouri outweigh the interests of the individual landowners. Many of the landowners' concerns will be addressed through carefully considered conditions placed on the CCN.

There can be no debate that our energy future will require more diversity in energy resources, particularly renewable resources. We are witnessing a worldwide, long-term and comprehensive movement towards renewable energy in general and wind energy specifically. Wind energy provides great promise as a source for affordable, reliable, safe, and environmentally-friendly energy. The Grain Belt Project will facilitate this movement in Missouri, will thereby benefit Missouri citizens, and is, therefore, in the public interest.

F. Conditions and Waivers

Section 393.170.3, RSMo, states that "[t]he commission may by its order impose such condition or conditions as it may deem reasonable and necessary". The parties have proposed numerous conditions should the Commission decide to grant Grain Belt a CCN. The Commission finds that those conditions to which Grain Belt has agreed are reasonable and necessary, so those conditions will be imposed below. The Commission concludes that

the remaining proposed conditions are unreasonable, unnecessary, or moot, so those will not be adopted.

One condition to which Grain Belt agreed relates to a decommissioning fund to pay for wind-up activities in the unlikely circumstance that the transmission line is retired from service. Grain Belt proposed that the fund be established beginning on the 20th anniversary of the completion of the Project. The Commission finds that this establishment date is insufficient to protect affected landowners should the transmission line be abandoned after construction begins or retired before the 20th year of operation. So, the Commission concludes that the decommissioning fund should be established at the outset of construction and increased during construction in an amount needed to perform necessary wind-up activities for any facilities that have been constructed and installed. Another condition that protects affected landowners is the requirement that if Grain Belt fails to obtain the necessary financial commitments for the Project within 5 years of obtaining an easement through eminent domain proceedings, Grain Belt must dissolve the easement and return possession of it to the landowner without any reimbursement of payments to the landowner for that easement.

For all of the conditions that the Commission includes as part of the CCN, if Grain Belt does not comply with such conditions the company may be subject to penalties in a subsequent complaint proceeding. If the Commission and a court find that the company fails to comply, then it is subject to penalties ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo. Also, unless Grain Belt exercises the authority conferred by the CCN within two years, the CCN becomes null and void under Section 393.170.3, RSMo.

The rules for which a waiver is requested - Commission rules 4 CSR 240-3.145, 4 CSR 240-10.145¹⁷⁸, 4 CSR 240-3.175, and 4 CSR 240-3.190(1), (2) and (3) (A)-(D) -relate to the filing of rate schedules, annual reports, depreciation studies, and reports regarding various safety, accident and other events. Commission Rule 4 CSR 240-3.015 provides that waivers or variances from Chapter 3 filing requirements are the same as in Commission Rule 4 CSR 240-2.015, which requires a showing of good cause for the waiver or variance. Good cause means a good faith request for reasonable relief.¹⁷⁹ Grain Belt alleges that good cause exists for the waiver because the proposed facilities will not provide retail service to customers and will not be rate-regulated by the Commission. Staff agrees with the waivers as long as Grain Belt is required to file with the Commission the annual report that it files with FERC, and Grain Belt has agreed to comply. The Commission finds that good cause exists for the waivers, so they will be granted, subject to Staff's condition.

G. Motion for Additional Exhibit

On February 15, 2019, after the record in this case had closed, Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners ("Show Me") filed a motion to offer an additional exhibit for the record and submit additional argument regarding that exhibit. The offered exhibit is an affidavit alleging that Grain Belt's option to purchase land in Ralls County, Missouri for purposes of constructing a converter station has now expired. Show Me states that good cause exists for granting the motion, in that without the additional exhibit the Commission would be "left in the dark" concerning a significant

¹⁷⁸ The Grain Belt request was for a waiver of Commission rule 4 CSR 240-3.165. That rule was rescinded by the Commission effective January 30, 2019, and the requirements of that rule were moved to 4 CSR 240-10.145.

¹⁷⁹ *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App. W.D. 1996).

change of fact. Grain Belt opposed the motion, arguing that expiration of the purchase option has no impact on the issue of Grain Belt's CCN, there is no good cause to accept the exhibit, accepting the exhibit would violate due process, and Show Me should not be permitted to reverse its prior position with post-hoc arguments.

Information relating to the expiration of the option agreement was already in the record of this case prior to Show Me's motion.¹⁸⁰ Show Me had every opportunity to make arguments and present further evidence relating to this option agreement at the remand evidentiary hearing and while the record of the case was open. Accepting this untimely exhibit now would deprive the parties of an opportunity to cross-examine witnesses or offer additional arguments regarding the exhibit. The Commission concludes that Show Me has failed to demonstrate good cause for including the additional exhibit in the record of the hearing, so Show Me's motion will be denied.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Grain Belt has met, by a preponderance of the evidence, its burden of proof to demonstrate that it is qualified for a certificate of convenience and necessity under Section 393.170.1, RSMo. Therefore, the Commission will grant the Grain Belt application, subject to the conditions ordered below.

¹⁸⁰ Ex. 116, Lawlor Surrebuttal, Schedule MOL-14.

THE COMMISSION ORDERS THAT:

1. Grain Belt Express Clean Line LLC's application for a certificate of convenience and necessity filed on August 30, 2016, is granted.
2. The conditions to which Grain Belt Express Clean Line LLC and the Commission's Staff agreed in Exhibit 206 are approved and adopted. Exhibit 206 is attached as Attachment 1 and incorporated herein by reference as if fully set forth. Grain Belt Express Clean Line LLC is ordered to comply with the conditions in Exhibit 206.
3. The conditions to which Grain Belt Express Clean Line LLC and Rockies Express Pipeline LLC agreed in Exhibit 205 are approved and adopted. Exhibit 205 is attached as Attachment 2 and incorporated herein by reference as if fully set forth. Grain Belt Express Clean Line LLC is ordered to comply with the conditions in Exhibit 205.
4. Grain Belt Express Clean Line LLC's owners, including, but not limited to, Invenergy Transmission LLC, Invenergy Investment Company LLC, and any related subsidiaries, shall cooperate with the Commission's Staff in providing reasonable access to its un-redacted financial records until the completion or official abandonment of the Grain Belt Project.
5. If Grain Belt Express Clean Line LLC acquires any involuntary easement in Missouri by means of eminent domain proceedings ("easement") and does not obtain the financial commitments referred to in Section I(1) and Section I(1)(a) of the Conditions Agreed to by Grain Belt Express and Staff (Exhibit 206) within five years of the date that such easement rights are recorded with the appropriate county recorder of deeds, Grain Belt Express Clean Line LLC shall return possession of the easement to the fee simple title holder ("title holder") within 60 days and cause the dissolution of the easement to be

recorded with the county recorder of deeds. In the event of such a return of the easement to the title holder, no reimbursement of any payment made by Grain Belt Express Clean Line LLC to the title holder shall be due.

6. If the design and engineering of the project is materially different from how the Project is presented in Grain Belt Express Clean Line LLC's Application, Grain Belt Express Clean Line LLC must file an updated application with the Commission for further Commission review and determination.

7. If any outstanding studies included as conditions raise any new issue(s), then the Commission must be satisfied with how Grain Belt Express Clean Line LLC resolves the issue(s).

8. Grain Belt Express Clean Line LLC shall comply with the Missouri Landowner Protocol, including, but not limited to, a code of conduct and the Missouri Agricultural Mitigation Impact Protocol, and incorporate the terms and obligations of the Missouri Landowner Protocol into any easement agreements with Missouri landowners.

9. Grain Belt Express Clean Line LLC shall modify the Missouri Landowner Protocol relating to a decommissioning fund as directed herein. At the commencement of construction of the Project, Grain Belt Express Clean Line LLC shall establish a decommissioning fund in an amount reasonably necessary to perform the wind-up activities described below, at Grain Belt Express Clean Line LLC's sole cost and expense, for any portion of the Project that has been constructed and installed. The amount of the decommissioning fund shall be increased as construction of the Project progresses sufficient to cover wind-up activities for any Project facilities that have been constructed and installed. The decommissioning fund may be collateralized with a letter of credit or

cash, or any combination thereof. In any circumstance in which the Project is retired from service or abandoned prior to service, Grain Belt Express Clean Line LLC shall promptly perform the following wind-up activities:

- dismantling, demolishing and removing all equipment, facilities and structures;
- terminating all transmission line easements and filing a release of such easements in the real property records of the county in which the property is located;
- securing, maintaining and disposing of debris with respect to the Project facilities; and
- performing any activities necessary to comply with applicable laws, contractual obligations, and that are otherwise prudent to retire the Project facilities and restore any landowner property.

10. Grain Belt Express Clean Line LLC shall construct the proposed Missouri converter station to be capable of the actual delivery of 500 MW of wind power to the converter station.

11. Grain Belt Express Clean Line LLC is granted a waiver of the requirements in the following Commission rules: 4 CSR 240-3.145, 4 CSR 240-10.145, 4 CSR 240-3.175, and 4 CSR 240-3.190(1), (2) and (3) (A)-(D). Grain Belt Express Clean Line LLC shall promptly file with the Commission a copy of each annual report that Grain Belt Express Clean Line LLC files with FERC.

12. Eastern Missouri Landowners Alliance d/b/a Show Me Concerned Landowners' motion to offer an additional exhibit for the record in this case and to submit additional argument regarding said exhibit, filed on February 15, 2019, is denied.

13. This order shall become effective on April 19, 2019.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

FILED
March 30, 2017
Data Center
Missouri Public
Service Commission

**CONDITIONS AGREED TO BY GRAIN BELT EXPRESS CLEAN LINE LLC AND
THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**

In re Grain Belt Express Clean Line LLC, No. EA-2016-0358

Based on the conditions and recommendations in the Staff Rebuttal Report submitted on January 24, 2017, and subsequent discussions between the Staff of the Missouri Public Service Commission ("Staff") and Grain Belt Express Clean Line LLC ("Grain Belt"), Staff and Grain Belt have agreed to the following conditions.

I. Financing Conditions (Staff Rebuttal Report at 63-64)

1. Grain Belt will not install transmission facilities on easement property in Missouri until it has obtained commitments for funds in an amount equal to or greater than the total cost to build the entirety of this multi-state transmission project. To allow the Commission to verify compliance with this condition, Grain Belt shall file the following documents with the Commission at such a time as Grain Belt is prepared to begin to construct electric transmission facilities in Missouri:

(a) On a confidential basis, equity and loan or other debt financing agreements and commitments entered into or obtained by Grain Belt or its parent company for the purpose of funding Grain Belt's multi-state transmission project that, in the aggregate, provide commitments for the total project cost.

(b) An attestation by an officer of Grain Belt that Grain Belt 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 multi-state transmission project cost, broken out by the categories of 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, and certified by an officer of Grain Belt, along with a reconciliation of the total project cost in the statement to the total project cost as of the Application of \$2.35 billion; and property owned in fee by Grain Belt including the converter station sites.

(d) A reconciliation statement certified by an officer of Grain Belt showing that (1) the agreements and commitments for funds provided in subsection (a), above, are equal to or greater than the total project cost provided in subsection (c), above; and (2) the contracted transmission service revenue is sufficient to service the debt financing of the project (taking into account any planned refinancing of debt).

II. Interconnection Studies and Safety (Staff Rebuttal Report at 64, 67)

1. Grain Belt will provide Staff with completed RTO Interconnection Agreements and any associated studies. Should the studies raise new issues, Grain Belt will provide its plan to address those issues.

102856881

REC. Staff Exhibit No. Staff Ex 206
Date 3-20-17 Reported KB
File No. EA-2016-0358

A-680

2. Grain Belt will provide to the Commission completed documentation of the Grain Belt plan, equipment, and engineering drawings to achieve compliance with NERC standards for a project of this scope and size, the National Electric Safety Code for a project of this scope and size, 4 CSR 240-18.010, the Overhead Power Line Safety Act (Section 319.075-.090), and any other applicable Missouri state law for a project of this scope and size prior to the commercial operational date of the Project.

III. Nearby Utility Facilities (Staff Rebuttal Report at 64-66)

1. Grain Belt shall use commercially reasonable efforts (as defined below) to obtain detailed location information on each existing underground utility plant, either crossed by or in close proximity to its proposed route, and to contact and coordinate with the owners of each such facility prior to construction.

(a) Grain Belt intends to undertake several related steps to obtain information about underground utilities. Grain Belt intends to hire a qualified survey firm with experience in locating underground utilities. Prior to field survey, Grain Belt intends to assemble desktop information about underground utility locations along the project route. This desktop information may be assembled by the survey firm, by a different contractor, or by Grain Belt itself. The desktop information will draw from both public and proprietary sources. Publicly available sources may include, but are not limited to, databases maintained by State utility regulatory bodies, Railroad Commissions, Departments of Transportation, Oil & Gas Commissions, Departments of Natural Resources, Municipal Utility Districts, Rural Water Districts, County Engineering Offices, and Electric Cooperatives. Proprietary sources may include, but are not limited to, databases and mapping information such as those maintained by Ventyx or Platts, and GIS or CAD files maintained by underground utility owners and provided to Grain Belt. In advance of field operations Grain Belt will engage in detailed title research to identify all easements of record for each parcel of land traversed by the Grain Belt Project. Field survey will utilize one or more detection methods to "sweep" sections of the right-of-way for underground utilities. These methods may include, but are not limited to: identification of above-ground staking or signage, magnetic, sonic and acoustic technologies, ground penetrating radar, radio frequency detection, and vacuum excavation. The extent of survey coverage will be determined by consulting with the project engineering and construction contractors.

(b) Commercially reasonable efforts, in the context of obtaining information about underground utility plant, are efforts sufficient to identify nearby infrastructure at specific excavation locations for the Project facilities (e.g., foundations for transmission line structures), as well as nearby infrastructure that can be identified using the aforementioned methods within the right-of-way of the Project, as specified by the project engineering and construction contractors, coordination with the utility owner, and applicable laws and regulations. "Commercially reasonable" in this context does not refer to a specific or maximum dollar amount.

2. Grain Belt will show the Commission, before it begins commercial operation of any part of the multi-state Project, that it built the entire multi-state Grain Belt proposed HVDC transmission line with dedicated metallic return conductors which are operational and that the entire multi-state Project has operational protection and control safety systems that automatically

de-energize the Project within approximately 150 milliseconds of when an abnormal or fault condition occurs.

3. Grain Belt will perform engineering studies to determine if the operation of the Grain Belt proposed HVDC transmission line, the Grain Belt proposed Missouri converter station, and the Grain Belt-owned portion of the AC electric transmission line connecting the Grain Belt proposed Missouri converter station to the AC grid have adverse impacts on nearby facilities. These engineering studies must include, but not be limited to the following:

- (a) the effects of tower footing groundings, if used;
- (b) analysis of metallic underground facilities;
- (c) other AC power lines and telecommunications facilities that are located within a distance from the Grain Belt proposed HVDC transmission line, as determined by an appropriately qualified expert, where there may be adverse effects on the facilities;
- (d) a determination whether there are locations where the Grain Belt proposed HVDC transmission line parallels a pipeline and an existing AC power line and, if so, whether there are any combined effects on steel pipelines (and other underground metallic facilities); and
- (e) the effects of Grain Belt proposed transmission line(s) connecting the Grain Belt proposed Missouri converter station to the AC grid.

If any of these studies show that mitigation measures are identified/needed, those measures must be in place prior to commercial operation of the Grain Belt proposed transmission line.

These studies must be made available to Staff and affected facility owners at least 45 days prior to commercial operation of the Grain Belt proposed HVDC transmission line.

Grain Belt must disclose to Staff and affected facility owners how the parameters for conducting the studies were determined (e.g., continuous 24-hour recordings at a certain time of year).

These studies must be conducted by persons knowledgeable in: (1) HVDC power lines; (2) DC-to-AC converter stations; (3) Pipeline cathodic protection systems; (4) Corrosion of underground metallic facilities; (5) Interference with AC utility lines; (6) Interference with telecommunications facilities; (7) Effects of DC and AC interference on the facilities identified in Exhibit 3, as amended by Grain Belt's Addendum to the Application, and all additional facilities subsequently identified.

4. Grain Belt must file "annual status updates" on discussions with Staff regarding need for additional studies of the impacts of its facilities on other facilities in Missouri, a summary of the results of any additional studies, and any mitigation measures that have been implemented to address underground metallic structures, telecom facilities and AC lines. Mitigation measures indicated by future studies must be implemented within three (3) months of discovery that additional mitigation measures are needed, or as quickly as reasonably practical thereafter.

IV. Emergency Restoration Plans (Staff Rebuttal Report at 66)

1. Grain Belt must provide a copy of the final Grain Belt Emergency Restoration Plan to the Commission prior to the commercial operations date for the Grain Belt Project.

V. Construction and Clearing (Staff Rebuttal Report at 67-68)

1. Prior to construction, Grain Belt will notify all landowners in writing of the name and telephone number of Grain Belt'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'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 aware.

3. From the beginning of construction until end of construction and clean-up of the right-of-way is complete, Grain Belt'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 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. Stumps will be treated to prevent regrowth consistent with industry best practices. Vegetation treatments will consider vegetation types, site specific land uses, and any environmental sensitivities. Grain Belt will notify all landowners of the Transmission Vegetation Management Policy and of the specific vegetation treatments for each landowner's property.

7. Unless the landowner does not want the area seeded, disturbed areas will be reseeded consistent with reclamation best practices in consultation with landowners, restoration specialists, and government agencies.

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 damage a gate, Grain Belt will repair that damage.

11. If Grain Belt installs a new gate, Grain Belt 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 will utilize design techniques intended to minimize corona.

13. Should a landowner experience radio or television interference issues believed by the landowner to be attributed to Grain Belt's line, Grain Belt will work with the landowner in good faith to attempt to solve the problem.

14. Grain Belt will clearly mark guy wires.

VI. Maintenance and Repair (Staff Rebuttal Report at 68-69)

1. With regard to future maintenance or repair and right-of-way maintenance after construction is completed, Grain Belt 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's presence, particularly if access is near their residence.

2. All Grain Belt 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. 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.

4. Routine maintenance will not occur during wet conditions so as to prevent rutting.

5. Existing access roads will be used to access the right-of-way wherever available.

6. Prior to commencing construction, Grain Belt will notify all landowners in writing of the Transmission Vegetation Management Policy and of the specific vegetation treatments for each landowner's property. Grain Belt will personally meet with each landowner who requests such a meeting to determine if the landowner does or does not want herbicides used on the landowner's property. If the landowner does not want herbicides used, they will not be used.

VII. Landowner Interactions and Right-of-Way Acquisition (Staff Rebuttal Report at 43-45, 69)

1. The certificate is limited to the construction of this line in the location specified in the application, and as represented to the landowners on the aerial photos provided by Grain Belt, unless a written agreement from the landowner is obtained, or the company gets a variance from the Commission for a particular property, provided, however, minor deviations to the location of the line not exceeding 500 feet will be permitted as a result of surveying, final engineering and design, and landowner consultation, so long as the line and required easements stay within the property boundaries of that landowner and do not involve a new landowner.

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

3. Grain Belt shall survey the transmission line location after construction and record the easement location with the Recorder of Deeds in the appropriate counties. Grain Belt shall also file a copy of its survey in this case.

4. Every landowner from whom Grain Belt requires an easement will be contacted personally, and Grain Belt will negotiate with each such landowner in good faith on the terms and conditions of the easement, its location, and compensation therefor. Each landowner will receive an Easement Agreement pertaining to such landowner's land, which Easement Agreement will contain a drawing that shows the location of the easement.

5. 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.

6. If a landowner so desires, Grain Belt will give the landowner a reasonable period of time in advance of construction to harvest any timber the landowner desires to harvest.

7. Grain Belt's right-of-way acquisition policies and practices will not change regardless of whether Grain Belt does or does not yet possess a Certificate of Convenience or Necessity from the Commission.

FILED
March 30, 2017
Data Center
Missouri Public
Service Commission

**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.)
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Psc Staff Exhibit No. 205
Date 3-21-17 Reporter KJB
File No. EA-2016-0350

Case No. EA-2016-0358

**GRAIN BELT EXPRESS RESPONSE TO
ROCKIES EXPRESS PIPELINE LLC'S FIRST SET
OF DATA REQUESTS TO GRAIN BELT EXPRESS CLEAN LINE LLC**

Grain Belt Express Clean Line LLC ("GBX") states the following in response to the data requests propounded by Rockies Express Pipeline LLC ("REX"):

1. GBX's application and the testimony and schedules filed in support propose preferred and alternative routes for GBX's high voltage, direct current electric transmission line and associated converter station (the "HVDC Project") that may involve multiple crossings of, and run parallel to, REX's existing high pressure natural gas pipeline (the "Pipeline"). None of said filings address the potential impacts of GBX's HVDC Project on REX's Pipeline, however. It is REX's position that it is not permissible to design, construct or operate GBX's HVDC line in a manner that would pose a risk to the safety or integrity of REX's pipeline. Does GBX support REX's position?

RESPONSE: Yes.

2. REX intends to study the potential impacts of the HVDC Project on the Pipeline. However, the testimony of GBX's witnesses, Anthony Wayne Galli and Thomas F. Shiflett, and the schedules attached thereto, indicate that the design and engineering of the HVDC project is still in a preliminary state. If comprehensive engineering and design work for the HVDC Project have yet to commence, please answer the following:

- a) At what identifiable stage or step during the HVDC Project engineering and design work processes does GBX believe that potential impacts of the HVDC Project to the Pipeline may be determined?

RESPONSE: The appropriate time to begin studies would be after the final route alignment and structure spotting exercises are completed. Once a route is approved, significant engineering activities will begin on an engineering commencement date to determine structure locations. At that time enough detail will be available to perform the studies to determine if any mitigation measures will be necessary.

- b) Does GBX intend to give REX prompt, advance notice that the stage or step identified in GBX's answer to the immediately preceding question is about to commence?

RESPONSE: Yes.

- c) REX anticipates that it will need technical information about the HVDC Project, as well as information about how GBX intends to operate the HVDC Project, in order for REX to study how the HVDC Project might impact the safety or integrity of the Pipeline. Does GBX intend to share such technical and operational information as REX may reasonably request for this purpose? If GBX's answer is conditional, please state GBX's conditions.

RESPONSE: Yes, subject to the execution of confidentiality agreements to protect such information.

- d) If GBX's answers to questions b) and c) are in the affirmative, will GBX collaborate with REX to study how the HVDC Project might impact the safety or integrity of the Pipeline? If GBX's answer is conditional, please state GBX's conditions.

RESPONSE: Yes.

3. After studying the HVDC Project, REX's pipeline safety engineers may determine that monitoring, testing and/or mitigation steps are required in order to safeguard the Pipeline from potential adverse effects of the HVDC Project. Does GBX agree that in such event, GBX should be responsible for the costs of installing and operating such monitoring and testing equipment and mitigation measures? If GBX's answer is conditional, please state GBX's conditions.

RESPONSE: Yes, GBX should be responsible for all such costs warranted by reasonable engineering and commercial practices.

I02163360\V-1

Exhibit 205

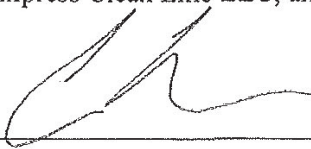
A-687

4. State whether GBX would be responsible for all direct damages to REX proximately caused by construction and/or ongoing operation of the HVDC Project, including direct damages from fault currents.

RESPONSE: Yes, GBX would be responsible.

VERIFICATION OF RESPONSE

The answers provided to this Set of Data Requests have been collected from various sources at Clean Line Energy Partners LLC and Grain Belt Express Clean Line LLC, and are true and accurate to the best of my knowledge and belief.

Signed:  _____

Position: GENERAL COUNSEL

Clean Line Energy Partners LLC

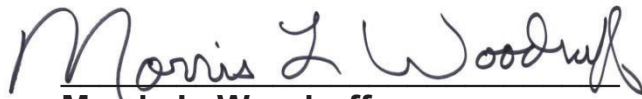
Date: 12/16/17

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

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 20th day of March 2019.




Morris L. Woodruff
Secretary

MOPSC Digitally signed
by MOPSC
Date: 2019.03.20
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A-690

MISSOURI PUBLIC SERVICE COMMISSION**March 20, 2019****File/Case No. EA-2016-0358****Missouri Public Service Commission**

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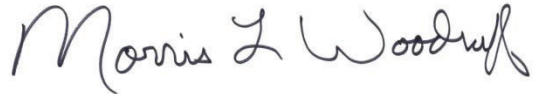
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Wal-Mart Stores, Inc.

David Woodsmall
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,

A handwritten signature in dark ink, reading "Morris L. Woodruff". The signature is fluid and cursive, with the first name "Morris" being the most prominent.

Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.