

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Company d/b/a :
AmerenIP and Ameren Illinois :
Transmission Company :
 :
Petition for (i) a Certificate of Public :
Convenience and Necessity, pursuant :
to Section 8-406(a) of the Public :
Utilities Act; (ii) a Certificate of Public :
Convenience and Necessity, pursuant :
to Section 8-406 of the Public Utilities :
Act, authorizing construction, : 06-0179
operation and maintenance of new :
345,000 volt electric lines in Monroe, :
Randolph, St. Clair, and Washington :
Counties, Illinois; (iii) an order :
pursuant to Section 8-503 of the :
Public Utilities Act approving :
construction of new transmission :
facilities; (iv) approval of an :
Agreement between affiliated :
interests; and (v) other relief as may :
be necessary. :

BRIEF ON EXCEPTIONS
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

Janis E. Von Qualen
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: 217-785-3402
Fax: 217-524-8928
[mail to: jvonqual@icc.illinois.gov](mailto:jvonqual@icc.illinois.gov)

April 25, 2007

TABLE OF CONTENTS

I.	PROCEDURAL HISTORY	2
II.	ARGUMENT	3
	A. Financial and Transco Issues	3
	1. Staff's Position	3
	2. Commission's Conclusion	6
	a. Adopting Staff's Position.....	7
	b. Concerns Regardless of Conclusion	7
	B. Section 8-503 Relief	7
III.	CONCLUSION.....	8

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Company d/b/a	:	
AmerenIP and Ameren Illinois	:	
Transmission Company	:	
	:	
Petition for (i) a Certificate of Public	:	
Convenience and Necessity, pursuant	:	
to Section 8-406(a) of the Public	:	
Utilities Act; (ii) a Certificate of Public	:	
Convenience and Necessity, pursuant	:	
to Section 8-406 of the Public Utilities	:	
Act, authorizing construction,	:	06-0179
operation and maintenance of new	:	
345,000 volt electric lines in Monroe,	:	
Randolph, St. Clair, and Washington	:	
Counties, Illinois; (iii) an order	:	
pursuant to Section 8-503 of the	:	
Public Utilities Act approving	:	
construction of new transmission	:	
facilities; (iv) approval of an	:	
Agreement between affiliated	:	
interests; and (v) other relief as may	:	
be necessary.	:	

**BRIEF ON EXCEPTIONS
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

The Staff Witnesses of the Illinois Commerce Commission (“Staff” and “Commission”), by and through its counsel, pursuant to Section 200.830 of the Rules of Practice (83 Ill. Adm. Code 200.830) of the Illinois Commerce Commission (“Commission”), respectfully submits its Brief On Exceptions (“BOE”) and Exceptions to the Proposed Order (“Exceptions”) issued by the Administrative Law Judge (“ALJ”) on April 6, 2007, in this proceeding.

I. PROCEDURAL HISTORY

On March 3, 2006, Illinois Power Company d/b/a AmerenIP ("AmerenIP" or "IP") and Ameren Illinois Transmission Company ("Ameren Transco" or "Transco") (together, "Petitioners") filed a Petition with the Illinois Commerce Commission ("Commission"). An Amended Petition was filed on May 9, 2006. Petitioners therein request that "the Commission (i) grant a Certificate of Public Convenience and Necessity to Ameren Transco; (ii) grant a Certificate of Public Convenience and Necessity [pursuant to § 8-406 of the Public Utilities Act ("Act"), 220 ILCS 5/8-406,] authorizing AmerenIP and Ameren Transco to construct, operate, and maintain three new 345 kilovolt [electric] transmission lines in Monroe, Randolph, St. Clair, and Washington Counties, Illinois; (iii) authorize construction of the Project pursuant to Section 8-503 of the Act; (iv) approve, [pursuant to Sections 7-101 and 7-102 of the Act,] the Joint Ownership Agreement between AmerenIP and Ameren Transco; and (v) grant such other relief as may be required."

On April 6, 2007, the ALJ issued a Proposed Order ("PO"). Staff recommends some clarifying changes to Staff's Position under the Positions of Parties section of Financial and Ameren Transco Issues (Section VI. A. 2.). The Commission Conclusion in the same section should be rewritten to more accurately represent and to adopt Staff's position. Language should be added to Relief Pursuant to Section 8-503 (Section VII. D.) to strictly define the authority for use of eminent domain that it is granting to a utility. In addition, Staff has rewritten the portions of the Findings and Ordering Paragraphs to be consistent with Staff's proposed changes in the preceding sections. Staff's proposed replacement language is set forth in legislative style in Staff's

Exceptions to the Administrative Law Judge's Proposed Order ("Exceptions") which is attached.

II. ARGUMENT

A. Financial and Transco Issues

1. Staff's Position

It appears from the PO that Staff has not made its position clear in its Initial and Reply Briefs. In this Brief on Exceptions ("BOE"), Staff will attempt to clarify its position. Language to clarify Staff's position in the PO is proposed in the attached Exceptions.

Staff's position is premised upon the plain meaning of the statute. On its face, Section 8-406(b) places the burden of proof on the Petitioners. Petitioners are required to demonstrate that they can finance the proposed construction without significant adverse financial consequences. Thus the financial analysis is focused solely upon the utility's ability to finance the construction. Finally, it is a two-pronged review; the statute clearly requires a showing of no significant adverse financial consequences on the *utility* or its *customers*.

Section 8-406(b) places the burden of proof for the issuance of a Certificate of Convenience and Necessity ("Certificate") squarely on the shoulders of the petitioning utility. Section 8-406(b) states in relevant part:

The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: ... and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

It is clear then that AmerenIP and Ameren Transco must demonstrate something. Staff's position is that neither AmerenIP nor Ameren Transco provided the record with sufficient information to reach the findings they requested.

This proceeding is a somewhat unusual Certificate case for two reasons. First, the Petitioners are requesting the Certificate in order to provide interconnection service to Prairie State Generating Company ("Prairie State") for a new generation plant as is required under Federal Energy Regulatory Commission ("FERC") Order No. 2003. In other words, the Petitioners are requesting a Certificate because AmerenIP is required by law to provide this service to Prairie State. Second, rather than alleging that AmerenIP can finance the proposed construction; the Petitioners allege that AmerenIP *cannot* finance the proposed construction. These are unique circumstances, but that does not change the burden of proof. The Petitioners still must provide evidence to support their position.

The evidence provided by the Petitioners on this issue is limited to their expert's opinion that AmerenIP cannot and Ameren Transco can finance the construction of the Project without significant adverse consequences. Petitioners provided no supporting analysis. And, as to Ameren Transco, this pronouncement is limited to without significant adverse consequences to its customers. The inclusion of the utility in this statutory requirement has meaning and should be enforced.

AmerenIP's current credit rating troubles are not related in any way to the construction of the Project proposed in this docket. The potential for another downgrade relates solely to the potential for legislation mandating an electric rate freeze extension for up to three years. (Staff Ex. 6.0, p. 3, and Staff Ex. 6.1) A Section 8-

406(b)(3) analysis is focused solely on whether or not AmerenIP is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

Staff's analysis considered the rating downgrade that took place during the evidentiary phase of this docket. Staff concluded that the financial ratios, after adjusting for the downgrade, were such that AmerenIP could finance 100% of the Project with no significant adverse financial consequences. Although Ameren has devoted considerable effort in its discussion of the ramifications of a downgrade of AmerenIP's credit ratings, Ameren has neglected to provide any evidence connecting a possible downgrade to the financing of 100% of the Project. Staff provided an analysis which soundly rebuts any conclusion that financing the Project would result in significant adverse financial consequences to AmerenIP. (See Staff Ex. 6.0, pp. 4-5)

The PO's finding that there will be potential for an incremental contribution to a reduced credit rating is not consistent with the statutory standard. The test is whether there are *significant* adverse financial consequences. Obviously any construction project will have some incremental financial consequences. If the test were whether the construction would result in incremental financial consequences it is difficult to imagine how any Certificate could ever be approved.

Conversely, Dr. Rearden's argument was based upon the *incremental* increase in cost caused by the formation of an additional affiliate. Two types of costs were referenced: the additional cost of regulating another utility and the potential for increased costs to ratepayers caused by affiliate abuse. Dr. Rearden relied upon the results of Mr. Hardas' quantitative and qualitative analyses which demonstrated that

AmerenIP is capable of financing 100% of the Project with no significant adverse financial consequences. Dr. Rearden opined that in this situation, where the additional affiliate provided no benefit, then an incremental cost would outweigh the benefit. Thus Dr. Rearden opined that the affiliate should not be authorized.

Staff's did not take the position that the potential for adverse impacts on customers is more significant in this proposed arrangement than in other affiliated interest transactions. (See PO, p. 28) In recent years, Staff has become increasingly concerned about the use of affiliates as there have been repeated instances of affiliate abuse. Most notably in Peoples Gas Light and Coke ("PGL") Purchased Gas ("PGA") Reconciliation the Commission found that the record evidence established that PGL's affiliates artificially inflated costs borne by ratepayers in a manner that unfairly conferred profits PGL affiliates." (See Final Order, p. 19, March 28, 2006, Docket No. 01-0707) That docket and the companion North Shore PGA docket 01-0706 resulted in \$100 million in refunds to ratepayers. Docket No. 01-0707 is not the only recent instance of affiliate abuse, but it does illustrate why Staff has concerns now that were not present when affiliate arrangements currently in effect were approved by the Commission. Since there is no need for the affiliate, Staff pragmatically recommends that the potential for abuse should be avoided by disallowing the affiliate.

Staff has proposed revisions to the Staff Position section of the PO in an attempt to clarify Staff's position on these issues.

2. Commission's Conclusion

Staff suggests revisions to the Commission's Conclusion in the PO for two reasons. First, the Commission should grant the Certificate to AmerenIP and should

deny the Certificate to Ameren Transco. Second, in the event the Commission does not adopt Staff's position and grants the Certificate as requested to AmerenIP and Ameren Transco, certain of the findings in the PO are problematical and should be revised.

a. Adopting Staff's Position

Staff's arguments in support of its position are discussed briefly above. The arguments are set out at length in Staff's Initial and Reply Briefs; those arguments will not be repeated but are adopted as if fully set forth herein.

b. Concerns Regardless of Conclusion

Even in the event the Commission does not adopt Staff's position, there are flaws in the PO that should be corrected. First, the PO should make clear that Ameren IP and Ameren Transco have the burden of proof. Second, in order for the Commission to determine that AmerenIP is not capable of financing the Project, it must find that financing the Project would cause significant adverse financial consequences, rather than the potential for an incremental contribution to a reduced credit rating, for the utility and its customers. Third, if the Commission determines that granting a Certificate to Ameren Transco provides a benefit, i.e., for example because AmerenIP cannot finance the Project without significant adverse financial consequences, then Staff believes that it is more appropriate for the Commission to simply find that the incremental benefits from Ameren Transco's participation outweigh its potential costs.

B. Section 8-503 Relief

Staff has proposed changes to Section VII. D. of the PO to specifically define the "additions, extensions or improvements" (See 220 ILCS 5/8-509), i.e., the transmission

line routes, which are authorized in the order. As noted in Dynegy Midwest Energy's ("Dynegy") argument (PO, p.30) Section 8-509, which authorizes public utilities to use eminent domain, is tied to Section 8-503 authority. Section 8-509 states:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 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. (220 ILCS 5/8-509)

Because, one of the results of an order granting Section 8-503 authority is to make it possible for a public utility to take the order to circuit court and request an order granting eminent domain as needed for the authorized construction, the Commission should strictly define the authority for use of eminent domain that it is granting to a utility. To that end, Staff suggests that the final order should include a description of the transmission line route which is being authorized. Staff's proposed language changes are included in the attached Exceptions.

III. CONCLUSION

WHEREFORE, for the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations and exceptions be adopted in this proceeding.

April 25, 2007

Respectfully submitted,



JANIS E. VON QUALEN
Staff Attorney

Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: 217-785-3402
[mail to: jvonqual@icc.illinois.gov](mailto:jvonqual@icc.illinois.gov)

**Staff's Exceptions
To the Administrative Law Judge's Proposed Order**

VI. FINANCIAL AND AMEREN TRANSCO ISSUES

2. Staff's Position

Based upon its analysis, Staff believes that IP is capable of financing the Project in its entirety. Staff complains that although IP provided a conclusory opinion about the effect financing the Project would have on IP, it failed to provide any quantitative analysis in support of this position. (Staff Reply Brief at 10, Staff Brief at 11) Based upon the analysis it conducted, Staff concludes that AmerenIP is capable of funding 100% of the Project. Staff states that Ameren Transco also failed to meet its burden of proof to demonstrate that it is capable of financing the Project without significant adverse financial consequences for the utility, Ameren Transco. (Staff Brief at 14) Staff concluded ~~also believes~~ that Ameren Transco does not have a greater ability to finance the Project and says that Ameren Transco has no existing revenues or assets. (Staff Brief at 11)

Staff says there is no disagreement between Petitioners and Staff about how the financing would work, i.e., that Prairie State Generating Company, LLC will pay for the total cost of the Project up front and will be repaid with interest, beginning when the project goes into service. Staff adds that it and Petitioners concur that, in this docket, a downgrade of IP's credit ratings to sub-investment grade would be a significant adverse financial consequence. The Petitioners and Staff disagree, Staff says, about whether financing the Project would cause IP's credit ratings to be down-graded to sub-investment grade if IP financed 100% of the Project. (Staff Reply Brief at 6-7)

Staff examined the Project from both a purely quantitative perspective and a qualitative perspective. Staff says that the estimated cost of the proposed construction under the primary or the alternative route was small in comparison to IP's total utility plant and revenue for electric operations. Additionally, Staff calculated IP's forecasted performance on the funds from operations interest coverage ("FFOIC") and funds from operations to average total debt ("FFODebt") ratios for the 2006-2008 construction period under two scenarios: (1) no Project; and (2) IP financed 100% of the Project. This analysis was updated in Staff's rebuttal testimony. (Staff Brief at 12)

According to Staff, if it assumed 100% of the Project debt, IP's FFOIC and FFODebt ratios would decline by a small amount. Those small declines were, in Staff's view, insufficient to change IP's implied credit rating. Under both scenarios, Staff claims that IP's FFOIC ratio remained consistent with S&P's BBB credit rating and IP's FFODebt ratio remained consistent with S&P's BB credit rating. (Staff Brief at 12) From the qualitative perspective, Staff claims its analysis considered that Prairie State will pay for the Project costs up front.

Under the terms of the indebtedness to Prairie State, repayment will be in the form of credits and is deferred until the Project goes into service. Once the Project goes into service, Staff says the indebtedness to Prairie State will have a dedicated cash flow stream for repayment. In Staff's view, it is improbable that a credit rating agency would

not consider the risk-mitigating aspects of these repayment terms on a company's credit worthiness. (Staff Brief at 12- 13; Reply Brief at 8-9)

Staff argues that since IP would not incur any additional cash outflows during the construction of the proposed Project, that financing 100% of the proposed Project would not significantly affect IP's financial strength even if the Project were funded with conventional debt. Staff contends that IP is capable of financing 100% of the proposed construction without significant adverse financial consequences for the utility or its customers. (Staff Brief at 13)

Staff says it considered the then-recent downgrade in IP's credit rating and the possibility of a further downgrade in its analysis. ~~Staff believes, however, that the potential for another downgrade relates solely to the potential for legislation mandating an electric rate freeze extension for up to three years. Staff argues that a Section 8-406(b)(3) analysis is focused solely on whether or not IP is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. Staff states claims that it did considered~~ whether the recent rating downgrade and the adjusted financial ratios based upon the financing of the Project would cause significant adverse financial consequences. Having considered the adjusted financial ratios, Staff maintains that IP is capable of financing 100% of the Project without significant adverse financial consequences. (Staff Reply Brief at 10-11)

During construction, Staff says the Project will cause no cash flow impacts. The Project will be financed through advances. The Project, Staff states, will not require IP to devote a single dollar of its cash flow to repaying the Project debt principal and interest until the Project is in service generating its own cash flow. Once the Project is in service, Staff asserts, it will have a positive effect on IP's cash flow. According to Staff, from 2009 to 2015, IP forecasts average annual Project revenue of \$15.4 million, which exceeds the \$8.3 million annual repayment, through transmission credits, to Prairie State. (Staff Reply Brief at 11)

Staff states that a Section 8-406(b)(3) analysis is focused solely on whether or not IP is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers. Staff asserts that the record is clear that the potential for another downgrade relates solely to the potential for legislation mandating an electric rate freeze extension for up to three years. In Staff's view, IP's discussion of the ramifications of a downgrade is misplaced when there is no substantive evidence in the record that there will be a downgrade, ~~based upon due to the IP financing 100% of this Project.~~ According to Staff, IP focuses on its message of gloom and doom and the adverse affects from a potential downgrade but, Ameren has neglected to provide an analysis to support its theory that a downgrade is likely. Staff believes that IP has put the cart before the horse by ~~is prematurely~~ focusing on the affects of a downgrade when the record demonstrates that the financing of the Project will not result in a downgrade of IP's credit rating. (Staff Reply Brief at 11-12)

Staff also asserts that IP did not present an analysis of the effect of financing 90% of the proposed Project on Ameren Transco's financial condition. IP, Staff says, asserts that weak financial ratios at Ameren Transco would have no consequences on IP or its customers. In this proceeding, the Petitioners seek a Certificate pursuant to Section 8-406(b) of the Act authorizing Ameren Transco to begin construction of the Project.

Staff argues that the Petitioners have failed to make any showing as to whether or not Ameren Transco is capable of financing the proposed construction without significant adverse financial consequences for the utility, Ameren Transco. Thus, in Staff's view, Ameren Transco has failed to meet its burden of proof to demonstrate that it is capable of financing the Project without significant adverse financial consequences for the utility, Ameren Transco. (Staff Brief at 14; Reply Brief at 7) Staff contends that Ameren Transco does not have a greater ability than IP to meet the requirements in Section 8-406(b)(3) of the Act. Staff says Ameren Transco does not have existing assets or revenues, its current financial ratios are nonexistent, and would be much weaker than the financial ratios for IP. Staff believes that the same financial consequences for IP would apply to Ameren Transco. (Staff Brief at 14, Reply Brief at 12)

In response to IP's argument that Staff did not take the desirability of adding new generation facilities into account in any respect in developing its financial analysis, Staff contends that such a consideration ~~might~~is not be appropriate in a financial analysis and notes that IP offered no evidence to the contrary. Staff argues that the importance of completing the generating project to Illinois consumers would more appropriately be considered under Section 8-406(b)(1) of the Act. Staff says it provided testimony that the Project is necessary and that there is no alternative means of satisfying the needs of Prairie State. (Staff Reply Brief at 14-15)

In terms of **public policy concerns and social benefits**, Staff argues that neither IP nor its ratepayers will derive any benefit from assigning the Project to an affiliate. On the other hand, Staff foresees higher costs from assigning the Project to an affiliate. Staff claims that the net social benefit was lower when Ameren Transco rather than IP finances the Project. Staff expressed concern that an additional affiliate would: (1) increase the resources necessary for the ICC to monitor the affiliate's activities; and (2) increase the potential for affiliate abuse. (Staff Brief at 15)

According to Staff, an incremental increase in the number of utilities creates an incremental increase in the monitoring responsibility of the Commission. Staff argues that either the same number of Commission employees must monitor an additional utility, or increased resources must be devoted to the Commission. Staff claims that the failure to increase resources could dilute the quality of monitoring, leading to the possibility that Illinois ratepayers pay more for their regulated services.

IP, Staff says, argued that there is no direct relationship between a given regulatory structure and the Commission's costs. Staff claims that IP's impression about staffing is erroneous because Commission staffing has dropped substantially, from 353 in fiscal year 2003 to 270 currently. Staff adds that any argument about the cost to monitor Ameren Transco is purely speculative. Staff states that the additional reporting that the Petitioners have agreed to is an improvement, but it does not eliminate Staff's concerns. Staff maintains that the public interest is not served by increasing the Commission's workload when there are no benefits to ratepayers. When costs from granting the certificate to Ameren Transco are positive and its benefits non-existent, then Staff believes the public interest is best served by granting the certificate to IP alone. (Staff Brief at 15-18)

According to Staff, IP notes that Commission head counts have decreased, budget appropriations have increased, which Ameren speculates indicates increased efficiency and productivity. Staff contends that Commission budget appropriations do not address the social cost or benefit of creating a new, unnecessary utility. Similarly, Staff says that while welcomes tariff consolidation within the Ameren family as having several benefits, it should not be treated, in this docket, as creating 'headroom' for other changes which are unnecessary and have the opposite effect. (Staff Reply Brief at 14)

Staff also opined that there is a risk to ratepayers arising out of the potential for affiliate transactions that benefit shareholders at the expense of ratepayers. Staff argues that there are generally more affiliates than are socially optimal since holding companies do not take into account all the social costs. Based upon the myriad of subsidiaries many holding companies create, often for narrow purposes, Staff claims that there is a relatively low cost to a holding company in forming an affiliate. With such low costs for forming an affiliate, the benefits derived from the affiliate can also be small and the holding company can still justify the affiliate's existence, Staff claims.

Staff contends that social costs, like increased regulatory costs, need not be considered by the holding company when contemplating the formation of an affiliate. Staff states that it is within the province of the Commission when considering a request for a CPCN to consider whether social costs outweigh social benefits for the creation of a new, unnecessary affiliate. (Staff Brief at 18) Staff recommends that the Commission grant IP a CPCN, but deny the request for a CPCN to Ameren Transco.

B. Commission Analysis and Conclusions

In this proceeding, Petitioners request that the Commission grant a Certificate of Public Convenience and Necessity authorizing IP and Ameren Transco to construct, operate and maintain three new 345 kilovolt electric lines in Monroe, Randolph, St. Clair, and Washington Counties, Illinois. Before issuance of a Certificate, Section 8-406(b) of the Act requires a finding that the utility has demonstrated, "that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers."

Petitioners want the Certificate issued to both IP and Ameren Transco. Under that arrangement, 90% of the ownership of the project would be held by Transco and 10% by IP. Although Prairie State will advance the funds for the Project, to be repaid with interest, Petitioners assert that the advance will be treated as debt on the balance sheet of the entity receiving the advance. Thus, 90% ownership by Transco will keep 90% of the debt off IP's balance sheet, thereby avoiding possible adverse effects on IP's credit ratings.

IP claims it is not capable of financing 100% of the proposed project without risking significant adverse financial consequences for IP or its customers. Petitioners assert that IP is capable of financing 10% of the cost of the proposed project and that Ameren Transco is capable of financing 90% of the proposed project, in each instance without significant adverse financial consequences for either utility or its customers. IP, however, provided no quantitative analysis for its position.

Staff provided both a quantitative and a qualitative analysis of IP's ability to finance the Project. Through these analyses, argues, essentially, the opposite. Staff claims demonstrates that IP is capable of financing 100% of the proposed project without significant financial consequences for the utility or its customers. Staff included the then-recent downgrade in IP's credit rating and the possibility of a further downgrade in its analysis. Staff's analysis demonstrates that even with the adjusted financial ratios, IP is capable of financing 100% of the Project without significant adverse financial consequences. During construction, the Project will cause no cash flow impacts, and once the Project is in service it will have a positive effect on IP's cash flow. ,but that Ameren Transco is not capable of financing 90% of the proposed project without significant adverse financial consequences for itself or its customers.

Staff ~~also~~ opposes the proposal to certificate both IP and Transco in this proceeding because it will create opportunities for IP and Ameren Transco to abuse their affiliate relationship to the detriment of IP's customers, and will create unwarranted additional work for the Commission and its Staff. These issues are discussed later in this section of the order.

With respect to Petitioners' claim that Ameren Transco is capable of financing 90% of the proposed project without significant adverse impact on Ameren Transco or its customers within the meaning of Section 8-406(b) of the Act, Petitioners assert that Transco has no conventional debt, no credit rating and no customers. Staff points to Ameren Transco's failure to provide any analysis to support its ability to finance 90% of the Project. Staff asserts that Ameren Transco does not have a greater ability than IP to meet the requirements in Section 8-406(b)(3) of the Act. ~~In support of its opposing position,~~ Staff claims that any adverse impact faced by IP from financing the project would be just as bad for Ameren Transco because Ameren Transco is less financially strong than is IP.

As the Commission understands it, the potential adverse impact for IP from financing 100% of the proposed project is an incremental contribution to a reduced credit rating. It appears to the Commission possible; however, that in the absence of conventional debt, credit ratings and retail customers, Ameren Transco does not face the same potential adverse impact as IP. However, Petitioners failed to support their position with any quantitative analysis. The Commission is unable to find that they have satisfied their burden of proof to demonstrate that Ameren Transco has the ability to finance 90% of the proposed transaction without a significant adverse impact on it or its customers. ~~Further, even assuming Transco 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.~~

~~In any event, given the structure proposed for financing this project and the facts presented with regard to Ameren Transco's existing financial situation, the Commission finds that Ameren Transco has the ability to finance 90% of the proposed transaction without a significant adverse impact on it or its customers.~~

Although financing 100% of the Project will cause AmerenIP's financial ratios to decline by a small amount, those small declines would be insufficient to change IP's credit rating. The Petitioners and Staff have agreed that in this case a significant adverse financial consequence would be a down grade in IP's credit rating below investment grade. The Commission concurs with Staff that the analysis of a significant adverse financial consequence under Section 8-406(b) is confined to such a consequence caused by financing the construction in question. Evidence of a possible downgrade wholly unrelated to the proposed Project does not affect this analysis. The Commission agrees with Staff that the potential for another downgrade of IP relates solely to the potential for legislation mandating an electric rate freeze extension.

~~With respect to whether IP should be required to finance 100% of the Project, the arguments of the IP and Staff are summarized above and will not be repeated here. In the Commission's view, what Petitioners have proposed here is essentially a financing tool to decrease the amount of debt on IP's balance sheet. Staff, however, believes that given the relatively small size of the Project and other factors, IP will be able to finance~~

100% of the Project without significant financial consequences for the utility or its customers.

~~Each side has offered some valid arguments with respect to whether IP could or should finance 100% of construction, and the extent to which doing so could contribute to a credit rating downgrade. Their bottom-line recommendations are well articulated but are somewhat polar in nature, and the record does not definitively support either one. What the record does support, on this issue, are two observations that are relevant to resolving the issue at hand.~~

~~First, the record is clear that the effects of a credit downgrade below investment grade are would be potentially serious in magnitude. However, Staff is correct that there is no evidence in the record to support a finding that the financing of the Project will result in a credit downgrade below investment grade. Second, no party has argued that including the debt on IP's balance sheet will improve its financial condition. At best, there would be no impact; however, if treated as conventional debt, it will weaken IP's financial ratios to some degree, thereby contributing to a weakening of IP's financial condition. In the Commission's view, given IP's financial condition and other circumstances of record, forcing IP to take that risk does not appear to be warranted assuming an alternative is available that avoids it and is otherwise reasonable. Before reaching a final conclusion on this question, the Commission will address two other objections relating to the proposal to certificate both IP and Transco.~~

~~As noted above, Staff also opposes the proposal to certificate both IP and Transco in this proceeding because it will create opportunities for IP and Ameren Transco to abuse their affiliate relationship to the detriment of IP's customers, and will create unwarranted additional work for the Commission and Staff.~~

~~With regard to the issue of affiliate transactions, the Commission is sensitive to agrees that there is the possibility of adverse impacts on utility customers, and believes the types of concerns raised by Staff are worthy of close review. In this instance, however, upon consideration of the nature of the transaction and the terms of the Joint Operating Agreement, discussed in a later section of the Order, it does not appear that the potential for such adverse impacts on customers is more significant than in other affiliated interest transactions subject to subject to Commission oversight.~~

~~Additionally, unlike most affiliated transactions, here Although both entities would be public utilities under the jurisdiction of the Commission. Thus, issuance of a Certificate to Transco will actually give the Commission more oversight authority over Transco than is present when the affiliated interest arrangement involves an unregulated affiliate.~~

~~Staff also contends that creating a new utility will create the potential for affiliate abuse as well as unwarranted additional work for the Commission and Staff. It appears to the Commission that this impact, while a legitimate concern, is somewhat difficult to measure, and the weight to which it is entitled is not easy to assess. In this instance,~~

~~†The Commission finds that the IP is capable of financing the Project with no significant adverse financial consequences; there is no need for and thus no benefit from the creation of Ameren Transco. record does not support a finding that any such increase is likely to be significant.~~

~~In conclusion, based on the record in this case and the findings in this and other sections of the order, the Commission believes that the issuance of a certificate should be issued only to both IP and Transco, with 90% of construction costs to be funded by Transco, represents, on balance, a reasonable proposal. Accordingly, the Commission concludes that a Certificate of Public Convenience and Necessity should be issued to both IP and Transco.~~

VII. OTHER ISSUES AND PROPOSALS

D. Relief pursuant to Section 8-503

Among other things, Petitioners requests that the Commission “authorize construction of the Project pursuant to Section 8-503 of the Act.” Petitioners state that such relief will allow them to seek eminent domain, in the courts, if necessary. 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 . . . 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

~~The Commission Staff had no objection to Petitioners' request. (Staff Ex-1.0 at 29-31)~~

As discussed in subsection VII.A above, Dynegy requested that certain conditions be imposed on IP relative to work at Dynegy's Baldwin substation. In the event those conditions were not on imposed on IP, Dynegy took issue with the granting Section 8-503 relief with regard to work at the Baldwin substation. Given the imposition of conditions found appropriate above, it is believed Dynegy's concerns regarding Section 8-503 would not be applicable.

Based on the record evidence, the Commission concludes, pursuant to Section 8-503 of the Act, that the Project (as defined in the Amended Petition page 2, ¶ 4) is necessary and should be erected. Thus the Commission finds that the issuance of an order, which will in effect authorize Petitioners to enter upon, take, or damage private property, in the manner provided for by the law of eminent domain, along the proposed electric transmission line routes, as shown in Ameren Ex. 18.0 and Ameren Ex. 18.0A and as incorporated into Attachment A hereto, is necessary for the construction and operation of the Project. These findings pertain to the transmission line routes identified herein, as set forth in Attachment A hereto, and to no other tracts unless approval for such is subsequently granted by the Commission. Such authority applies only to

property interests for which Ameren has been unable to reach agreement with a landowner and for which Ameren has made an offer to acquire the necessary easements, etc. as necessary for the construction and operation of the Project.

Subject to the conditions imposed and other findings made in this order, the Commission concludes that the necessary showings under Section 8-503 of the Act have been made and that Petitioners should be and are hereby authorized and directed to construct the Project pursuant to Section 8-503.

VIII. 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 AmerenIP and Ameren Transco 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) the proposed construction, as and to the extent found appropriate above, and subject to the conditions found reasonable herein, will promote the public convenience and necessity; the record demonstrates that: (1) the proposed construction as found appropriate above is necessary to provide adequate, reliable, and efficient service to ~~Petitioners~~IP' customers and is the least-cost means of satisfying the service needs of the customers; (2) ~~Petitioners are~~ IP is capable of efficiently managing and supervising the construction process and ~~has~~ has ~~ve~~ taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) ~~Petitioners are~~ IP is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;

(4) ~~Petitioners~~ IP should be granted a certificate of public convenience and necessity authorizing the construction, operating and maintenance of the three 345 kV transmission lines in Monroe, Randolph, St. Clair and Washington counties over the routes found appropriate above; accordingly,

(5) the request for authority for Ameren Illinois Transmission Company is to be authorized to act as deemed to be a public utility and for approval of the Joint Operating Agreement is denied and shall comply with all applicable requirements relating thereto;

(5) ~~Petitioners~~ IP should be authorized and directed to construct the Project along the proposed electric transmission line routes, as shown in Ameren Ex. 18.0 and Ameren Ex. 18.0A and as incorporated into Attachment A hereto pursuant to Section 8-503 of the Act.

IT IS THEREFORE ORDERED that a Certificate of Public Convenience and Necessity shall be issued to Illinois Power Company d/b/a AmerenIP ~~and Ameren Illinois Transmission Company~~ pursuant to Section 8-406 of the 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 Illinois Power Company d/b/a AmerenIP and ~~Ameren Illinois Transmission Company~~ of three 345 kV electric transmission lines over the routes found appropriate above, and (2) the transaction of an electric public utility business in connection therewith, all as herein before set forth.

IT IS FURTHER ORDERED that ~~Petitioners are~~ IP is authorized and directed to construct the Project along the proposed electric transmission line routes, as shown in Ameren Ex. 18.0 and Ameren Ex. 18.0A and as incorporated into Attachment A hereto pursuant to Section 8-503 of the Act.

~~IT IS FURTHER ORDERED that the terms of the Joint Operating Agreement between AmerenIP and Ameren Transco are reasonable and Petitioners are authorized to enter into said Agreement, subject to the conditions recommended by the Commission Staff as described above.~~

IT IS FURTHER ORDERED that ~~Petitioners~~ IP shall comply with all reporting requirements, conditions and other determinations set forth in this order, and the authorizations granted in this order are conditioned thereon.

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.