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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 Construct,
Operate and Maintain an Electric
Transmission Line and Authorizing
and Directing Rock Island Clean Line
Pursuant to Section 8-503 of the
Public Utilities Act to Construct
an Electric Transmission Line, Docket No. 12-0560

Springfield, Illinois
December 13, 2013

Met, pursuant to notice at 9:30 A.M.

BEFORE:

Larry Jones, Administrative Law Judge

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EXHIBITS

ADMITTED

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P R O C E E D I N G S

JUDGE JONES: On the record. Good morning, I call hearing Docket Number 12-0560. This is entitled in part Rock Island Clean Line LLC, Petition for an Order granting Rock Island Clean Line LLC a Certificate of Public Convenience and Necessity, and for other relief.

At this time we will once again take the respective appearances orally for the record. Again, if you have already appeared in one of these hearings, then you need not restate your contact information unless it has somehow changed, or you simply prefer to do that. We will start with the appearance or appearances on behalf of Rock Island Clean Line LLC. Mr. MacBride?

MR. MacBRIDE: Appearing on behalf of Rock Island Clean Line LLC, Owen MacBride and Laura Chipkin, addresses previously given.

JUDGE JONES: Thank you. Other parties?

MR. OLIVERO: Appearing on behalf of the staff witnesses of the Illinois Commerce Commission, Christine Ericson, Jessica Cardoni, Matthew Harvey and James Olivero. Thank you.

JUDGE JONES: Thank you.

1 MR. BERNET: Appearing on behalf of
2 Commonwealth Edison Company Richard Bernet, and my
3 contact information is already in the record.

4 MR. RIPPIE: And also appearing on
5 behalf of Commonwealth Edison Company Glenn Rippie
6 and Kenyatta Beverly, our addresses are in the
7 record.

8 JUDGE JONES: Mr. Shay?

9 MR. SHAY: For the Illinois Landowners
10 Alliance NFP, William Shay and Jonathan Phillips,
11 our information is in the record.

12 JUDGE JONES: Mr. Davis?

13 MR. DAVIS: Chuck Davis and Laura Harmon
14 for the Illinois Farm Bureau, and our contact
15 information is in the record.

16 JUDGE JONES: Thank you. Are there
17 other appearances from those who are physically
18 here?

19 (No response.)

20 JUDGE JONES: All right, let the record
21 show there are not. Turning to the Chicago office,
22 are there some appearances to be entered from there
23 this morning?

24 MR. STALKER: Good morning, Your Honor,

1 Clark Stalker on behalf of Commonwealth Edison.

2 MR. FOSCO: And Your Honor, also Carmen
3 Fosco with Rooney, Rippie, Ratnaswamy, on behalf
4 Commonwealth Edison.

5 JUDGE JONES: Thank you. Are there any
6 other appearances?

7 (No response.)

8 JUDGE JONES: Let the record show there
9 are not, at least for right now.

10 Are there any preliminary matters the
11 parties believe should be taken up at this time
12 before proceeding with the cross examination of the
13 witnesses?

14 (No response.)

15 JUDGE JONES: Let the record show there
16 are not. Very briefly, with regard to the
17 appearances that were entered in the course of this
18 proceeding, I'm not going to -- I just need to
19 mention one, one other thing right now, and I'm not,
20 do not intend to spend any real time on that before
21 we cross examine witnesses, but Supreme Court Rule
22 707, out-of-state attorneys in proceedings in
23 Illinois, I think there have been some filings in
24 this case that were, that pertain to that. I do not

1 know if also situations have been covered by any
2 filings here or elsewhere, at some point in the
3 process, be that a hearing or some other, some other
4 matter, we will need to speak to that, however,
5 however briefly.

6 All right. It appears that the first
7 witness to be cross examined this morning is a
8 witness being called by Commonwealth Edison Company,
9 is that correct?

10 MR. RIPPIE: Yes, Your Honor, Ms. Ellen
11 Lapson, and she is in the hearing room.

12 JUDGE JONES: Please raise your right
13 hand.

14 ELLEN LAPSON,
15 of lawful age, having been first duly sworn to
16 testify the truth, the whole truth, and nothing but
17 the truth in the case aforesaid, deposes and says in
18 reply to oral interrogatories propounded as follows,
19 to-wit:

20 JUDGE JONES: Please be seated.

21 EXAMINATION

22 QUESTIONS BY MR. RIPPIE

23 Q. Good morning, Ms. Lapson. Could you
24 please state and spell your full name for the

1 record?

2 A. Yes, it is Ellen, E-L-L-E-N, Lapson,
3 L-A-P-S-O-N.

4 Q. And Ms. Lapson, do you have before you a
5 document that has been designated Commonwealth
6 Edison Exhibit 2.0?

7 A. Yes, I do.

8 Q. And does that document consist of a
9 total of 18 pages, including Cover Page and Table of
10 Contents?

11 A. Yes, it does.

12 Q. And is it, was that document prepared by
13 you or under your direction and control?

14 A. Yes, by me.

15 Q. And is it your intention that that
16 document stand as your Direct Testimony for
17 submission to the Illinois Commerce Commission in
18 this case?

19 A. Yes, it is.

20 Q. Were there also attachments that are
21 referenced and filed with that -- referenced in and
22 filed with that testimony?

23 A. Yes, there are.

24 Q. Are attachments 2.01, 2.02, 2.03, 2.04

1 and so on up through 2.07, are those the attachments
2 referenced in Com-Ed Exhibit 2.0?

3 A. Yes.

4 Q. Let me try that again. There's a, and
5 there's a correction to 2.01, is there not?

6 A. That is correct.

7 Q. Okay. Is it also correct that Exhibit
8 2.0 was submitted, and 2.02 were submitted in both
9 confidential and public forums?

10 A. I'm sorry, 2.0 --

11 Q. 2 and 2.0?

12 A. Yes, correct.

13 Q. Ms. Lapson, if I were to ask you the
14 same questions as appear in Commonwealth Edison
15 Exhibit 2.0 today, would your answers also be the
16 same?

17 A. Yes, they would.

18 Q. Do you have in front of you a document
19 that's been designated Commonwealth Edison Exhibit
20 5.0 consisting, coincidentally, of 18 pages of
21 testimony including Title Page and Table of
22 Contents?

23 A. Yes, I do.

24 Q. Is it your intention that that document

1 stand as your Rebuttal Testimony for the
2 Commission -- to the Commission in this docket?

3 A. Yes.

4 Q. And was it prepared by you or under your
5 direction and control?

6 A. Yes, by me.

7 Q. And does that document reference a
8 single attachment, Attachment 5.01?

9 A. Yes, that is correct.

10 Q. And is that document also in front of
11 you?

12 A. Yes.

13 Q. If I were to ask you the same questions
14 as appear on Commonwealth Edison Exhibit 5.0, would
15 you give me the same answers today?

16 A. Yes, I would.

17 Q. Do you have any additions or corrections
18 to make to any of the documents that we've
19 identified today?

20 A. No, sir.

21 Q. Thank you very much, Ms. Lapson.

22 MR. RIPPIE: Your Honor, I would offer
23 into evidence Commonwealth Edison Exhibit 2.0
24 submitted in both public and confidential forms on

1 eDocket on the 25th of June, 2013, along with
2 Exhibit 2.02 submitted in both confidential and
3 public forms, and 2.03 through 2.07, all submitted
4 on eDocket on that same date, and 2.01 Corrected
5 submitted on eDocket on October the 21st, 2013, and
6 Commonwealth Edison Exhibits 5.0 and 5.01 submitted
7 on eDocket on October the 15th, 2013.

8 JUDGE JONES: Thank you. Any -- are
9 there any responses to that motion?

10 (No response.)

11 Let the record show there are not.
12 Those evidentiary items just offered into the
13 evidentiary record are hereby admitted into the
14 evidentiary record. They include the two
15 Commonwealth Edison Exhibits 2.0 Public, 2.0
16 Confidential, 2.01 Corrected, 2.02 Public, 2.02
17 Confidential, 2.03, 2.04, 2.05, 2.06, and 2.07, 5.0
18 and 5.01. They are admitted as filed on eDocket on
19 the dates that were identified in the motion.

20 (Com-Ed Exhibits 2.0, 2.02, 2.03
21 through 2.07, 2.01 Corrected, 5.0
22 and 5.01 were admitted into evidence
23 at this time.)

24 MR. RIPPIE: That's all the questions,

1 Your Honor, that I have for Ms. Lapson, and she's
2 available for cross examine.

3 JUDGE JONES: All right, it appears that
4 there are two parties whose counsel will be asking
5 some questions of Ms. Lapson this morning. Who
6 would like to begin?

7 MR. MacBRIDE: I'll go.

8 JUDGE JONES: Mr. MacBride.

9 MR. MacBRIDE: Yes, thank you.

10 EXAMINATION

11 QUESTIONS BY MR. MacBRIDE

12 Q. Good morning, Ms. Lapson.

13 A. Good morning.

14 Q. I'm Owen MacBride, I'm representing Rock
15 Island Clean Line in this proceeding, and forgive me
16 for peering at you over my reading glasses.

17 A. I understand.

18 Q. You are currently the principal of a
19 consulting firm called Lapson Advisory, correct?

20 A. That is correct.

21 Q. And you formed Lapson Advisory in
22 December, 2001, correct?

23 A. 2011.

24 Q. 2011, I'm sorry.

1 A. Two years, this is approximately the
2 two-year anniversary.

3 Q. Thank you. Does Lapson Advisory have
4 any other employees or principals?

5 A. No.

6 Q. So I take it you formed Lapson Advisory
7 after retiring from Fitch Ratings, is that correct?

8 A. Correct.

9 Q. Do you consider project financing to be
10 unusual in the energy industry?

11 A. No, I do not.

12 Q. And in fact, during your tenure at
13 Fitch, you reviewed and participated in assigning
14 credit ratings to many project financings in the
15 energy segment, is that correct?

16 A. That is correct.

17 Q. Do you have with you Com-Ed Responses To
18 Rock Island's Data Request that you helped prepare
19 in preparation for your Direct Testimony?

20 A. No, I don't think I have all of those
21 data responses with me.

22 Q. Well, do you have --

23 A. I have them on a, in a computer, but I
24 don't have them in front of me.

1 Q. All right. Well, let me ask, do you
2 have 2.1B?

3 A. I do not.

4 Q. All right. Well, let me try and ask
5 this based on your recollection. Is it correct that
6 during your tenure at Fitch from 2003 to 2012, you
7 participated on ratings committees that assigned or
8 updated ratings for an estimated 120 to 200 project
9 financings relative to energy and power?

10 A. Yes, that's -- that's correct.

11 Q. And these project finances -- financings
12 included power generation projects using various
13 fuel sources, correct?

14 A. Yes.

15 Q. They included projects for synthetic gas
16 production for coal, correct?

17 A. A few, yes.

18 Q. Okay. They also include projects,
19 project financing for landfill gas production.

20 A. Perhaps one or two.

21 Q. Okay. And projects for biodiesel fuel
22 production?

23 A. Yes, maybe one or two.

24 Q. All right. And natural gas pipelines?

1 A. Correct.

2 Q. Uranium processing facilities?

3 A. Yes, three.

4 Q. And electric transmission lines?

5 A. I'm not -- are you talking about project
6 finance ratings?

7 Q. Well, I'm referring to what was in
8 your --

9 A. Because those were not, those are
10 ratings, might have been corporate ratings. The
11 ones for electric transmission lines were in the
12 area of corporate ratings.

13 Q. You participated in --

14 A. I take that back, I also, I did also
15 participate in electric transmission project
16 ratings.

17 Q. All right, thank you.

18 A. Thank you. I do recall that.

19 Q. During your tenure at Fitch, did you
20 participate on the Ratings Committee for every
21 energy or power project financing for which Fitch
22 assigned a rating?

23 A. No, I did not.

24 Q. All right. So would it be correct to

1 say that Fitch assigned ratings to additional energy
2 project financings in which you did not participate?

3 A. Correct.

4 Q. In your experience at Fitch, would it be
5 typical for an energy industry projects that were to
6 be funded through project financing to obtain a
7 rating from all three major rating agencies?

8 A. No, not necessarily. Some of them did,
9 but not all.

10 Q. So therefore, there, during your time at
11 Fitch, there may have been additional energy
12 industry project financing that Fitch did not rate.

13 A. Correct.

14 Q. Ms. Lapson, do you have the response to
15 Rock Island Data Request 2.03 in your materials?

16 A. Excuse me while I look for that.

17 I do not believe I do.

18 Q. All right. Let me -- may I approach the
19 witness?

20 JUDGE JONES: Yes, sir.

21 (Mr. MacBride presents document to the witness.)

22 MR. MacBRIDE: I'm not actually going to
23 mark this, I'm just giving it to the witness to help
24 speed along the answers here. Or the questioning.

1 Q (By Mr. MacBride) Ms. Lapson, you have
2 before you Com-Ed's response to Rock Island Data
3 Request 2.03, is that correct?

4 THE WITNESS: Yes, I do.

5 Q. And did you prepare or assist in
6 preparing this response?

7 A. Yes, I did.

8 Q. And the question in this Data Request
9 was: Does Ms. Lapson agree that it is necessary for
10 an electric transmission project that is to be
11 financed through a project finance approach such as
12 the Rock Island project to obtain a Certificate of
13 Public Convenience and Necessity or similar state
14 regulatory certification or authorization before
15 lenders and investors will make binding commitments
16 to provide financing for construction of the
17 project.

18 That was the question, correct?

19 A. Correct.

20 Q. All right. All right. And I note there
21 was an objection to the response, and then it says,
22 subject to the objection, Com-Ed responds as
23 follows, and it states that: No projects may
24 receive conditional commitments that are conditioned

1 upon receipt of specific licenses, certificates,
2 environmental approvals, or tax rulings; is that
3 correct?

4 A. That is correct.

5 Q. And what's the difference between a
6 binding financial commitment, which was the term
7 used in the question, and a conditional financing
8 commitment, which is the term used in the answer?

9 A. I guess in a binding commitment, there
10 is no further condition to be met, whereas in a
11 conditional commitment, an additional -- the
12 performance of that additional condition is a
13 prerequisite to closing.

14 Q. To providing --

15 A. To providing the closing on the
16 transaction.

17 Q. Okay. Do you agree that for a project
18 to receive binding financial commitments from
19 investors prior to receiving all required regulatory
20 approvals is contrary to practice in the financial
21 marketplace?

22 A. That is the case, although with the case
23 of owners, sponsors and owners, binding commitments
24 may be provided by sponsors and owners, and

1 frequently are, and may indeed have been, so in many
2 of the project financings that I rated in my career.

3 Q. So you're referring to a binding
4 financial commitment from the owner or sponsor of
5 the project.

6 A. Right, a capital call or some other form
7 of commitment to provide funding.

8 Q. Okay. And opposed to from third-party
9 lenders.

10 A. Yes.

11 Q. So is it your experience that any
12 financing commitments from investors for a project
13 prior to receiving all regulatory approvals would be
14 a conditional commitment rather than a binding
15 commitment?

16 A. That has been my experience, although
17 there may be some exceptions.

18 Q. And that that -- so the commitment in
19 that case would be contingent upon receipt of the
20 required approvals in a form satisfactory to the
21 investor.

22 A. Correct.

23 Q. And would that apply to both investments
24 by equity investors and to debt financing provided

1 by lenders?

2 A. Yes, as far as I know. Although in the
3 case of a sponsor or owner or interested party, the
4 equity commitments in that case may not be
5 contingent.

6 Q. Would you agree that a Certificate of
7 Public Convenience and Necessity or similar order
8 issued by the applicable state regulatory commission
9 is one of the principal regulatory approvals that a
10 utility project requires?

11 A. It's one of many, I would not say it's
12 the principal. I'm not sure, how did you state
13 that? Would you repeat that question?

14 Q. Would you agree that a Certificate from
15 the state, applicable state commission is one of the
16 principal regulatory approvals that a utility
17 project requires?

18 A. One of the regulatory approvals.

19 Q. Okay.

20 A. In the case of many of these projects,
21 there are so many regulatory approvals, it's hard to
22 say which are the principal ones.

23 Q. Okay, fair enough. And would you agree
24 that a Certificate of Public Convenience and

1 Necessity from the Illinois Commerce Commission is
2 one of the principal regulatory approvals that the
3 Rock Island project will need?

4 A. I don't know. I'm not a lawyer, I don't
5 know.

6 Q. Okay. You understand that Rock Island
7 does need a Certificate from the Illinois Commerce
8 Commission, correct?

9 A. If you, would you advise -- I'm not sure
10 how I should answer to that one.

11 Q. Okay. So you don't know.

12 A. We -- typically, as a financier, I would
13 utilize the advice of counsel to know whether or not
14 something was required. I did not make that
15 determination myself.

16 Q. Is it your understanding that a utility
17 transmission project that is to be financed through
18 project financing would need to have an approved
19 route for the project in order to get binding
20 financial commitments from investors and lenders for
21 the construction costs of the project?

22 A. I'm sorry, could you repeat that?

23 Q. Yes. Is it your understanding that a
24 utility transmission project that is to be financed

1 through a project financing approach would need to
2 have an approved route for the project in order to
3 get binding financial commitments from investors and
4 lenders for the construction costs of the project?

5 A. From third party investors and lenders
6 that may be the case, although I do know of
7 transmission projects that did not have the entire
8 route in detail determined prior to their financing.

9 Q. In that case is it your experience that,
10 for a project to be financed through project
11 financing, that debt and equity investors would
12 typically limit their investment commitments to
13 amounts that can be recovered based on the portion
14 of the project that has the necessary approvals and
15 certificates?

16 A. I believe that that was part of my
17 response.

18 Q. So your answer is yes.

19 A. Yes.

20 Q. Would it be your experience that the
21 developer of a merchant energy project would need to
22 have a detailed, definitive cost estimate for the
23 project in order to get binding financial
24 commitments from investors and lenders for the

1 construction costs of the project?

2 A. That would generally be the case.

3 Q. Is it your experience that typically
4 before investors make binding commitments to provide
5 construction financing for an energy or
6 infrastructure project, the investors will have the
7 project cost estimate reviewed by the investors' own
8 experts to verify that the project budget has
9 sufficient provision for contingencies?

10 A. Yes, that is true.

11 Q. Is it your experience that typically
12 before binding commitments to provide construction
13 financing -- let me start that over, I'm sorry.

14 Is it your experience that typically
15 before making binding commitments to provide
16 construction financing for an energy or
17 infrastructure project, the investors will verify
18 that the project sponsor has sufficient financing
19 commitments to cover the entire budgeted project
20 cost?

21 A. Yes, that is very often the case.

22 Q. In your experience, is the developer of
23 a utility transmission project very unlikely to have
24 acquired all necessary right-of-way for the project

1 prior to having a specific route approved by the
2 project -- for the project by the applicable
3 regulatory commission?

4 A. I'm sorry, I wasn't able to follow that.
5 There seemed to be a lot of negatives; double
6 negatives, perhaps.

7 Q. All right. Let me ask the question
8 again. Do you agree that the developer of a utility
9 transmission project is unlikely to have required
10 all necessary right-of-way for the project before it
11 has gotten a specific route for the project approved
12 by the applicable regulatory commission?

13 A. It is unlikely -- the question is
14 unlikely to have all of the route --

15 Q. Required right-of-way.

16 A. Acquired right-of-way prior to having
17 the route, the route approved?

18 Q. By the Commission. By the regulatory
19 authority.

20 A. I'm sorry, I don't know the answer to
21 that.

22 Q. Ms. Lapson, you have with you a copy of
23 Com-Ed Response to Rock Island Data Request 2.02?

24 JUDGE JONES: I'm sorry, what was that

1 number again?

2 MR. MacBRIDE: 2.02.

3 JUDGE JONES: Thank you.

4 THE WITNESS: It's not in front of me,
5 it's on my computer.

6 Q (By Mr. MacBride) Okay.

7 A. I am familiar, I recall it. But not,
8 although not in detail.

9 Q. Well, it's sort of complicated.

10 A. Yes.

11 Q. May I approach the witness?

12 JUDGE JONES: Yes, sir.

13 Q (By Mr. MacBride) To provide a copy of
14 this response?

15 (Mr. MacBride presents document to the witness.)

16 Q. Ms. Lapson, you have in front of you
17 what appears to be Com-Ed Response to Rock Island
18 Data Request 2.02?

19 A. Yes.

20 Q. Did you prepare or assist in preparing
21 this response?

22 A. I prepared it.

23 Q. All right. And I want to direct your
24 attention to the table that's on the second page of

1 the document.

2 A. Actually, I assisted in preparing it,
3 there's some text that I assisted in preparing, and
4 I prepared the table.

5 Q. All right. My question pertains to the
6 table. And this is a, a list of, the table is a
7 list of project documents and information that is
8 typically available before construction financing is
9 concluded for a project financing, is that correct?

10 A. That is correct.

11 Q. All right. If I direct your attention
12 to Item 6: Relevant Real Estate Permits and
13 Rights-of-Way; do you see that?

14 A. Yes, I do.

15 Q. And you have a column: Availability or
16 Form of Availability Prior To Selection of Route and
17 Issuance of CPCN?

18 A. Correct.

19 Q. All right. And what is CPCN?

20 A. Certificate of Public Convenience and
21 Necessity.

22 Q. All right. So under that availability
23 column for Item 6, Relevant Real Estate Permits and
24 Rights-of-Way, it says in the last sentence there:

1 All permits and ROW's are not likely to be acquired
2 prior to route approval and certification; is that
3 correct?

4 A. Yes.

5 Q. And what is ROW?

6 A. Rights-of-Way.

7 Q. All right. And what is certification
8 referring to?

9 A. Generally certification in whatever form
10 is required in the jurisdiction.

11 Q. Okay, thank you. And if we can stick
12 with this table for a minute, another item you have
13 on the list in this table is Item 1, Contracts With
14 Shippers or Capacity Agreements; correct?

15 A. Correct.

16 Q. All right. And again under the column
17 Availability or a Form of Availability Prior To
18 Selection of Route and Issuance of CPCN, for that
19 item: Contracts With Shippers or Capacity
20 Agreements, your entry is: Preliminary outlines of
21 model contracts, list of shippers who have indicated
22 interest or are prospects, or with which
23 negotiations are under way; correct?

24 A. Correct.

1 MR. RIPPPIE: Actually, Mr. MacBride, I
2 think it's preliminary outlines of terms of model
3 contracts.

4 MR. MacBRIDE: If I said otherwise, I
5 stand corrected.

6 MR. RIPPPIE: You just skipped two words.

7 MR. MacBRIDE: You told me that earlier.

8 Q (By Mr. MacBride) All right, Ms. Lapson,
9 the items on the table in the Response to Data
10 Request 2.02 were taken from a list on Page 9 of
11 your Direct Testimony, correct?

12 THE WITNESS: I'm sorry, excuse me while
13 I find that.

14 Q. That's fine.

15 A. Yes, that's correct.

16 Q. All right. And on Lines 183 to 184 on
17 Page 8 of your Direct Testimony, you describe this
18 list of, it's on Page 9, as: A condensed list of
19 the information and documents that prospective debt
20 investors typically require prior to committing to
21 provide financing; is that correct?

22 A. Correct.

23 Q. And, you know, are there any of the
24 items in your list that Rock Island witness Mr.

1 Berry has disagreed with?

2 A. Not to my knowledge.

3 Q. Ms. Lapson, are you aware of any
4 proposed electric industry projects, either
5 generation or transmission, in the United States
6 since January 1, 2003, that were successfully
7 project financed to raise the capital for
8 construction of the project, but failed to reach
9 project completion and commercial operation?

10 A. What were the dates involved here?

11 Q. Since January 1, 2003.

12 A. I, I do not recall. There may indeed
13 have been, but I just have no recollection.

14 Q. All right. So as you sit here today,
15 you're not aware of any such projects.

16 A. Either that there were or there were
17 not.

18 Q. Okay. Could you refer to your Direct
19 Testimony at Lines 326 to 330, please?

20 A. (Witness complies.)

21 Q. And at that portion of your testimony
22 you state that: In supplemental testimony that he
23 filed after his Direct Testimony was submitted, Rock
24 Island witness Mr. Berry confirmed that the project

1 will not be constructed until and unless future
2 contingencies are met; correct?

3 A. Correct.

4 Q. And you cite two lines, 96 to 111 of
5 Rock Island Exhibit 10.13, correct?

6 A. Correct.

7 Q. And Rock Island Exhibit 10.13 is Mr.
8 Berry's Additional Supplemental Direct Testimony in
9 this case, correct? Do you have a copy of it with
10 you?

11 A. Additional -- 10.13 --

12 Q. Yeah.

13 A. -- is Additional Supplemental, correct.

14 Q. And can you look at Lines 96 to 111 of
15 Mr. Berry's Exhibit 10.13?

16 A. (Witness complies.)

17 Q. In the part of his testimony that you
18 cite, Mr. Berry is discussing a condition that the
19 Commission Staff had proposed in Rock Island's,
20 Certificate of Public Convenience and Necessity in
21 this case, correct?

22 A. That seems to be what it describes.

23 Q. All right. And specifically the
24 question in that testimony at Lines 96 and 97 is:

1 Is this Certificate condition consistent with the
2 financing and construction plan that you describe in
3 your Direct Testimony; correct?

4 A. Yes.

5 Q. And then at Lines 98 and 99, Mr. Berry
6 answers by stating that: The staff's proposed
7 condition, if adopted, will formalize this plan as a
8 requirement of Rock Island's Certificate of Public
9 Convenience and Necessity; correct?

10 A. That's what I see here.

11 Q. Could you now look at Lines 344 to 356
12 of your Direct Testimony, please?

13 A. Yes.

14 Q. And this answer in your testimony lists
15 some possible ways in which a project may fail to be
16 completed, correct?

17 A. Let me look back at it and see. Do I
18 need to go back to this page again?

19 Q. Oh, no, no, we're done with Mr. Berry's
20 for the purpose -- for purposes of this question.

21 A. That frees up a hand.

22 (Witness peruses document.)

23 THE WITNESS: Yes.

24 Q (By Mr. MacBride) You also list some

1 circumstances in which a project encounters
2 unexpected difficulties may nonetheless achieve
3 completion, correct?

4 A. Yes.

5 Q. And in the last sentence of this answer
6 at Lines 355 to 356, you state: So even if a
7 project is successful in achieving funding of the
8 construction phase, that is not, in itself, a
9 guarantee of successful completion and commercial
10 operation, correct?

11 A. Yes.

12 Q. Okay. So in, in this case, even if Rock
13 Island had demonstrated to your satisfaction that
14 it, it has binding equity and debt financing
15 commitments for the entire project construction cost
16 of its transmission line, the statement in the last
17 sentence of your answer at Lines 355 to 356 would
18 still be true, correct?

19 A. If the -- I think that what I, what it
20 says here is that if, the initial funding might not
21 be sufficient if the actual cost of construction
22 exceeds the amount initially raised.

23 Q. Right. So even if a project believes it
24 has binding commitments for its entire estimated

1 construction costs, it can still be the case that
2 some --

3 A. It's the overrun that estimate.

4 Q. Thank you. I'd like to ask you some
5 questions about what has been referred to as the
6 Revenue Model and the Capacity Sales Model for the
7 project financing transmission. And I believe you
8 discussed that at some length in your Rebuttal
9 Testimony.

10 A. Yes.

11 Q. If you would refer to Lines 65 to 67 of
12 your rebuttal.

13 Are you there? Are you at that page?

14 A. Yes.

15 Q. Okay. You indicate there that what,
16 what you have referred to as the Capacity Sales
17 Model is also sometimes referred to as the Merchant
18 Transmission Approach, correct?

19 A. Yes.

20 Q. All right. And I take it you would use
21 those terms to describe the approach that Rock
22 Island has described in this case.

23 A. Yes; I believe Rock Island used those
24 terms.

1 Q. Okay.

2 A. I think they use the term Capacity
3 Sales.

4 Q. Okay. Do you agree that a Merchant
5 Transmission Project is a project in which the owner
6 assumes the full market risk of the cost of
7 constructing the proposed transmission project?

8 A. Yes.

9 Q. You also agree that Merchant
10 Transmission owners must pay all the costs of
11 operating and maintaining the Merchant Transmission
12 Line?

13 A. Yes, with the exceptions that Mr. Downy
14 made yesterday concerning conversions of the
15 merchant line into some sort of an all -- cost
16 allocated line.

17 Q. All right. At which point it's not a
18 Merchant Transmission Project.

19 A. Right.

20 Q. You also agree that the Merchant
21 Transmission owner recovers the cost through the
22 revenues that it receives from the transmission
23 customers it contracts with to take transmission
24 capacity and transmission service on the line.

1 A. That is my understanding.

2 Q. Now with respect to the revenue model,
3 the characteristics of this approach --

4 A. Are you talking about the rate recovery
5 model? Or --

6 Q. Yes. Yes.

7 A. Or cost of service model? I would
8 typically use the terminology cost of service. I
9 think I used rate recovery here to conform with an
10 exhibit that was prepared by Rock Island.

11 Q. All right, that's fine. Rate recovery
12 model.

13 Would you agree that the characteristics
14 of the Rate Recovery Approach would be that the
15 project obtains its revenues through a regulated
16 tariff that is filed with and approved by a
17 regulatory agency?

18 A. That is my understanding.

19 Q. Is it also a characteristic of the Rate
20 Recovery Model that the entity's charges under its
21 tariff are based on its costs?

22 A. Yes. That's why I called it the Cost of
23 Service Model.

24 Q. All right. Is it also a characteristic

1 of the Rate Recovery Model that if the entity's
2 costs increase, it will be able to increase its
3 rates under the tariff to recover the increased
4 costs?

5 A. Yes.

6 Q. So for example, if the entity
7 experiences cost overruns on the project beyond its
8 original construction cost estimate, it would be
9 entitled to raise its rates under the tariff to
10 recover the increased costs, correct?

11 A. That may be the case in many cases,
12 although there are tests of prudence, and there may
13 be cost caps associated. We certainly have seen
14 cases of cost caps.

15 Q. All right. Is it also a characteristic
16 of the Rate Recovery Model that the entity has a set
17 of captive customers from which it can recover its
18 costs pursuant to the tariff?

19 A. It has a set of customers, I think we
20 would all dispute in this day and age whether those
21 customers are captive or whether they have
22 alternatives.

23 Q. But it has a defined customer base.

24 A. It has a defined set of customers, yes.

1 Q. So for example, Commonwealth Edison
2 provides transmission and distribution service to a,
3 a set of customers within a defined service or
4 geographic footprint or service territory, is that
5 your understanding?

6 A. Yes, that's my understanding.

7 MR. RIPPIE: Could I hear the question
8 back, please?

9 THE WITNESS: I am not sure that -- I
10 think that the basic element of this is that they
11 are, they are available, commonly available, and
12 anyone who qualifies may purchase service from them.
13 So anyone who is qualified and within their service
14 territory may take service, they have a very large
15 number of such customers. The customers are not
16 defined; the customer pool is always changing,
17 because people choose to take service or terminate
18 their service.

19 Q (By Mr. MacBride) All right, fair enough.

20 MR. MacBRIDE: Okay, Glenn?

21 MR. RIPPIE: I'm okay.

22 Q (By Mr. MacBride) All right. So the Rate
23 Recovery Model would be perceived as less risky by
24 investors than the Capacity Sales Model, because the

1 entity using the Rate Recovery Model can recover its
2 increased costs from this group of customers that
3 you've just described, correct?

4 A. That is my testimony, yes, that the Rate
5 Recovery Model is perceived differently from the
6 Capacity Sales Model by investors.

7 Q. All right. And is it fair to say that
8 investors perceive the Rate Recovery Model as less
9 risky because under the Rate Recovery Model, some or
10 all of the risks of increased costs and other
11 adverse developments are transferred to the, to the
12 entity's customer base?

13 A. That's one reason, but I think another
14 reason is that there is not as much risk of default
15 by any particular customer or group of customers.
16 Customer default is not perceived to be a material
17 risk in the case of the Cost of Service Model or
18 Rate Recovery Model.

19 Q. And I think you indicated a few answers
20 back that my, my term captive rate payors is one
21 that is probably disputable in this day and age, is
22 that correct?

23 A. Correct.

24 Q. So even an entity using a Rate Recovery

1 Model that has a defined service territory or
2 defined customer base is at some risk that some of
3 its customer base may depart for various reasons?

4 A. May elect to use distributed generation
5 or self-generate, or whatever.

6 Q. Or may -- and may seek alternatives
7 because it believes the initial provider's costs
8 have gotten too high?

9 A. Correct.

10 Q. The construction and completion risks of
11 a project financed by the Rate Recovery Model in a
12 similar project that is being financed by the
13 Capacity Sales Model are not inherently different,
14 are they?

15 A. Could you repeat the question?

16 Q. Yes. The construction and completion
17 risks for a project financed by the Rate Recovery
18 Model in a similar project that is being financed by
19 the Capacity Sales Model are not inherently
20 different, are they?

21 A. I don't know of any difference.

22 Q. So there would, for example, they both
23 face risks relating to unforeseen costs?

24 A. Yes.

1 Q. And construction difficulties?

2 A. Yes.

3 Q. Labor strikes?

4 A. Yes.

5 Q. Unexpected increases in material prices?

6 A. Correct.

7 Q. Please look at Exhibit 5.01 of your

8 Rebuttal Testimony.

9 A. Yes.

10 Q. And you developed this exhibit using

11 information on Mr. Berry's Exhibit 10.16, correct?

12 A. Right, I just reconfigured his exhibit.

13 Q. Right. So the projects listed on Rock

14 Island Exhibit 10.16 and your Exhibit 5.01 are the

15 same, correct?

16 A. I believe so.

17 Q. And all the projects listed on Com-Ed

18 Exhibit 5.1 are electric transmission projects,

19 correct?

20 A. Correct.

21 Q. There's no other types of energy

22 projects.

23 A. Correct.

24 JUDGE JONES: What's that exhibit number

1 you're referring to?

2 MR. MacBRIDE: Ms. Lapson's is Com-Ed
3 5.01, and Mr. Berry's is 10.16.

4 JUDGE JONES: Thank you.

5 Q (By Mr. MacBride) Would an electric
6 generation project that was being financed based on
7 power purchase agreements with wholesale electricity
8 purchasers be considered as a Capacity Model project
9 or a Rate Recovery Model project?

10 A. It would be more similar to the Capacity
11 Sales Model.

12 Q. Would a pipeline project that was being
13 financed based on individual shipper contracts be
14 classified as a Capacity Sales Model project or a
15 Rate Recovery Model project?

16 A. It would be more similar to those that
17 are called Capacity Sales Model. But neither of
18 those would belong on this list of -- this is a list
19 that was offered as precedent transactions, and I
20 would not consider those to be precedent
21 transactions, because they're not electric
22 transmission.

23 Q. Okay. Understood. Is it your
24 understanding that all the projects listed on

1 Exhibit 5.01 were financed through a special --
2 separately capitalized financial structure that was
3 organized for a specific limited purpose?

4 A. I believe that to be the case, although
5 I did not individually examine the structure of each
6 one.

7 Q. Is it your understanding that for each
8 of these projects on Exhibit 5.01, the debt and
9 equity used to finance the project are being paid
10 back from the cash flow generated by the project,
11 and not from other sources of security?

12 A. I believe that is the case.

13 Q. In your experience, is the use of a
14 single purpose legal entity to project finance
15 energy and other industry projects unusual?

16 A. No, in my experience that is the norm.

17 Q. If you could look at your Rebuttal
18 Testimony at lines, starting at Line 197, please?

19 A. (Witness complies.)

20 Q. In the portion of your Rebuttal
21 Testimony, you discuss the financing condition to
22 Rock Island's Certificate that was proposed by
23 Commission Staff and agreed to by Rock Island, is
24 that correct?

1 A. Correct.

2 Q. And by the way, this is your Rebuttal
3 Testimony. Did you discuss that condition anywhere
4 in your Direct Testimony?

5 A. I don't think I did. I'm not even sure
6 if I was aware of it at that time.

7 Q. Now in this portion of your Rebuttal
8 Testimony, you refer to the financing condition as
9 the "Safety Valve" proposal, and you have the words
10 Safety Valve capitalized and in quotes. Did you
11 take the term from someone else's testimony?

12 A. It's possible that I did. But I'm not
13 sure. I don't recall now. Did it perhaps come from
14 Mr. Berry's testimony?

15 Q. Well, I'm asking you, ma'am.

16 A. I am not sure.

17 Q. Okay. Do you know what a safety valve
18 is in mechanical engineering?

19 A. No, I'm not a mechanical engineer.

20 Q. All right, so it's your testimony you,
21 you can't recall whether you chose to describe this
22 financing condition as a safety valve --

23 A. I do not recall where it came from.

24 Q. If I could ask you to look at Lines 205

1 to 207.

2 A. Yes.

3 Q. And there you say: We can only infer
4 that the concern that led Staff to demand the safety
5 valve mechanism is based on the reality that Rock
6 Island has not demonstrated financial capability,
7 and Rock Island's ability to finance is at best
8 uncertain. Is that correct?

9 A. I certainly -- I did say that, yes.

10 Q. All right. Do you know if Com-Ed sent
11 any Data Request to Commission Staff in this
12 proceeding asking Staff why it requested or proposed
13 this condition?

14 A. No, I do not.

15 Q. Did you ask Com-Ed to send a Data
16 Request on this topic to Staff?

17 A. No.

18 Q. Would you next look at Lines 237 to 254
19 of your rebuttal? I'm sorry, 237, 254. Do you
20 have -- excuse me.

21 So starting at Line 237, you quote Rock
22 Island's response to Com-Ed Data Request 6.02, is
23 that correct?

24 A. Yes, correct.

1 Q. Okay. And do you know what the question
2 is that was asked in Data Request 6.02?

3 A. I don't remember word for word.

4 Q. Do you have a copy with you?

5 A. No.

6 Q. All right. Could I ask this subject to
7 check to move along here?

8 MR. RIPPIE: Sure. In fact, I will be
9 able to check.

10 Q (By Mr. MacBride) Ms. Lapson, would you
11 agree subject to check that the question posed in
12 Com-Ed Data Request 6.02 to Rock Island is as
13 follows: Does Mr. Berry agree that a transmission
14 customer is harmed if it enters into a firm
15 Transmission Capacity Contract with a transmission
16 supplier that is ultimately unable to provide
17 transmission services? Question mark. If the
18 answer is anything other than a, than an unqualified
19 yes, please explain the response in detail.

20 A. That sounds right.

21 Q. So the question did not refer
22 specifically to the Rock Island project, did it?

23 A. No.

24 Q. Or to its potential customers?

1 A. Apparently not, no. I understand that
2 now.

3 Q. Does the answer --

4 A. At the, at the time that I, I must
5 explain that at the time that I wrote this and
6 quoted this thinking that it applied to Rock Island,
7 I did not understand at that time that Rock Island
8 does not have any customers, and that there are no
9 wind facilities at the other end of its line, that
10 it's really a line to nowhere. I didn't realize
11 that at the time. So I, I was, at the time I wrote
12 it, I believed that there were wind facilities and
13 potential customers. But now I understand there are
14 not.

15 Q. Okay. Does the answer that you quoted
16 in your testimony state that the transmission
17 customers of the Rock Island project will have other
18 alternatives to obtain the same or similar
19 transmission service as they would obtain from the
20 Rock Island project?

21 MR. RIPPPIE: Can I hear that back,
22 please? Just the beginning of the question.

23 (The requested portion of the
24 record read by the reporter as follows:)

1 THE REPORTER: QUESTION: "Does the
2 answer that you quoted in your testimony state that
3 the transmission customers of the Rock Island
4 project will have other alternatives to obtain the
5 same..."

6 MR. RIPPIE: All right. There's one
7 word. Does the answer quoted "in", or "or"?

8 THE REPORTER: I show, "Does the answer
9 that you quoted in your testimony..."

10 MR. RIPPIE: "In." Thank you.

11 Q (By Mr. MacBride) Now, do you remember
12 the question?

13 THE WITNESS: I think so. Okay. So
14 does the, does it -- does the response from Rock
15 Island to the Com-Ed data request, which I quoted in
16 my testimony.

17 Q. Yes.

18 A. Does it refer to -- and now I've lost
19 it.

20 Q. All right. Does Rock Island's response
21 to the Data Request that you quoted state that
22 transmission customers of the Rock Island project
23 will have other alternatives to obtain the same or
24 similar transmission service as they would obtain

1 from the Rock Island project?

2 A. As I now understand the response, I
3 think the response is generic, I believe it just
4 says in general customers could have alternate
5 service. It doesn't say specifically that Rock
6 Island customers, who, of whom there are, I now
7 understand that those generators don't exist, so if,
8 we're talking very hypothetical here, hypothetical
9 Rock Island generators, hypothetical service and
10 hypothetical alternatives.

11 Q. All right. So your answer is no?

12 A. No. I believe no.

13 Q. Yes, your answer is no?

14 A. Yes.

15 Q. All right. Thank you, that's all our
16 questions for Ms. Lapson.

17 JUDGE JONES: Thank you, Mr. MacBride.
18 Mr. Shay, do you have questions for the witness?

19 MR. SHAY: Yeah. Could we take five
20 minutes, Your Honor? I need to look over a couple
21 things.

22 JUDGE JONES: I think we need to keep
23 moving. I'm sorry, I mean we haven't taken any
24 breaks in between crosses where --

1 MR. SHAY: Okay.

2 JUDGE JONES: -- it's not otherwise been
3 sort of a logical place, so.

4 I mean if you're looking to shorten
5 questions by means of that break, that would be a
6 possibility, but otherwise, I think we just need to
7 move ahead.

8 MR. SHAY: I can't promise that, so...

9 I have no questions at this time.

10 JUDGE JONES: Okay, thank you Mr. Shay.
11 Is there redirect?

12 MR. RIPPIE: Yes, Your Honor. Very
13 briefly.

14 EXAMINATION

15 QUESTIONS BY MR. RIPPIE

16 MR. RIPPIE: Your Honor, may I approach
17 my witness?

18 JUDGE JONES: Yes, sir.

19 (Mr. Rippie hands document to the witness.)

20 Q (By Mr. Rippie) Ms. Lapson, I have placed
21 two documents before you that have been designated,
22 hopefully not confusingly, Commonwealth Edison Cross
23 Exhibits 8 and 9. Can you tell us what those two
24 documents are?

1 THE WITNESS: These are both responses
2 to Data Requests.

3 Q. And can you indicate which Data Request
4 responses they are?

5 A. Commonwealth Edison Exhibit 8 is a
6 response to Rock Island Clean Line's Data Request
7 2.01 to 2.45. Request Number 2.02.

8 Q. I'm sorry, you're reading the header,
9 which is the whole set.

10 A. Yes, this is request Rock Island hyphen
11 Com-Ed 2.02.

12 Q. And the next Exhibit 9 is --

13 A. Is the Request Number Rock Island hyphen
14 Com-Ed 2.03.

15 Q. Ms. Lapson, are those two Data Request
16 responses that Mr. MacBride both asked you about and
17 quoted from in portion but not in toto?

18 A. Yes, that's correct.

19 Q. Do the two documents that I've placed
20 before you contain your answers to those data
21 requests in toto?

22 A. Yes, they do.

23 Q. To the best of your knowledge, do the
24 answers remain true and correct today?

1 A. Yes, they do.

2 Q. Would the entirety of the answers help
3 explain and place into context those portions of the
4 Data Request responses that were quoted to you by
5 Mr. MacBride?

6 A. It's -- I think it was always preferable
7 to have the entire content rather than snippets
8 taken out of context.

9 Q. Thank you, Ms. Lapson, that's all the
10 redirect I have, and Your Honor, I would offer those
11 two exhibits into evidence.

12 MR. MacBRIDE: Judge, I don't object to
13 the admission of the exhibits, but I believe they
14 should be indicated or identified as redirect
15 exhibits.

16 MR. RIPPPIE: I'm happy to do that.

17 MR. MacBRIDE: So indicating whom, what
18 party.

19 MR. RIPPPIE: To avoid having multiple
20 series of numbers, in other times we've used the
21 definition hearing exhibits, but if you would prefer
22 that those be renumbered, Your Honor, we can
23 renumber them Rock -- Com-Ed Redirect Exhibits 1 and
24 2. I'm --

1 JUDGE JONES: Is that your preference,
2 Mr. MacBride?

3 MR. MacBRIDE: Yes.

4 MR. RIPPIE: I'm happy to do that. So
5 we would offer what will be renumbered as
6 Commonwealth Edison Redirect Exhibits 1 and 2,
7 Redirect Exhibit 1 constituting RI Com-Ed 2.02, and
8 Redirect Exhibit 2 constituting RI Com-Ed 2.03.

9 JUDGE JONES: Do any of the parties have
10 any clarifications or other responses to that
11 motion?

12 (No response.)

13 Let the record show they do not. Those
14 two items are admitted into the evidentiary record.
15 Let me make sure that we are clear on the exact
16 identification involved here.

17 MR. RIPPIE: Your Honor, if I may,
18 Com-Ed Redirect Exhibit Number 1 is the Data
19 Response to RI dash Com-Ed 2.02. In the bottom
20 right-hand corners it bears the index numbers CRI 10
21 through CRI 12. And Com-Ed Redirect Number 2 is the
22 response to RI dash Com-Ed 2.03, in the bottom
23 right-hand corner it bears the index number CRI 13.

24 And we would, of course, file these on

1 eDocket.

2 JUDGE JONES: And in terms of Exhibit
3 identification, they are now known as Com-Ed
4 Redirect Exhibits 1 and -- 1 and 2, is that correct?

5 MR. RIPPIE: That is correct, Your
6 Honor.

7 JUDGE JONES: All right. Let the record
8 show that Com-Ed Redirect Exhibits 1 and 2 are
9 hereby admitted into the evidentiary record. Lead
10 is given to file those on eDocket; they're admitted
11 subject to that occurring. Once that happens, they
12 will be deemed admitted into the evidentiary record
13 without, without condition. They are responses to
14 DR's as noted by Mr. Rippie in his motion. Anything
15 further with regard to that?

16 (No response.)

17 There is not.

18 (Com-Ed Redirect Exhibits 1 and 2
19 were admitted into evidence
20 at this time.)

21 JUDGE JONES: Did you state that's all
22 the questions you had?

23 MR. RIPPIE: Yes, Your Honor, that's all
24 the redirect I have.

1 JUDGE JONES: All right. Do other
2 parties have any recross? Mr. MacBride or Mr. Shay?

3 MR. MacBRIDE: I have none.

4 JUDGE JONES: Anyone?

5 MR. SHAY: No.

6 JUDGE JONES: That concludes the
7 questions for Ms. Lapson. Thank you.

8 THE WITNESS: Thank you.

9 JUDGE JONES: All right, it appears that
10 we are or will next, soon be ready for the, Mr.
11 Berry. I think there was some discussion about
12 there being some communications between Counsel, and
13 I wasn't quite sure what the, what the plan was in
14 terms of exactly when that would be happening, so if
15 you can go ahead and indicate what you, what you
16 have in mind.

17 MR. RIPPIE: If we could take a short
18 recess now, Your Honor, we'll -- I have the
19 documents here in front of me, we can consult on
20 them presently.

21 JUDGE JONES: And do you have copies of
22 those for other Counsel, too?

23 MR. RIPPIE: I do.

24 JUDGE JONES: All right. And how long

1 do you propose for that to take?

2 MR. RIPPIE: Ten minutes, which would
3 also -- you know, Your Honor, why don't we suggest
4 15, because that will also allow us to perhaps take
5 a break for other purposes.

6 MR. BERNET: Your Honor, if there is an
7 agreement to, to admit certain exhibits in lieu of
8 additional cross, would you like us to mark those as
9 cross exhibits?

10 MR. MacBRIDE: Right, yes.

11 MR. RIPPIE: Yeah, we'll mark them as
12 cross exhibits.

13 JUDGE JONES: That would be one option,
14 we'll see what other parties may suggest.

15 All right. Does anyone have an
16 objection to breaking for 15 minutes for the above
17 purpose? Purposes.

18 (No response.)

19 At this time let the record show we're
20 hereby breaking for 15 minutes.

21 (Recess)

22 JUDGE JONES: All right, back on the
23 record. There was an off the record discussion for
24 the purposes indicated. I believe the plan is for

1 the next witness to be called, is that right, Mr.
2 MacBride?

3 MR. MacBRIDE: I was going to call Mr.
4 Berry, but he's already there.

5 JUDGE JONES: Please stand and be sworn.

6 DAVID BERRY,
7 of lawful age, having been first duly sworn to
8 testify the truth, the whole truth, and nothing but
9 the truth in the case aforesaid, deposes and says in
10 reply to oral interrogatories propounded as follows,
11 to-wit:

12 EXAMINATION

13 QUESTIONS BY MR. MacBRIDE

14 Q. Please state your name and business
15 address for the record?

16 A. My name is David Berry, business address
17 1001 McKinney Street, Suite 700, Houston, Texas,
18 77002.

19 Q. Who is your employer and what is your
20 present position?

21 A. My employer is Clean Line Energy
22 Partners, my present position is Executive
23 Vice-president.

24 Q. Have you prepared certain testimony and

1 exhibits that you wish to offer in this proceeding?

2 A. Yes, sir.

3 Q. And do you understand that your
4 previously submitted testimony and exhibits have
5 been filed on the Commission's eDocket System?

6 A. I do.

7 Q. You have before you a document that's
8 entitled Direct Testimony of David Berry on behalf
9 of Rock Island Clean Line, LLC, that is identified
10 as Rock Island Exhibit 10.0?

11 A. I do.

12 Q. Does that document consist of a Cover
13 Page followed by a Table of Contents and 47 pages of
14 written questions and answers?

15 A. Yes, it does.

16 Q. Is Rock Island Exhibit 10.0 the prepared
17 Direct Testimony you wish to offer in this case?

18 A. It is.

19 Q. Do you have any corrections or changes
20 to make to that exhibit?

21 A. No, I do not.

22 JUDGE JONES: One moment. Sorry for the
23 interruption.

24 (Discussion off the record.)

1 Q (By Mr. MacBride) If I were to ask you
2 the questions shown on Rock Island Exhibit 10.0 at
3 this hearing today, would you give the same answers?

4 THE WITNESS: I would, subject to one
5 update. On Line 223, I believe, of my Direct
6 Testimony, I refer to 15 wind developers in the
7 resource area, and as has been made clear in some
8 subsequent testimony, I am now aware of 18 wind
9 developers in the resource area.

10 Q. At the time your Direct Testimony was
11 filed, you were aware of 15 wind developers, is that
12 correct?

13 A. That's correct, the statement was true
14 as of the date filed.

15 Q. Mr. Berry, do you also have before you
16 documents that have been marked for identification
17 as Rock Island Exhibits 10.1 -- you also have before
18 you documents that have been marked for
19 identification as Rock Island Exhibits 10.1 through
20 10.11?

21 A. One moment.

22 (Witness peruses document.)

23 Yes, I do.

24 Q. And of those exhibits, is Exhibit 10.9

1 and Exhibit 10.10 each submitted in public and
2 confidential form?

3 A. That's correct.

4 Q. Are the -- these the exhibits to your
5 Direct Testimony?

6 A. Yes, they are.

7 Q. Do you have any corrections or changes
8 to make to any of those exhibits?

9 A. No corrections or changes.

10 Q. Were they prepared under your
11 supervision and direction?

12 A. They were.

13 Q. Is the contents of those exhibits true
14 and accurate, to the best of your knowledge and
15 belief?

16 A. Yes.

17 Q. Next you have a document before you
18 titled Supplemental Direct Testimony of David Berry
19 on behalf of Rock Island Clean Line, LLC, that is
20 identified as Rock Island Exhibit 10.12?

21 A. Yes, I do.

22 Q. Is Rock Island Exhibit 10.12 the
23 supplemental Direct Testimony that you wish to offer
24 in this proceeding?

1 A. Yes, it is.

2 Q. Do you have any corrections or changes
3 to make to that exhibit?

4 A. I do not.

5 Q. If I were to ask you the questions
6 identified in Rock Island Exhibit 10.12, would your
7 answers be the same?

8 A. Yes, they would.

9 Q. You also have before you a document that
10 is titled Additional Supplemental Direct Testimony
11 of David Berry on behalf of Rock Island Clean Line,
12 LLC, that is identified as Rock Island Exhibit
13 10.13?

14 A. I do.

15 Q. Does Rock Island Exhibit 10.13 consist
16 of a Cover Page followed by 19 pages of written
17 questions and answers?

18 A. Yes, it does.

19 Q. Is Rock Island Exhibit 10.13 the
20 Additional Supplemental Direct Testimony you wish to
21 offer in this case?

22 A. Yes, it is.

23 Q. Do you have any corrections or changes
24 to make to that testimony?

1 A. No, sir.

2 Q. If I were to ask you at this hearing the
3 questions on Rock Island Exhibit 10.13, would your
4 answers be the same?

5 A. Yes, they would.

6 Q. Next you have before you a document that
7 is titled Rebuttal Testimony of David Berry on
8 Behalf of Rock Island Clean Line, LLC, that is
9 identified as Rock Island Exhibit 10.14 Revised?

10 A. I do.

11 Q. Does that document consist of a Cover
12 Page and Table of Contents followed by 68 pages of
13 written questions and answer?

14 A. Yes.

15 Q. Is Rock Island Exhibit 10.14 Revised the
16 Rebuttal Testimony you wish to offer in this case?

17 A. Yes.

18 Q. And have you submitted both a public and
19 confidential version of Rock Island Exhibit 10.14
20 Revised?

21 A. I have.

22 Q. Do you have any corrections or changes
23 to make to Rock Island Exhibit 10.14 Revised?

24 A. No.

1 Q. If I were to ask you at this hearing the
2 questions shown on Rock Island Exhibit 10.14
3 Revised, would your answers be the same?

4 A. Yes, they would.

5 Q. Next you have before you documents that
6 have been marked for identification as Rock Island
7 Exhibits 10.15 through 10.18, 10.19 Revised, and
8 10.20 through 10.25?

9 A. One moment, please.

10 (Witness peruses document.)

11 Yes, I do.

12 Q. Are these the exhibits to your Rebuttal
13 Testimony?

14 A. They are.

15 Q. Were they -- these exhibits prepared
16 under your supervision and direction?

17 A. They were.

18 Q. Do you have any corrections or changes
19 to make to any of these exhibits?

20 A. No, I do not.

21 Q. Is the contents of these exhibits true
22 and accurate, to the best of your knowledge and
23 belief?

24 A. Yes.

1 Q. You also have before you a document that
2 is entitled Surrebuttal Testimony of David Berry on
3 behalf of Rock Island Clean Line, LLC, that is
4 identified as Rock Island Exhibit 10.26.

5 A. I do.

6 Q. Rock Island Exhibit 10.26 consists of a
7 Cover Page and Table of Contents followed by 42
8 pages of written questions and answers, correct?

9 A. Yes.

10 Q. Is Rock Island Exhibit 10.16 the
11 Surrebuttal Testimony you wish to offer in this
12 case?

13 A. I'm sorry, I believe it's 10.26.

14 Q. 10.26, sorry.

15 A. Yes.

16 Q. Do you have any corrections or changes
17 to make to Rock Island Exhibit 10.26?

18 A. No changes or corrections.

19 Q. If I were to ask you at this hearing the
20 questions shown on Rock Island Exhibit 10.26, would
21 you give the same answers?

22 A. Yes, I would.

23 Q. Finally, you also have before you
24 documents that have been marked for identification

1 as Rock Island Exhibits 10.27 through 10.30.

2 A. One moment, please. Yes, I do.

3 Q. Are these the exhibits to your
4 Surrebuttal Testimony?

5 A. They are.

6 Q. Were they prepared under your
7 supervision and direction?

8 A. Yes.

9 Q. Do you have any corrections or changes
10 to any of these exhibits?

11 A. No.

12 Q. Is the contents of these exhibits true
13 and accurate, to the best of your knowledge and
14 belief?

15 A. Yes.

16 MR. MacBRIDE: We offer the exhibits
17 identified by Mr. Berry into the evidentiary record
18 and offer Mr. Berry for cross examination.

19 JUDGE JONES: There's a motion pending
20 to admit those exhibits. Are there any responses to
21 that motion?

22 MR. RIPPIE: We have no objection, Your
23 Honor.

24 JUDGE JONES: Others?

1 MR. SHAY: No objection.

2 JUDGE JONES: Okay, let the record show
3 that those evidentiary items as sponsored by this
4 witness are hereby admitted into the evidentiary
5 record, 10.0, 10.1, 10.2, 10.3, and 10.4 are
6 admitted as filed on October 10, 2012; 10.5, 10.6,
7 10.7, 10.8, 10.9 Public, 10.9 Confidential, 10.10
8 Public, and 10.10 Confidential, and 10.11 are
9 admitted as filed on eDocket on October 10, 2012.
10 10.12 is admitted as filed, excuse me, on eDocket on
11 November 27, 2012, 10.13 is admitted on filed on
12 eDocket on December 18, 2012, 10.14 Revised Public,
13 and 10.14 Revised Confidential are admitted as filed
14 on eDocket on October 2, 2013. 10.15, 10.16, 10.17
15 and 10.18 are admitted as filed on eDocket on August
16 20, 2013. 10.19 Revised is admitted as filed on
17 November 5, 2013, 10.20, 10.21, 10.22, and 10.23, as
18 well as 10.24 and 10.25 are admitted as filed on
19 eDocket on August 20, 2013. 10.26, 10.27, 10.28,
20 10.29 and 10.30 are admitted as filed on November
21 12, 2013.

22 Are there any corrections on that, any
23 of those Exhibit numbers I just noted in that
24 ruling?

1 MR. MacBRIDE: No, sir.

2 (Rock Island Exhibits 10.0 through
3 10.8; 10.9 Public, 10.9 Confidential,
4 10.10 Public, 10.10 Conf., 10.11
5 through 10.13, 10.14 Rev. Public,
6 10.14 Rev. Conf., 10.15 through
7 10.18, 10.19 Rev., and 10.20 through
8 10.30 were admitted into evidence
9 at this time.)

10 JUDGE JONES: All right. It's my
11 understanding there will be some documents to be
12 admitted and so on in connection with the cross
13 examination process, but that that will come later
14 and that there will be -- or any questions will come
15 next or, or is that not correct?

16 MR. RIPPIE: No, that is correct, Your
17 Honor, those questions will probably be at the
18 commencement of the cross examination.

19 JUDGE JONES: All right. Thank you, the
20 witness is tendered, is that, is that right? The
21 witness is tendered for cross?

22 MR. MacBRIDE: Yes.

23 EXAMINATION

24 QUESTIONS BY MR. RIPPIE

1 Q. Mr. Berry, pursuant to some discussions
2 that were had with your -- well, I apologize. We
3 have not been formally introduced, despite the fact
4 that we've been involved in this hearing for the
5 last few days. I'm Glenn Rippie, I'm one of the
6 counsel for Commonwealth Edison; I hope to conclude
7 my cross examination in less than the one hour and
8 forty-five minutes that was estimated. And in part,
9 that's due to a conversation that we had with
10 yourself and your counsel and counsel for other
11 parties prior to you taking the stand. As a result
12 of that conversation, do you have in front of you a
13 series of documents that I'm going to walk you
14 through?

15 A. I'm actually not sure I have them in
16 front of me, I have a list of them.

17 Q. Okay. Well, we'll try to do it that
18 way, and we'll see what we can, what we can do.

19 Do you have in front of you or available
20 to you a copy of Rock Island's Response To Com-Ed
21 Data Request 6.03?

22 A. I do.

23 Q. And I'm going to mark that document as
24 Commonwealth Edison Cross Examination Exhibit Number

1 8. If I were to ask you the questions that appear
2 on Commonwealth Edison Exhibit Number 8, would you
3 give me the same answers, and by that I mean to
4 include the data that is on Attachment 01
5 Confidential to that response.

6 A. Yes, I would, subject to Attachment 1
7 being as of a certain date that's labeled on the
8 exhibit.

9 Q. The exhibit that I've placed in front of
10 you has Attachment 1 being through August 31 of
11 2013, is that the correct exhibit?

12 A. That's correct. So these figures are
13 true as of that date.

14 Q. Thank you. Ask you to take a look at,
15 if you have it in front of you, a document that has
16 been marked Com-Ed Cross Exhibit 9, it consists of
17 the Response To Com-Ed Data Request 7.23, do you
18 have that document before you?

19 A. Yes, sir.

20 Q. If I were to ask you the questions
21 that -- the question that appears on that Data
22 Request, would you give me the same answer?

23 A. I would.

24 Q. Ask you to refer to a document that I

1 have labeled Com-Ed Exhibit, Cross Exhibit 10, it
2 consists of the response to Com-Ed to Rock Island's
3 Data Request 7.24, plus Confidential Attachment
4 Number 1. If I were to ask you the question that
5 appears on that Data Request, would you give me the
6 same answer as appears on that Data Request, and
7 please understand that I mean to include the data on
8 Attachment 1.

9 A. Yes.

10 Q. Ask you to refer to a document that has
11 been labeled Com-Ed Cross Exhibit 11, it's the
12 Response to Data Request Com-Ed To Rock Island 8.14.
13 If I were to ask you the question that appears on
14 that Data Request, would you give me the same
15 answer?

16 A. I would.

17 Q. Ask you to refer to a document that's
18 been marked as Com-Ed Cross Exhibit 12. It is my
19 understanding that there is a second update to that
20 Data Request as of November the 19th, 2013, that is
21 the Response To Data Request -- Staff Data Request
22 RJZ 2.4 to Rock Island, and along with the text of
23 that Data Request come a series of four confidential
24 attachments, including some updates thereto.

1 If I were to ask you the questions that
2 appear on the November 19th, 2013, supplemented
3 version of that Data Request, would you give me the
4 same answers, with the understanding that that also
5 includes up to and including the most current
6 attachment -- versions of Attachments 0.1 through
7 0.4?

8 A. I would, subject that the latest dated
9 files would be my current understanding, and the
10 files with the prior date were my understanding as
11 of those dates.

12 Q. Yes. So, and in particular, because
13 there's one I'm going to want to focus on, I ask you
14 to turn to Attachment 04, Confidential Attachment
15 04, and am I correct that the most recent version of
16 that attachment is dated November 11th, 2013, and as
17 of November 11th, 2013, the data that appears on
18 that attachment is true and correct?

19 A. Yes, sir.

20 Q. Thank you very much.

21 Mr. Berry, I take it that you at Clean
22 Line are responsible for the financing activities,
23 accounting, transactions, structuring and market
24 analysis not only for Rock Island, but for Clean

1 Line and its other subsidiaries, is that correct?

2 A. That's correct.

3 Q. And that prior to joining Clean Line,
4 you were a finance director at Verizon Wind Energy,
5 which is a wind energy developer; am I also correct?

6 A. You're correct.

7 Q. Prior to that, you were at Rice
8 University from which you graduated with degrees in
9 economics and history.

10 A. Correct.

11 Q. In what year did you receive those
12 degrees?

13 A. 2005.

14 Q. I take it you were not involved in the
15 development of transmission lines or wind developers
16 while you were at Rice University. Is that fair?

17 A. That's correct.

18 Q. So your sum experience in this industry,
19 including wind development and transmission line
20 finance and development consists of between seven
21 and eight years of work history. Is that fair?

22 A. It's over eight, but yes.

23 Q. Well, I guess June -- it would have been
24 eight as of June or July of 2013.

1 A. That's correct.

2 Q. Okay. You, my math stands corrected.

3 On Page 2, and I promise I won't be
4 going through your testimony page by page, but on
5 Page 2 of your Direct Testimony, you do reference
6 Sections 8-406 of the Illinois Public Utilities Act
7 and Section 8-503 of the Illinois Public Utilities
8 Act. As the person responsible for transaction
9 structuring strategy for Clean Line, do you have a
10 lay understanding of those two sections and how they
11 relate to the project?

12 A. Could you repeat the reference to my
13 testimony, please?

14 Q. That would be Page 2 of Exhibit 10.0.

15 A. Okay.

16 Q. Beginning at Lines 27 and concluding at
17 approximately Line 35.

18 A. Yes, I do reference them, and I believe
19 the question on the second part I'm familiar with
20 those statutes, particularly those areas that are
21 relevant to my responsibilities with the company.

22 Q. Fair enough. So as I understand it, you
23 have described the Rock Island project as a merchant
24 project, and we've had -- is that fair?

1 A. Yes.

2 Q. And we've had various definitions of
3 merchant project, but I'm going to really quickly
4 walk you through the one that Mr. MacBride, or
5 approximately the one that Mr. MacBride has used on
6 several occasions.

7 By a merchant project, we mean a project
8 that is financed with privately secured funds,
9 right?

10 A. I agree with that, but I don't think
11 that is the defining feature of a merchant project.

12 Q. Well, I was going to give you more, but,
13 but is that one defining feature?

14 A. Fair enough.

15 Q. Okay. Another defining feature is that
16 the costs of the project are borne by private
17 entities, they are not allocated to retail customers
18 through the transmission rate making mechanism.

19 A. That's correct.

20 Q. And another defining feature is that you
21 don't expect customers to bear the financial risk of
22 the construction and operating costs in the project,
23 is that correct?

24 A. That's correct.

1 Q. Did I miss any characteristics that you
2 think are particularly important, other than those
3 three?

4 A. Could you read back those three to me,
5 please?

6 JUDGE JONES: I'm sorry, you're not
7 going to ask to reread the last three or four
8 questions, do the best you can and, I'm just not
9 inclined to have the last, you know, multiple
10 questions read back.

11 If you don't understand the question,
12 you can't answer it, tell us, and we'll figure
13 something out.

14 THE WITNESS: I believe those cover the
15 key features of the merchant transmission.

16 Q (By Mr. Rippie) Okay. So given that Rock
17 Island is a Merchant Transmission Line, why do you
18 need a Certificate of Public Convenience and
19 Necessity from the Commission?

20 A. Again, I'm not a lawyer, and I'm not
21 offering a legal opinion, but I've been advised by
22 Counsel that that is necessary to continue with our
23 business plan in the state of Illinois, and build
24 the project as we have designed it.

1 Q. Do you have an understanding of any
2 particular business aspect of the construction and
3 operation of this plan that requires a certificate?

4 A. Could you repeat that question, please?

5 Q. Do you have any understanding of any
6 particular business aspect of the construction and
7 operation of this line that requires a certificate?

8 A. No, I don't know what aspect of this
9 project gives rise to it requiring a certificate.
10 As I stated, it's my opinion based on advice of
11 Counsel.

12 Q. Could it be that the reason you require
13 a certificate is because it is one of the predicates
14 to exercise the coercive power of Eminent Domain to
15 take private property?

16 A. As I said, I don't know.

17 Q. Okay. Do you have an understanding of
18 why you require an order under Section 8-503 of the
19 Public Utilities Act, from a business perspective?

20 A. I addressed this topic briefly in my
21 Rebuttal Testimony, and that summarizes my
22 understanding on the topic. I certainly wouldn't
23 know all the reasons we require it, but I am aware
24 of those that are relevant to my testimony.

1 Q. And what would those reasons be?

2 A. I'd like to turn to that section of my
3 testimony. One moment, please.

4 Q. Just tell me where you're going.

5 A. The end. As I state at beginning of
6 Lines 1596 in my testimony, my understanding, again,
7 not based on a legal opinion, but based on advice of
8 Counsel, is that both such orders are required to
9 construct a transmission line, and we would be
10 presenting essentially the same evidence and seeking
11 essentially the same determination in both
12 proceedings, and therefore, from a business
13 perspective, we elected to pursue, pursue both in
14 the same proceeding.

15 Q. Okay. What line are you on?

16 A. I'm summarizing Line 1596 and the next
17 few lines of Rock Island Exhibit of 10.14 Revised.

18 Q. Ah. You said the end, so I went to the
19 end of the exhibit we were on which, was 10.0.

20 A. I apologize.

21 Q. No, no. No problem. And the line
22 number again was?

23 A. 1596.

24 Q. Thank you. If the Commission issued an

1 order authorizing and directing the construction of
2 the project, can you assure the Commission that you
3 would construct the project?

4 A. Today I cannot unconditionally guarantee
5 that we'd construct the project.

6 Q. And --

7 A. As I think I've been clear in my
8 testimony, there are future milestones that Rock
9 Island needs to achieve before it is able to
10 construct the project.

11 Q. Okay. And those future milestones
12 include financing, and regulatory, and other
13 commercial milestones.

14 A. Yes.

15 Q. To be clear, other than advice of
16 Counsel, and that it's easier to present the
17 evidence in one proceeding than two, you have no
18 independent business understanding of any reason why
19 you need a certificate or an order under 8-503 in
20 order to complete this project, do you?

21 A. No, I would say there are other business
22 reasons.

23 Q. Let's hear them.

24 JUDGE JONES: What -- is this a

1 question?

2 MR. RIPPPIE: Yes, please.

3 Q (By Mr. Rippie) What are they?

4 THE WITNESS: In order to proceed with
5 tracking customers in the project, one thing that is
6 very helpful is being able to represent to those
7 customers that we have the necessary authorizations
8 to build the project.

9 Q. That, of course, assumes --

10 A. I wasn't finished.

11 Q. Oh, sorry.

12 A. If I could finish, please.

13 Q. Sure.

14 A. And so if we need two authorizations,
15 which, again, is my lay understanding on the advice
16 of Counsel, but we only possess one of those
17 authorizations, at that point in time we would not
18 be, from a regulatory perspective, authorized to
19 build the project, and we would not be able to make
20 the representation I alluded to earlier to potential
21 customers.

22 Q. Okay. That rationale, though, relies,
23 does it not, on the assumption that those orders are
24 required to construct the project.

1 A. Yes.

2 Q. Okay. Do you have any independent
3 business reason, other than your assumption that
4 those orders are required in order to construct the
5 project, for asking the Commission for a certificate
6 for a Section 8-503 order?

7 A. No, not that I'm aware of.

8 Q. Okay. Now this is an integrated
9 project, right? It involves a transmission line,
10 and some wind generation, and potentially other
11 generation that you hope to be constructed, as well
12 as whatever energy is going to flow over that
13 project to customers. Right?

14 I'm trying to -- you know what, I'll
15 withdraw the question; we'll go through it step by
16 step.

17 If this line is built, but there's no
18 generation connected to the west end of it, is
19 the -- does it make any sense to build the line?

20 A. We would not intend to build a line that
21 had no generation connected to it.

22 Q. Correct.

23 A. Certainly.

24 Q. So in order for load to take energy

1 through this project, it requires that there be a
2 line, it requires there be generation, and it
3 requires that that generation in some way arrange to
4 use the line to transfer the output of its power to
5 the east terminance of the line.

6 A. Correct.

7 Q. And if any of those pieces are missing,
8 the project's purpose fails, right?

9 A. It, it may still have other purposes,
10 but I agree that it would not serve its primary
11 purpose.

12 Q. If any of those things were missing, you
13 wouldn't be in here asking for permission, if
14 required, to build this line, would you?

15 A. If we did not believe that all of those
16 pieces will be in place at the time we construct the
17 project, then no, we would not be pursuing
18 development of this project, we would not be
19 investing our time and money.

20 Q. And you could not offer to a potential
21 customer electric transmission service until the
22 line is built, generators are constructed, and those
23 generators are interconnected to your line, can you?

24 A. No, I would not agree with that.

1 Q. How can you offer utility service when
2 you don't have a line?

3 A. Well, I believe you referenced
4 transmission service.

5 Q. Okay, fair enough. How can you offer
6 transmission service when you don't have a line?

7 A. It's, it's commonly called a Precedent
8 Agreement, and under Precedent Agreements, customers
9 commit to taking service once a new project is
10 built. So that's part of my answer.

11 The other part of my answer is that it
12 is routinely the case that generators purchase
13 transmission service, generators and other entities
14 purchase transmission service in advance of actually
15 being able to use them. That's a common practice in
16 the utility industry.

17 Q. Now if you offered that service prior to
18 having a line, you wouldn't tell the Commission that
19 you would be offering that service unconditionally,
20 right? That, that offer would simply be, as you
21 say, a Precedent Agreement, it would be an agreement
22 to provide that service if you could.

23 A. I mean I think all agreements to provide
24 service are agreements to provide that service if

1 it's possible to provide the service.

2 Q. Well, so is the answer to my question
3 yes?

4 A. Could you repeat it, please?

5 Q. Sure. If you sign an agreement prior to
6 having a line, you're not going to offer to provide
7 service until the line is available, right?

8 A. We would offer to provide the service
9 prior to the line being able. We would not actually
10 be able to provide the service until the line was
11 constructed, that's correct.

12 Q. And you --

13 MR. MacBRIDE: Excuse me, Judge. The
14 screen.

15 JUDGE JONES: Can you still hear us in
16 Chicago?

17 MS. ERICSON: Yes, we can still hear
18 you.

19 Q (By Mr. Rippie) Nothing in the Petition
20 requests establishment of a retail service -- oh,
21 are you familiar with the Petition that Rock Island
22 has filed in the case?

23 THE WITNESS: I've read it, I wouldn't
24 say I'm familiar with it. I haven't read it in a

1 while.

2 Q. Would you agree that nothing in the
3 Petition or in Rock Island's other request to the
4 Commission seeks establishment of any retail service
5 territory?

6 A. I'm unaware that we've asked for that.

7 Q. To your knowledge, is the only utility
8 service Rock Island has sought permission to offer
9 electric transmission service?

10 A. That's true, to the best of my
11 knowledge. Again, subject to I haven't read the
12 Petition in some time.

13 Q. Are you aware of Rock Island seeking to
14 offer any service that's a utility service other
15 than electric transmission service?

16 A. No, I am not aware.

17 Q. And that electric transmission service
18 in particular would be the transmission of
19 electricity from a point in Iowa approximately 500
20 miles to an, a point just west of the city of
21 Chicago. Southwest of the city of Chicago.

22 A. To the Collins Substation, correct.

23 Q. Lines 14 through 16 of your Direct
24 Testimony state that you are responsible for raising

1 the capital necessary to fund the development and
2 construction of Clean Line's projects. Have I read
3 that correctly?

4 A. I'm sorry, I started flipping and
5 stopped listening; could you repeat the line
6 numbers, please?

7 Q. Sure. 14 through -- we're back on Page
8 1.

9 A. Okay, we're back at the beginning.

10 Q. 14 through 16.

11 A. That's correct.

12 Q. As you sit here today, you have not
13 raised the capital necessary to fund the development
14 and construction of Clean Line's projects, have you?

15 A. I'd agree that we have not raised the
16 capital to fund the construction of the projects.
17 We have raised development capital that is
18 sufficient at this point in time to carry out the
19 development of our project.

20 Q. So the answer to my question that you
21 have not raised the capital necessary to fund the
22 development and construction is yes.

23 A. My answer was my answer.

24 Q. Okay. Have you raised the capital

1 necessary to fund the construction of the Clean
2 Line's projects -- of the Clean Line projects?

3 A. As I said, the answer is no.

4 Q. And is it also true that you have not
5 raised the capital necessary to fund the
6 construction of the Rock Island project?

7 A. That's correct.

8 Q. Okay. If you turn to the attachment to
9 Cross Exhibit 12 that I asked you to pay particular
10 attention to.

11 MR. MacBRIDE: He doesn't have that.

12 THE WITNESS: Well, yeah, I do actually
13 have it in one of these binders; if you have it
14 handy it might be faster.

15 MR. MacBRIDE: May I hand the witness my
16 copy?

17 MR. RIPPPIE: Sure. And I'm just going
18 to use that one page. I'm going to attempt to avoid
19 putting confidential data in the transcript by
20 referring to the numbers on the page.

21 THE WITNESS: Okay.

22 Q (By Mr. Rippie) Okay, are we looking at a
23 page that is Attachment 4 to the Response To Data
24 Request RJZ 2.4 Confidential, as of November 11th,

1 2013?

2 A. I have it in front of me.

3 Q. Okay.

4 MR. MacBRIDE: Mr. Rippie, I don't know
5 if this will speed this up, but the total project
6 cost is not confidential. The other numbers, the
7 details are, but...

8 MR. RIPPIE: The bottom line is not.

9 MR. MacBRIDE: Right, you stated that in
10 testimony.

11 MR. RIPPIE: Not that precisely, but
12 good enough.

13 Q (By Mr. Rippie) Is it fair to -- well,
14 let's do it this way. At the present time -- do you
15 know what the total net -- strike that again.

16 Do you know what the total net worth is
17 of RICL, LLP, right now?

18 A. I don't know precisely.

19 Q. Do you know within the nearest hundred
20 thousand dollars?

21 A. I wouldn't say that.

22 Q. Within the nearest half million?

23 A. I'm not sure of that.

24 Q. Can you confirm that the total net worth

1 of Rock Island is less than one percent of the total
2 project cost?

3 A. And by net worth here, you're referring
4 to assets less liabilities as you --

5 Q. Assets less liabilities, just like you'd
6 see on a balance sheet.

7 A. Yes, I can confirm that.

8 JUDGE JONES: One moment, and I
9 apologize for the interruption. Off the record.

10 (Discussion off the record.)

11 JUDGE JONES: All right, back on the
12 record.

13 Q (By Mr. Rippie) If Rock Island obtained
14 all of the financial assets that it is now
15 unconditionally contractually able to obtain, would
16 it still have less than 2 percent of the total
17 project cost?

18 THE WITNESS: Could you repeat that
19 question for me, please? Or have it read back if
20 you refer?

21 Q. If Rock Island obtained all of the
22 additional financial assets that it is contractually
23 able to obtain, would it still have less than 2
24 percent of that total project cost as its net worth?

1 A. Yes.

2 Q. At the present time, Rock Island has no
3 customers, does it?

4 A. Do you mean that to say do we have
5 binding agreements for customers to purchase
6 capacity on our line?

7 Q. That would be one, one type of customer.
8 Do you have any of those?

9 A. No, we do not.

10 Q. Do you have any other type of customer
11 who has agreed to take transmission service of any
12 kind using your facility?

13 A. Not under a binding agreement.

14 Q. Do you have any other customer of any
15 kind who has agreed to take transmission service
16 solely on the contingency that the line actually is
17 built?

18 A. No potential customer has made a binding
19 commitment of that nature.

20 Q. Is there any activity of which you are
21 aware that Rock Island cannot commence until it has
22 received a certificate from the Illinois Commerce
23 Commission that it can commence while still not
24 having received approval from Iowa?

1 A. I'm going to need you to repeat that
2 one?

3 Q. Sure.

4 A. There are several parts.

5 Q. I'll break it up, I'm trying to go fast,
6 and it may be counter productive. The line is in
7 two states, right?

8 A. Yes.

9 Q. Iowa and Illinois?

10 A. Yes.

11 Q. And there is a sister entity to the
12 Illinois Commerce Commission in the state of Iowa.

13 A. The Iowa Utilities Board.

14 Q. And has Rock Island made a filing with
15 the Iowa Utilities Board seeking one or more kinds
16 of regulatory determinations?

17 A. We have made the filings to begin that
18 process.

19 Q. And that includes a franchise approval
20 process in multiple counties, as well as permission
21 to actually make the investment.

22 A. I wouldn't exactly agree with your
23 characterization, I can't say there is a permit
24 called a franchise from the Iowa Utilities Board

1 that we're seeking, I think that's --

2 Q. Fair enough.

3 A. Trying establish.

4 Q. What activities can you not commence
5 now? Strike that, please.

6 Is it your intention to begin
7 construction of the line prior to receiving all
8 regulatory approvals required from Iowa?

9 A. No.

10 Q. And in part, is that because of the
11 agreement you have made with Staff that you won't
12 commence construction of the project until such time
13 as you can be assured financially and otherwise that
14 you can complete it?

15 A. I think that would be the case,
16 regardless of any agreement with Staff.

17 Q. So what is it that you can't start doing
18 until you get an Illinois certificate that you could
19 start doing while you're still waiting on Iowa's
20 approval?

21 A. Well, there are several activities in
22 Illinois that we'd like to proceed with, and we
23 believe an approved route and a CPCN from the
24 Commission is a necessary prerequisite to those

1 activities.

2 Q. Is one of them --

3 A. And I want --

4 Q. Sorry.

5 A. Thank you. Those activities include
6 additional land acquisition once we have an approved
7 route and we know the route on which we're approved
8 to build, we'll be able to increase our efforts to
9 acquiring land. They include surveys. My
10 understanding, again as a nonlawyer, is that a CPCN
11 will grant us survey access along the approved
12 route, and we would proceed with biological cultural
13 surveys, for example, geotechnical investigation
14 that would allow us to advance the engineering of
15 the project. As a result of a CPCN we would know
16 that structures were allowed to install, and we
17 could make additional progress on detailed
18 engineering to tighten the uncertainty of our cost
19 estimate.

20 Those are the factors that come to mind.

21 Q. Now isn't it true that you would also
22 have to do all those factors in Iowa?

23 A. Yes, it is.

24 Q. And do you plan on doing those

1 activities, undertaking those activities and
2 completing them in Iowa prior to receiving Iowa
3 regulatory approval?

4 A. Many of them, yes, because of the nature
5 of the process in Iowa is different from Illinois.

6 Q. Are you allowed to enter private
7 property in Iowa for surveying or study of
8 historical or cultural resources without approval of
9 the Iowa Utilities Board?

10 A. My understanding is that it is possible
11 to do that, it is possible to request survey access
12 prior, from the Iowa Utilities Board, prior to the
13 granting of a franchise.

14 Q. Are you going to know the route in Iowa
15 prior to receiving the franchise?

16 A. We won't know the definitive route, we
17 will have a proposed route.

18 Q. The same as you do here. Have a
19 proposed route.

20 A. Similar, yes.

21 Q. Now the first thing you mentioned in
22 response to my question was land acquisition
23 activities, right?

24 A. Don't recall if it was the first, but it

1 was something I mentioned.

2 Q. Okay. Is it Rock Island's intention to
3 seek authority to condemn land prior to approval
4 from Iowa of the roughly 350 miles of line that run
5 through that state?

6 A. Could you clarify the form or the
7 context you're referring to of seeking condemnation?

8 Q. Is it Rock Island's intention to ask
9 this Commission for authority to condemn land in
10 Illinois prior to receipt of approval from the State
11 of Iowa of authority to build the roughly 350 miles
12 of line that lies in Iowa?

13 A. I don't know. I, that would depend on
14 the timing of the Iowa approval. We don't have any
15 current plans to do that, but neither am I aware
16 that that would be impossible under any circumstance
17 I could envision.

18 Q. Let me show you a document that has
19 previously been marked Com-Ed Cross Exhibit Number
20 3.

21 MR. RIPPIE: May I approach the witness,
22 Your Honor?

23 JUDGE JONES: Yes, you may.

24 Q (By Mr. Rippie) If you are at an impasse

1 with an Illinois land owner, will Rock Island commit
2 that it won't ask this Commission for condemnation
3 authority prior to the receipt of authority from
4 Iowa to build the portion of the line that is in
5 that state?

6 A. I'm not authorized to make any such
7 commitments here today.

8 Q. Would you --

9 A. I don't know the answer.

10 Q. Sorry. Would you expect that if Rock
11 Island reached an impasse with an Illinois land
12 owner, it would seek condemnation authority from the
13 Commission prior to the summer of 2015?

14 A. I don't know the answer to that either.

15 Q. What does impasse mean in the context of
16 seeking condemnation authority to Rock Island?

17 A. Well, I don't know that I could speak
18 for Rock Island, our, our real estate attorneys
19 would be more qualified to do that. If, I could
20 offer you a lay understanding of what an impasse is
21 in negotiations, but that's all I can offer.

22 Q. Well, do you have an understanding of, a
23 practical understanding of what it's going to take
24 before Rock Island comes back and asks for authority

1 to condemn land for this project?

2 A. I have no detailed understanding. I am
3 aware that negotiations with land owners would need
4 to occur, and in fact, it's our intent, as a matter
5 of business philosophy, to do everything we can to
6 attempt to acquire voluntary easements before we
7 ever sought condemnation. I don't know whether, the
8 exact nature of the requirement under law to do
9 that. We'd do it anyway.

10 Q. Were you here during the cross
11 examination of Dr. Marshall?

12 A. Part of it.

13 Q. If a land owner such as Dr. Marshall
14 said under oath that he will never sell land to you
15 voluntarily, does not want contact with you, and
16 will accept nothing but US Mail notices from Rock
17 Island, as a practical matter, are you at an
18 impasse?

19 A. I would say we're at an impasse at this
20 time. As far as furthering land negotiations with
21 that land owner, I can't speak to whether that's an
22 impasse in the context of seeking any future
23 condemnation authority.

24 Q. So you have no understanding at all of

1 how long Rock Island will wait before seeking
2 condemnation authority from the Commission in a case
3 such as I've just described?

4 A. Well, my understanding is limited to
5 this, which is that we would absolutely exhaust
6 voluntary negotiations before we requested any
7 potential condemnation proceeding, and that
8 condemnation proceeding, if it occurs, would be
9 during the land acquisition stage of the project.
10 That's the limit of my understanding.

11 Q. Do I -- that is all, that's the sum
12 total of your understanding of the answer to that
13 question.

14 A. Yes, it is.

15 Q. Do you understand that Rock Island is
16 attempting to acquire land in Illinois now?

17 A. We're making some very limited efforts
18 on a couple of parcels, I'm aware of that.

19 Q. Have you acquired any parcels at all in
20 Illinois?

21 A. We have.

22 Q. If Rock Island asks the Commission for
23 authority to condemn property, is that going to be
24 done on a property-by-property basis, or once

1 that -- well, try that again.

2 Is that going to be done on a
3 property-by-property basis?

4 A. I am not sure I'm clear on what a
5 property-by-property basis means.

6 Q. Well, if you are at an impasse with a
7 land owner who refuses to sell their property
8 voluntarily and refuses all further contact with you
9 other than receipt of mail notices, do you intend to
10 seek authority from the Commission to condemn that
11 particular parcel, or do you intend to seek
12 authority from the Commission to exercise
13 condemnation authority across the length of the line
14 based on that impasse?

15 MR. MacBRIDE: And Judge, I have an
16 objection to this question. This is outside the
17 scope of Mr. Berry's direct. Mr. Detweiler was our
18 witness on land acquisition activities, and in fact,
19 he was cross examined extensively on this very point
20 that's now being asked about and has been asked
21 about for the last few minutes, so I think this is
22 belaboring something that's already in the record
23 through cross of the appropriate Rock Island witness
24 through cross examination of a witness who, who is

1 not our offered witness on this topic.

2 MR. RIPPPIE: Well, this witness, I'm --
3 this witness does expressly state that it is, that
4 he is the witness that is explaining why an 8-503
5 order is required. He takes that subject up in
6 detail. And this is, I mean I know lawyers always
7 like to say it's my last question before I come back
8 to 8-503, but it's my last question before I come
9 back to 8-503.

10 JUDGE JONES: Are you saying -- I'm
11 sorry, have you finished your argument?

12 MR. RIPPPIE: Yes.

13 JUDGE JONES: Are you stating that the
14 witness has opened the door on this line of
15 questioning?

16 MR. RIPPPIE: Absolutely, the witness is
17 explaining why he, the project requires an 8-503,
18 and the, one of the principal reasons of requiring
19 an 8-503, as the witness has testified, is to
20 facilitate land acquisition activities.

21 JUDGE JONES: Could you provide a
22 citation to where the witness said this?

23 MR. RIPPPIE: In response to my cross, it
24 was the first reason he gave.

1 MR. MacBRIDE: Well, I disagree with
2 that, the question was why do you require a
3 certificate.

4 JUDGE JONES: If I've asked somebody a
5 question, if you want to respond to it, bring it up
6 with me first, and we'll -- we'll proceed in that
7 manner.

8 MR. MacBRIDE: Thank you.

9 JUDGE JONES: That's a close call, I
10 will allow the question. I think there's been
11 sufficient foundation for it through prior
12 questions. It was permitted, so I'll ask the
13 witness to answer the question, if you understand it
14 and have an answer.

15 THE WITNESS: Could I ask the reporter
16 to read it back, please?

17 JUDGE JONES: Yes.

18 (The requested portion of the
19 record read by the reporter as follows:)

20 THE REPORTER: QUESTION: "Well, if you
21 are at an impasse with a land owner who refuses to
22 sell their property voluntarily and refuses all
23 further contact with you other than receipt of mail
24 notices, do you intend to seek authority from the

1 Commission to condemn that particular parcel, or do
2 you intend to seek authority from the Commission to
3 exercise condemnation authority across the length of
4 the line based on that impasse?"

5 THE WITNESS: My lay understanding of
6 this matter, which I believe I've characterized as
7 such before, is that we would only request
8 condemnation authority in a case that we do on
9 parcels where we have reached this point in
10 negotiations that you've, you've mentioned. Whether
11 there could be more than one parcel in a single
12 proceeding or filing, I honestly have, I have no
13 idea.

14 Q (By Mr. Rippie) Fair enough. Do you have
15 an understanding of what, should you already have an
16 8-503 order from this Commission, you would intend
17 to show in such a proceeding, other than that you
18 have reached an impasse?

19 A. I have no knowledge.

20 Q. One way or the other.

21 A. No.

22 Q. Does Rock Island irrevocably commit that
23 it will never initiate or support a request of the
24 Federal Energy Regulatory Commission to assign any

1 portion of the construction or operating costs of
2 this project to retail customers through the
3 Transmission Rate Mechanism?

4 MR. MacBRIDE: Counsel, you may have
5 misspoke, you said a request of the Federal Energy
6 Regulatory Commission?

7 MR. RIPPIE: A request to.

8 MR. MacBRIDE: To?

9 MR. RIPPIE: Well, I think either
10 pronoun works, but I'm happy with yours, too.

11 THE WITNESS: The condition that I'm
12 authorized to accept on this topic that you
13 mentioned is the one mentioned in my Rebuttal
14 Testimony, which I would characterize as a
15 prohibition against such a request, but I'm not
16 authorized to agree to any other text here on the,
17 here on the stand today.

18 The condition, I believe, speaks for
19 itself, and you can argue I guess whether it exactly
20 matches the description you provided for it.

21 Q (By Mr. Rippie) So I take it you are also
22 not authorized to commit irrevocably and permanently
23 that you will not cause any portion of the
24 construction or operating costs of the project to be

1 charged to Illinois retail customers without
2 previously obtaining the approval of this
3 Commission, because I've said it slightly more
4 broadly than you agreed? Strike that.

5 I take it you are also not authorized to
6 commit irrevocably and permanently that Rock Island
7 will not support or seek assignment of costs to
8 Illinois retail rate payers through the Transmission
9 Rate Mechanism without the advanced approval of this
10 Commission.

11 A. As you characterize it, to me that seems
12 like a -- I don't happen to have the words in front
13 of me -- but that sounds like a summary of the
14 condition we have proposed, and I'm authorized and
15 have previously stated we would accept the condition
16 we have. The point of which is that we will not
17 recover costs from Illinois rate payors under PJM or
18 MISO cost allocation mechanisms without a Commission
19 approval.

20 Q. And you will not seek to change those
21 cost allocation mechanisms without Commission
22 approval.

23 A. I'd say it would depend on the kind of
24 changes we're seeking. I mean we certainly could --

1 Q. Fair enough.

2 A. -- seek changes unrelated to the Rock
3 Island project, but we wouldn't want to rule that
4 out, we, like most transmission companies, regularly
5 have matters, regulatory matters before PJM and
6 MISO.

7 Q. You, you will not seek to change those
8 cost recovery mechanisms in a manner that would
9 cause them to assign the cost of this project to
10 Illinois retail customers without approval of the
11 Commission.

12 A. That's certainly our intent.

13 Q. Now Mr. Naumann, in his Rebuttal
14 Testimony, stated that in his experience PJM does
15 not require a certificate before they will issue an
16 ISA and attached an Exhibit Numbered 4.01 to his
17 testimony, and you, as I take it, took issue in your
18 Surrebuttal Testimony with Mr. Nauman's conclusions,
19 correct?

20 A. I provided a response, yes.

21 Q. Now am I correct that at no time has
22 Rock Island produced any email, letter, document or
23 notes of any conversation or communication with PJM
24 on that subject.

1 A. By on that subject you mean whether a
2 CPCN is a necessary condition to sign an ISA for a
3 Merchant Transmission Line?

4 Q. Or issuance of an ISA to a Merchant
5 Transmission Line, yes.

6 A. Well, it, the milestone may be for
7 signing.

8 Q. All right, we'll -- I'll take your
9 answer.

10 A. I'm sorry to be so, so careful here, but
11 let me state my knowledge and see if it, if it
12 satisfies you.

13 Q. No, I'd just like you to answer my
14 question.

15 A. All right.

16 Q. You have produced no email, letters,
17 notes of any conversation or other documents
18 reflecting any communication between -- with PJM
19 about whether a CPCN is required before a merchant
20 transmission developer may sign an ISA.

21 A. We have not produced any such
22 communications to my knowledge. I'm not aware of
23 any.

24 Q. And if you can look at your surrebuttal,

1 please, Page 22, Lines 499 to 517.

2 A. One moment, please.

3 JUDGE JONES: What was that line number
4 again?

5 MR. RIPPPIE: Yeah, I'm making sure it's
6 correct, Your Honor. It's Exhibit 10.26, Lines 499
7 through 517.

8 THE WITNESS: I'm there.

9 Q (By Mr. Rippie) I understand your answer
10 beginning at Line 502 to preserve the right to raise
11 a complaint at FERC about the question of whether or
12 not a network upgrade is required due to a
13 generation interconnection request. Is my
14 understanding correct?

15 A. Well, my testimony states that we have
16 no plans or basis to file such a complaint, but
17 we're also unwilling to totally waive the right to
18 file a complaint for the reasons I describe here.

19 Q. Right, and my question to you, sir, was,
20 is the right that you preserve or state you're
21 preserving here is, to quote yourself: However, if
22 an upgrade is not actually required, or if the
23 upgrade benefits other interconnection customers
24 that are not assigned a pro rata cost in accordance

1 with the PJM tariff, or if there is an error in the
2 study, Rock Island should be able to pursue it's
3 rights.

4 Did I read that correctly?

5 A. You did read it right.

6 Q. Okay. So if an upgrade is due to the
7 interconnection, and there's not an error in the
8 studies, and there isn't general benefit, do you
9 intend to still preserve your rights to file such a
10 complaint?

11 A. I don't see under that circumstance that
12 we would be able to file a complaint, we'd have no
13 intention of doing so.

14 Q. Okay. Would you agree that on a project
15 of this scale, it is reasonable to assume that an
16 easement or easements will need to be required
17 through the use of Eminent Domain?

18 A. I certainly think it's a possibility.

19 Q. Do you think it's reasonable to assume
20 that an easement or easements will need to be
21 acquired through the use of Eminent Domain?

22 A. I think it's a reasonable possibility, yes.

23 Q. To the extent that you made a
24 representation to the Iowa Utilities Board about the

1 likelihood that Eminent Domain would be necessary,
2 would you expect it to be any more or less likely to
3 be necessary in Illinois?

4 A. I have no knowledge one way or the
5 other.

6 Q. That's all I have. Thank you, sir.

7 A. Thank you.

8 MR. RIPPIE: At this point I would like
9 to offer into evidence Com-Ed Cross Exhibits 8
10 through 12.

11 JUDGE JONES: Is it the case that two of
12 those have confidential content?

13 MR. RIPPIE: Yes. On the confidential
14 content, Your Honor, what we'll do is make a filing
15 on eDocket that's a public version which contains
16 the narrative answer to the question. I believe in
17 every case the confidential information is contained
18 in the attachment, and the confidential filing will
19 contain both the narrative and the attachment.
20 Where, where the attachment has been designated
21 confidential.

22 JUDGE JONES: All right, there's a
23 motion pending to admit Com-Ed Cross Exhibits 8
24 through 12. Are there any responses to that motion?

1 MR. MacBRIDE: Rock Island has no
2 objection, with the understandings, number one, that
3 we will work with Com-Ed to get the correct current
4 or most recent version of Cross Examination Exhibit
5 12, and that Com-Ed will permit us to satisfactorily
6 develop the public version of the confidential Cross
7 Exhibits for filing.

8 JUDGE JONES: Is that agreeable?

9 MR. RIPPIE: Yeah, absolutely, Your
10 Honor. We'll, in fact, agree to provide drafts in
11 advance so that Mr. MacBride and his client can
12 confirm that the confidential information is
13 protected.

14 JUDGE JONES: Do any of the other
15 parties have any clarifications or objections or
16 other responses to the motion?

17 MR. SHAY: We have no objection, Your
18 Honor.

19 JUDGE JONES: Okay. Let the record show
20 that Com-Ed Cross Exhibits 8, 9, 10, 11 and 12 are
21 admitted into the evidentiary record subject to
22 their being filed on eDocket, and subject to the
23 other clarifications noted by Mr. MacBride to which
24 Mr. Rippie agreed.

1 As mentioned, two of the, two of the
2 Cross Exhibits will be filed in both public and
3 confidential proprietary versions. The exhibits
4 then will be deemed admitted without condition upon
5 their actually being, being filed.

6 Are there any, any other, any questions
7 about the motion and the ruling?

8 (No response.)

9 All right, let the record show there are
10 not. Leave 14 days as given for that purpose. I
11 would just note that with regard to any of the other
12 items where motions are granted and the items,
13 themselves, are to be filed later, a 14-day window
14 will be provided for the making of that filing from
15 the, from the time of the ruling unless, unless
16 otherwise indicated.

17 (Com-Ed Cross Exhibits 8-12
18 were admitted into evidence
19 at this time.)

20 JUDGE JONES: Mr. MacBride, do you have
21 recross for Mr. Berry? I'm sorry. Redirect?

22 MR. SHAY: Your Honor, we have time
23 reserved for cross.

24 JUDGE JONES: Yeah, one moment. I'm

1 sure you're right.

2 MR. SHAY: It's been a long week.

3 JUDGE JONES: Yeah, that is correct,
4 both ILA and IAA have indicated they have cross for
5 this witness, so we will allow them to proceed with
6 that, and treat the question to Mr. MacBride as
7 premature, and slightly misstated to boot. So Mr.
8 Shay.

9 MR. SHAY: Your Honor, if I may, I'd
10 like to go off the record for just a moment, I'd
11 like to confer with Mr. MacBride on a pending matter
12 we were trying to work out regarding a stipulation,
13 and I just didn't want to, I wanted to talk to him
14 about it now so that we have enough time to work it
15 out before the day is over.

16 JUDGE JONES: Okay.

17 MR. SHAY: So it will just take a
18 moment.

19 JUDGE JONES: That's fine. We'll go off
20 the record to allow that to happen.

21 (Discussion off the record.)

22 MR. SHAY: We're ready, Your Honor.

23 JUDGE JONES: Okay, Mr. Shay.

24 EXAMINATION

1 QUESTIONS BY MR. SHAY

2 Q. Good morning. Is it still morning? No,
3 good afternoon.

4 A. Good afternoon, Mr. Shay.

5 Q. Mr. Berry, my name is Bill Shay, and I'm
6 an attorney for Illinois Landowners Alliance, as you
7 know. If you'll bear with me, I, some of my
8 questions are no longer necessary, because of the
9 stipulated items that were admitted earlier and some
10 of the cross by Mr. Rippie. I want to clarify one
11 thing.

12 With regard to this condition that you
13 offered to the Commission and the parties pertaining
14 to cost allocation, is it correct that that
15 condition, the, as it presently exists, appears in
16 your Surrebuttal Testimony, Rock Island Exhibit
17 10.26, Page 21, starting at Line 487?

18 A. That's correct, and then continues into
19 Page 22.

20 Q. Yes, over to Line 497?

21 A. Yes, sir.

22 Q. Okay. So you can represent that that is
23 Rock Island's current position regarding the
24 assurance to this Commission and the parties

1 regarding cost allocation?

2 A. Yes, that's the condition at this time
3 we're willing to agree to. As I also stated in my
4 testimony, I think the intent of that condition was
5 clear, and we're happen to look at alternative
6 language to accomplish the intent.

7 Q. Thank you. Okay, you're, you're
8 responsible, are you not, for all finance matters
9 for not only the Rock Island project, but for all of
10 Clean Line's projects?

11 A. Yes, sir.

12 Q. Do you generate, as part of that
13 responsibility, financial projections for Clean Line
14 and for this project?

15 A. Yes, with my team.

16 Q. With your team?

17 A. Yes.

18 Q. Do you, as part of that, do you use
19 Microsoft Excel and build financial models?

20 A. Yes, sir.

21 Q. Okay. Do you recall what the, maybe the
22 latest version of your financial model would be for,
23 for this project that includes financial projections
24 for it?

1 A. Do I recall if such a file exists or --

2 Q. No, about when was the latest version of
3 that model produced? And produced means just
4 internally, not turned over to anybody.

5 A. I can't say for sure. It's not -- we
6 update it regularly, I can say that.

7 Q. Okay. Would it have been within the
8 last month?

9 A. I can't say for sure if we've updated
10 the file in the last month, sorry.

11 Q. Last quarter?

12 A. I think that's likely, but again, I
13 don't know the exact date.

14 Q. That's fine, thank you. For this
15 project, Rock Island project, how many years does
16 that model cover in terms of yearly projections?

17 A. We'll look at different useful lives,
18 it's a sensitivity term model, commonly we use 40
19 years as a proxy for the useful life of the
20 transmission line, but I think we also believe that
21 it could be much longer with respect to transmission
22 lines, last longer than that.

23 Q. So for, would 40 -- would it be fair to
24 say 40 years is sort of a base case approach?

1 A. In our financial projections for the
2 purpose of evaluating the economics of the Rock
3 Island Clean Line, yes.

4 Q. Okay. And those projections would
5 include cash flows, including expenditures --
6 development expenditures, financing proceeds and
7 revenues and ongoing operating expenses and so
8 forth?

9 A. Yes.

10 Q. Okay. For that model that you just
11 described, does that assume that Rock Island retains
12 ownership of this project for that entire period?

13 A. Yes.

14 Q. Okay, based on your current plans, base
15 case plans, when do you project that construction of
16 the Rock Island project would begin?

17 A. I would say at the end of 2015, towards
18 the end 2015, fourth quarter of 2015 would be our
19 best estimate.

20 Q. Okay. And again, you have testified to
21 this somewhat, but I'd like to, to ask you again, if
22 I may. How does Rock Island plan to finance the
23 construction of the project?

24 A. Well, I described this in detail in my

1 testimony, so I don't want to leave anything out,
2 but subject to that caveat, we plan to use project
3 finance to finance the construction of the project.

4 Q. Okay. Can you just describe that in a
5 little more detail? What you mean by that? Again,
6 we won't hold you to that, we will allow your
7 details in your testimony to remain in the record,
8 but I just would like to get a little more better
9 idea here today what you mean by project finance.

10 A. Allow me one moment, please. So project
11 finance relies principally on the assets and
12 revenues of the Rock Island project. We would put
13 into place long-term capacity contracts with
14 customers, and against the security of revenues from
15 those contracts attract debt and equity financing.

16 Q. Debt and equity financing.

17 A. Yes, sir.

18 Q. Both. Okay. But the security that you
19 mentioned, the revenues from the contracts, would be
20 only offered to the lenders, not the equity
21 investors, is that correct?

22 A. It depends what you mean by security. I
23 guess there are two meanings. The security in the
24 legal sense of having a security interest in

1 revenues I expect would be limited to debt
2 investors. Security in terms of predictable cash
3 flow would be attractive to both debt and equity
4 investors.

5 Q. Got it, thank you. About, if you can
6 say at this time, about what mix of debt and equity
7 would you expect for this project when you, when you
8 go to the markets to finance it?

9 A. Look at a range between 60 and 80
10 percent.

11 Q. That would be debt?

12 A. Correct.

13 Q. Would you go to the markets for those
14 two components, equity and debt, simultaneously?

15 A. Generally, yes, because both equity and
16 debt investors would want to see the other financing
17 in place before they pursue their investment.

18 Q. So you end up with a total package of
19 project financing.

20 A. There'll be separate agreements, but
21 they will be connected in the sense I described.

22 Q. Fine, thank you. When would you expect,
23 based on your best knowledge as you sit here today,
24 when the, when this project financing might close?

1 And if it's more than one date, we'd like both of
2 those.

3 A. I would say for both debt and equity
4 financing, target date is the fourth quarter of
5 2015. For the construction financing for the
6 project.

7 Q. So nearly immediately before you would
8 start -- or just prior to starting construction.

9 A. That's correct. It's wasteful to tie up
10 capital resources in advance of starting
11 construction of the project.

12 Q. I understand. Okay. Now once you
13 complete that finance, project financing that you
14 described, and once construction begins in the
15 fourth quarter of 2015 as you stated, will the
16 company, that is Rock Island, continue to incur
17 other expenses and costs besides construction costs?

18 A. Yes, though they're in a much smaller
19 magnitude than the construction costs.

20 Q. Absolutely. And those costs would be
21 similar to costs that you're incurring today, as
22 well as maybe others?

23 A. I'd say they're actually largely
24 different than the costs that we're incurring today.

1 Q. Okay. And how so? Can you just
2 describe generally how, what kind of costs you'd be
3 incurring after construction begins that's not part
4 of the construction?

5 A. Property taxes.

6 Q. Okay.

7 A. Clearing and grubbing for the
8 transmission line, transmission line operations and
9 maintenance. As you know, there's an annual land
10 owner payment that's part of our compensation
11 package.

12 Q. Okay. Let, let me clarify. What I
13 really am trying to get at are costs, expenses that
14 you would incur after construction begins that would
15 not be covered or financed by your project financing
16 proceeds.

17 A. With respect to the Rock Island project?

18 Q. Yes.

19 A. There would be no such costs.

20 Q. Okay. So your project financing
21 proceeds would then fund Rock Island entirely from
22 that point forward until your revenue -- start
23 generating revenues?

24 A. Financing plus revenue would cover all

1 of those costs, yes. On an ongoing basis we would
2 expect revenue to cover all of those operations
3 costs.

4 Q. Okay. Okay, when you obtained project
5 financing for Rock Island as you described, would
6 that -- would you expect that that, that those
7 proceeds would be used solely for Rock Island
8 project expenditures and other Rock Island-specific
9 expenses and costs?

10 A. Yes.

11 Q. So none of that, those proceeds would be
12 available for the Centennial West project, for
13 example, or any other project in the portfolio, or
14 for corporate overhead?

15 A. No; if investors are investing in the
16 Rock Island project, those investments would go to
17 fund the Rock Island project.

18 Q. Right. And is that one reason that the
19 project would be held in a single legal entity?

20 A. Yes, sir.

21 Q. Okay. Now I think you've testified that
22 Rock Island will have signed transmission customer
23 contracts before getting project financing
24 commitments, is that correct?

1 A. Yes.

2 Q. And you have testified, haven't you,
3 that Rock Island will need to have sold the majority
4 of the capacity on the line?

5 A. Is your -- could I ask for
6 clarification, that, solely the majority of the
7 capacity on the line prior to closing construction
8 financing?

9 Q. Yes.

10 A. That's correct.

11 Q. Okay, now you've, you've indicated the
12 fourth quarter of 2015 is when you expect the
13 project financing to close. When will you sign your
14 first Anchor Tenant Capacity Contracts for Rock
15 Island?

16 A. We'd also target for that to occur in
17 2015, once we've obtained approvals we hope both
18 from the Illinois Commerce Commission and the Iowa
19 Utilities Board.

20 Q. After such approvals are obtained?

21 A. Yes.

22 Q. Will those Anchor Tenant Capacity
23 Contracts be with perspective new generators in the,
24 to locate in the resource area, or with non, other

1 nongenerator customers?

2 A. Could be both.

3 Q. Could be both, okay. So in 2015, you'll
4 be signing capacity contracts for capacity on the
5 line with respect to new generators in, that would
6 expect to locate in the resource area?

7 A. Yes.

8 Q. What, generally, based on your
9 experience, would these kinds of contracts, what
10 would the -- at the time that they signed, what
11 would the customer's obligations under those
12 contracts be conditioned on, if anything?

13 A. I'd say it's really specific to the
14 nature of the particular project.

15 Q. Okay. Would, would those contracts
16 expect to be conditioned on the project, that is the
17 Rock Island project, being built and placed into
18 service?

19 A. The contracts we enter into, themselves,
20 wouldn't be conditioned on that, but the provision
21 of service under those contracts would be
22 conditioned on the project being built and able to
23 offer service.

24 Q. Would the customer's obligation to pay

1 you any money be conditioned upon you placing the,
2 the line in service and becoming operational?

3 A. That's correct, we don't intend to
4 charge customers for a service we don't provide.

5 Q. So there wouldn't be any up front
6 payments to Rock Island at the time those contracts
7 are signed.

8 A. We don't foresee that.

9 Q. Okay. Generally how will revenues under
10 those kinds of contracts be structured?

11 A. As a fixed capacity charge.

12 Q. Okay. Would that be a monthly charge?

13 A. It's possible; it would be based on a
14 period of time certainly.

15 Q. Okay. So in the utility parlance, would
16 you call that a demand charge? Is that fair?

17 A. I would not, actually.

18 Q. No? Okay. How would it be different
19 than a demand charge?

20 A. A capacity charge isn't based on the
21 amount of capacity reserved. A demand charge is
22 typically based on actual utilization or actual
23 demand.

24 Q. Do you understand how demand charges

1 work in the utility -- utility industry?

2 A. I believe I do.

3 Q. Okay. I won't belabor that point.

4 Okay, so back to signing these contracts
5 with customers. When would you, again, based on the
6 timeframe that you've described here, when would you
7 expect to first receive revenues from any of your
8 anchor tenants? For the Rock Island project.

9 A. Be as the project is completed, which,
10 based on our current schedule, would be towards the
11 end of 2017.

12 Q. Okay. Mr. Berry, so you're telling us
13 that Rock Island, you expect Rock Island to be able
14 to obtain financing for the project's construction
15 without any generation having been located at or
16 near the western terminance in the resource area,
17 and Rock Island's project lenders will be counting
18 on, when they commit to you and allow you to close
19 on the financing for this project, they will be
20 counting on prospective generators in the resource
21 area, getting all their necessary approvals, their
22 own project of corporate financing for their wind
23 projects or their generation project, and getting
24 those projects constructed in commercial operation?

1 A. No, I would not characterize it that
2 way.

3 Q. How would you characterize it?

4 A. Our lenders/investors will look to the
5 revenue contracts into which we enter, however, it's
6 not standard under those contracts that the
7 transmission shipper take the development risk
8 associated with the project of the -- excuse me, I
9 think I stated that wrong.

10 It's not typical under such contracts
11 that the transmission shipper would try to push onto
12 the transmission provider the risks of the
13 transmission shipper completing his project.

14 Q. Okay. So the shippers that you
15 mentioned will have an obligation, once they've
16 signed these capacity contracts, they'll have an
17 obligation to pay you once you have the transmission
18 line in service and ready to be utilized, regardless
19 of whether they have actually developed their
20 generation facilities?

21 A. The nature of a capacity charge, as I
22 described earlier, is that you pay for the capacity
23 if it's available, regardless of your use.

24 Q. Okay. That's, that's a, would you agree

1 that's a major risk for those generators to
2 shoulder?

3 A. That is the business of a power plant
4 developer to manage the risk of their own generation
5 development.

6 Q. Okay. And is that a yes then?

7 A. I wouldn't describe it as a major risk,
8 I would describe it as the risk of their business.

9 Q. But it is, that's the way it would work,
10 is that correct? How I described? That risk would
11 be on the generators?

12 A. By that risk, could I ask you to clarify
13 what you mean by that risk?

14 Q. The risk that, associated with those
15 generators who sign capacity contracts with you
16 actually doing all the things necessary in order to
17 get their generation facilities built and in service
18 and connected to your western terminance.

19 A. Yes, they would take that risk.

20 Q. Okay, thank you.

21 A. By they, I mean the generators.

22 Q. Okay, in talking further about those
23 generators in the resource area, you've, your --
24 you're aware of about how much capacity will need to

1 be committed to and built in the, in terms of
2 generation in that resource area in order to make
3 this project, your project financially feasible, is
4 that correct?

5 A. Am I aware of that number?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. And what is that number? In
9 terms of megawatts.

10 A. Well, we target slightly over 4000
11 megawatts of new wind generation. It's possible the
12 project could proceed based on slightly less, in the
13 case that we would have a plan to sell the balance
14 of the capacity to new generators as the project is
15 constructed.

16 Q. So some amount less than 4000 megawatts?

17 A. I would say slightly over 4000 megawatts
18 is our, is our base case.

19 Q. Well, but my question, if it wasn't
20 clear, my question was is the, is the minimum amount
21 necessary in order to make your project economically
22 feasible?

23 A. I would say it's something less than
24 4000 megawatts, yes.

1 Q. Okay. And about -- what would that
2 translate into, based on your experience in the wind
3 energy industry, and assuming this is all wind for
4 the moment, what would be the total approximate
5 development and construction costs of, of that
6 amount of generation capacity in the resource area,
7 just confining your answer for the moment to just
8 the, the generating facilities, themselves.

9 A. Current construction costs for wind are
10 about \$1.5 million per megawatt.

11 Q. Okay.

12 A. That's a rough estimate obviously, and
13 it depends on the circumstance, but that's a
14 reasonable rule of thumb.

15 Q. So for 4000 megawatts -- would you do
16 the math, or are you going to make me do it?

17 A. Your preference.

18 Q. Do you know the number?

19 MR. MacBRIDE: Sorry, what's the
20 question?

21 Q (By Mr. Shay) For 4000 megawatts -- for
22 4000 megawatts of wind capacity at \$1.5 million per
23 megawatt as a representative cost, what would be
24 that total dollar amount?

1 THE WITNESS: Six billion dollars.

2 Q. Six billion?

3 A. Correct.

4 Q. Okay. Going back to, following up on
5 questions and answers you gave about Rock Island's
6 costs going forward and the time schedule, and the
7 project financing that you expect, and the time you
8 expect to close on that, and then further with the
9 time you expect on assigning customer contracts,
10 capacity contracts and getting revenue, taking all
11 that together, do you have a projection of the date
12 at which Rock Island Clean Line would become cash
13 positive on a sustained basis, bringing it in to
14 your monthly cash burn?

15 A. Could I ask for clarification? Are you
16 referring to Rock Island or Clean Line here?

17 Q. Rock Island.

18 A. It would be when we finish construction
19 and begin to generate revenue, which I've said
20 before is expected in late 2017.

21 Q. So you're saying you expect Rock Island
22 to become cash positive about the, immediately after
23 it starts getting customer revenues?

24 A. Yes, at that point construction would be

1 completed, and as I mentioned before, revenues will
2 certainly greatly exceed the operational costs of
3 the project.

4 Q. Okay. Mr. Berry, do you have in front
5 of you, it's a cross examination exhibit that's been
6 admitted, admitted into the record labeled ILA Group
7 Cross Exhibit 1?

8 A. I'm sure I have it, I don't have it
9 under that nomenclature. Do you have the Data
10 Request reference?

11 Q. Yes, it's Rock Island's Response To
12 Com-Ed Data Request 8.16, Attachments 1 and 2.

13 A. One moment, please.

14 (Witness searches for document.)

15 I apologize, I appear to have
16 overstuffed my binder.

17 And could you repeat the DR reference,
18 please?

19 Q. Yes, I'm sorry, it's 8 -- 8.16.

20 A. I have it.

21 Q. Okay. And Attachment 1, which are the
22 first two pages of that exhibit, do you see those?

23 A. I do.

24 Q. Okay. And does this show, as far as

1 your budget and forecast, a budget for 2013 and
2 forecast for 2014/2015?

3 A. That is what this exhibit shows.

4 Q. Okay. And on Page 1 you show, for the
5 Rock Island project you show amounts, realizing
6 these are confidential, so we won't state them here,
7 you show forecasted amount for 2014 and a similar
8 forecasted amount for 2015, is that correct?

9 A. Yes.

10 Q. Okay. And based on your testimony that
11 this project will become -- or the company, Rock
12 Island, will become cash positive in late 2017, is
13 it fair to say that, if you haven't already, you'll
14 be developing forecasts, similar forecasts for 2016
15 and 2017 up to the date that you will become cash
16 positive?

17 A. Yes, that would be our construction
18 budget.

19 Q. What would be your construction budget?
20 I'm sorry, I'm confused.

21 A. The budget in 2016 and 2017 up until the
22 point we become cash positive.

23 Q. Okay. Well, but this, this exhibit we
24 have in front of us is not a construction budget,

1 right?

2 A. That's correct.

3 Q. Okay. So I'm, I'm referring to these
4 types of expenditures, isn't it true you will
5 continue to incur these in 2016 and 2017?

6 A. We will incur similar expenditures
7 related to the construction of the project. For
8 example, we will incur technical, technical and
9 engineering expenditures related to the construction
10 of the project in 2016 and 2017. We will not incur
11 these exact same kinds of development expenditures,
12 for example, related to licensing or obtaining
13 permits in 2016 and 2017.

14 Q. Okay. I -- let me ask it this way.
15 After 2015, will, will Rock Island still need to --
16 will it or won't it need to raise additional
17 development capital?

18 A. No.

19 Q. No. That construction financing,
20 project financing will, will fund all of Rock
21 Island's expenditures after 2015?

22 A. After the point the project financing is
23 in place it will fund all of the project's
24 expenditures, yes.

1 Q. Okay, thank you. All right, for this
2 whole line of questioning that we've had about, and
3 your answers about Rock Island, would you expect
4 that all those answers would be similar if we asked
5 you those about your other projects, the four other
6 projects in the pipeline?

7 MR. MacBRIDE: I object --

8 Q (By Mr. Shay) Different, different values
9 maybe, and different timing, but the same nature
10 from a qualitative standpoint?

11 MR. MacBRIDE: I object to this
12 question, he's asking the witness to, you know,
13 state if his, if he'd give the same or similar
14 answers for five other -- four other projects on a
15 line of questioning that's lasted 45 minutes, by my
16 count, at this point, and I don't think that's fair
17 to ask the witness to summarize in that manner.

18 MR. SHAY: I'm just trying to save time.

19 JUDGE JONES: Although saving time is a
20 good thing, I don't know that it really directly
21 responds to the objection, so the objection is
22 sustained.

23 Q (By Mr. Shay) Okay. Mr. Berry, with
24 respect to this same exhibit that you have in front

1 of you, the one that is, was your Response To Com-Ed
2 Data Request 8.16, Attachment 1, are those amounts
3 for the forecast for 2014, 2015, for the other Rock
4 Island -- for the other Clean Line projects, are
5 those still accurate?

6 A. Well, this document was prepared as of
7 May, 2013, so they were accurate as of that date.

8 Q. Okay.

9 A. I'm not aware of, sitting here today,
10 and couldn't come up with any specific updates to
11 those projects.

12 Q. Okay. Would you expect that the, there
13 would be any significant changes to any of those,
14 either year of those forecasts if this document was
15 updated as of today?

16 A. I can't say, I haven't done that review,
17 particularly for the other projects, besides the
18 Rock Island project.

19 Q. Okay. How about for the forecast for
20 the corporate expenditures that's in the first block
21 of numbers on Page 1?

22 A. I haven't done that review, I don't
23 foresee any major changes.

24 Q. Okay. So we've had some questions and

1 answers of other witnesses before you about the
2 total cost of all of, all five projects, total
3 capitalized costs. What, what would be your
4 estimate of that?

5 A. By all five projects, are you referring
6 to all of Clean Line's development projects?

7 Q. Yes, I am.

8 A. And by all capitalized costs, are you
9 referring to their total construction costs?

10 Q. Yes.

11 A. I don't have the figure in front of me,
12 I believe prior witnesses have said approximately \$8
13 billion. That sounds correct to me.

14 Q. Yeah, I -- well, I recall that there
15 have been varying estimates of 8 billion to 10
16 billion, so would you say it's closer to 8 billion?
17 Maybe slightly in excess? Is that fair?

18 A. I don't have the budgets of those
19 projects in front of me; my answer, 8 billion seems
20 like a reasonable estimate.

21 Q. Thank you. Do you expect today, as you
22 sit here, each project to go forward and become
23 approved, financed, built and commercialized?

24 A. That's what I wake up every morning

1 hoping to achieve.

2 Q. If any project would fail to get project
3 financing and not get constructed, then what happens
4 to the project?

5 A. Could you repeat that, please?

6 Q. If any one of your projects would fail
7 to get project financing for any reason, and not get
8 constructed, then what happens to the project?

9 A. It doesn't proceed to construction.

10 Q. So the project would be terminated?

11 A. Depends.

12 Q. What would happen to the funds that
13 Clean Line has spent to date on that project if it
14 doesn't get financed?

15 A. Again, it depends. If we initially are
16 unable to obtain financing, we may well keep trying,
17 or may well go do other things to improve the
18 possibility that our financing efforts are
19 successful.

20 Q. If you determine that the project just
21 couldn't, couldn't get financed for one reason or
22 another, would it, is it correct that the funds
23 spent today on that project are then just lost?
24 It's a loss for the investors in the company?

1 A. If we decide not to pursue a project any
2 further, yes, that's a loss to our investors. We
3 have no way of recovering those costs.

4 Q. All right. In fact, isn't that one of
5 the tenants of a so-called Merchant Transmission
6 Project, that that kind of risk is borne by the
7 owners?

8 A. Yes, that's exactly right, as a merchant
9 project, we are accepting that risk rather than
10 asking any rate payors to take it.

11 Q. Okay.

12 JUDGE JONES: Mr. Shay, could you give
13 us an idea of how much more you have here?

14 MR. SHAY: Yeah, I am going to take
15 stock here for a moment. I'm close, very close
16 here. Some of these other questions were covered by
17 what's been put in the record already, so I'll skip
18 those.

19 Q (By Mr. Shay) Mr. Berry, you had some
20 questions from Mr. Rippie about your current, I
21 think he called it assets of Clean Line, I believe,
22 which mainly consists -- I'm sorry, strike that.
23 Of, about the funds that Clean Line has a right to
24 draw upon that are unconditionally -- or that are

1 committed to it, do you remember that?

2 A. I'm sorry, I'm not clear on the
3 question.

4 Q. Okay, how, how much money is there that
5 Clean Line can draw upon in terms of capital from
6 its investors to continue to fund this development?

7 A. We have binding commitments for an
8 additional \$15 million from Natural Grid. We also
9 have the possibility of raising additional funds
10 from those investors.

11 Q. Okay.

12 A. But as I've stated, they're not legally
13 bound to make those contributions, they're going to
14 evaluate the investment at the time.

15 Q. Right, so \$15 million in firm
16 commitments today.

17 A. Yes, sir.

18 Q. Okay. And assuming for the moment that
19 that's all the money we're, you have available,
20 about how much longer will that continue to fund
21 Clean Line's operations?

22 A. Depends how the board allocates that
23 capital.

24 Q. I'm talking about Clean Line overall.

1 A. Are you referring to just our corporate
2 expenditures or...

3 Q. No, all of Clean Line's expenditures.
4 And I think for purposes of answering, I, unless,
5 unless you think it's not valid, you could assume
6 that your projected expenditures would be rateably
7 spent on a monthly basis.

8 A. Okay, my answer is the same, which is
9 that the amount of time \$15 million lasts until
10 additional capital contributions are required
11 depends on how the board allocates and spends that
12 capital and how fast.

13 Q. Well, you have, based on your current
14 forecast for 2014 --

15 A. Mm-hmm.

16 Q. -- which is right in front of you, at
17 least the one from last may, about when would -- if
18 those, if those moneys were spent as that projection
19 shows, how far would that \$15 million carry you?

20 A. Based on these projections, and assuming
21 the board allocates capital consistently with these
22 projections, we would need to raise additional
23 capital from our investors or other sources sometime
24 in 2014.

1 Q. Would it be fair to say it would have to
2 be by mid 2014?

3 A. I don't know when in 2014. It wouldn't
4 be early 2014. Whether it's mid or late, I couldn't
5 say.

6 Q. Don't you project your expenditures by
7 month for the following year?

8 A. I do; if you recall, these exact numbers
9 are confidential, and so if you're asking me kind of
10 to perform mathematical operations that reveal those
11 numbers, I'm sorry, I'm not going to be able to do
12 that.

13 Q. I'm not, I'm not trying to trick you.

14 A. Oh, I know that, I'm not, I'm just
15 stating, that's why I'm limiting my responses.

16 Q. Okay, could -- okay, based on all that,
17 can we say at mid, sometime mid 2014 would be a
18 reasonable expectation?

19 A. I'm sorry, I think you already asked me
20 that question and my answer is the same.

21 Q. Okay, you said not early 2014, but
22 sometime in 2014?

23 A. Correct.

24 Q. Okay. We can leave it at that.

1 MR. SHAY: Your Honor, I have no further
2 questions.

3 JUDGE JONES: All right, thank you, Mr.
4 Shay. Mr. Davis?

5 MR. DAVIS: I do. And I need to ask
6 Mr --

7 THE WITNESS: I'm sorry, Your Honor,
8 could we take a time estimate? I need to take a
9 short five-minute break here.

10 MR. DAVIS: I would estimate that my
11 questions will be 10 to 15 minutes, and that's a
12 true estimate. But if we'd like to take a quick
13 break, I have no objection to that.

14 THE WITNESS: I can certainly go 15
15 minutes, but I'd ask if we go longer that we'd --

16 MR. DAVIS: No problem.

17 THE WITNESS: Allow we a quick break.

18 MR. DAVIS: I do have a quick question
19 for Mr. MacBride before I can start.

20 THE WITNESS: Your Honor, are we on or
21 off the record?

22 JUDGE JONES: We're still on the record.
23 Go off the record.

24 (Discussion off the record.)

1 JUDGE JONES: All right, back on the
2 record. Mr. Davis, do you have some cross for Mr.
3 Berry?

4 MR. DAVIS: I do, Your Honor, and I did
5 have a discussion with Mr. MacBride, I do have a
6 question, I believe, that will need to be taken in
7 camera, and I'm going to save that for the very end
8 of my questioning.

9 EXAMINATION

10 QUESTIONS BY MR. DAVIS

11 Q. Mr. Berry, good afternoon, my name is
12 Chuck Davis, I am a lawyer for the Farm Bureau here
13 in Illinois. I have some pretty straight forward
14 questions, and I'll try to be clear on them as
15 quickly as I can.

16 True or false: At the time of the
17 filing of the Petition and now, Rock Island Clean
18 Line does not own, control, operate or manage any
19 plants, equipment or property used for or in
20 connection with transmission, delivery or furnishing
21 of electricity in the state of Illinois.

22 A. Could you repeat that question, please?

23 Q. Sure. It's a long one, I apologize. Is
24 this true or false?

1 At the time of the filing of the
2 Petition and now, Rock Island Clean Line does not
3 own, control, operate, or manage any plants,
4 equipment or property used for or in connection with
5 the transmission, delivery or furnishing of
6 electricity in the state of Illinois?

7 A. We do own assets that meet that
8 description, so I don't recall whether it's a
9 negative, but...

10 Q. Okay, what are those assets?

11 A. The ones that come to mind are the, we
12 have permits connected to the operation of the
13 transmission line, we have routing and technical
14 studies connected to the transmission line, we own
15 various real property that is connected to the
16 transmission line. That may not be a comprehensive
17 list, but they're the ones that come to mind.

18 Q. So you said you own real property. Do
19 you own property, or you have options to purchase
20 real property in Illinois?

21 A. I believe we have both options and
22 easements. I'm not sure, I don't know whether we
23 actually own real property in fee.

24 Q. So the, where the converter station is,

1 is it correct that you own an option there and not,
2 you do not own the property in fee at that location,
3 is that correct?

4 A. By aware of the converter station is do
5 you mean the proposed location of the eastern
6 converter station --

7 Q. Yes.

8 A. -- in Illinois? My understanding is we
9 have an option.

10 Q. And as to easements, you believe you may
11 or may not own them at some location in Illinois,
12 you're not sure?

13 A. I said I was unsure about owning real
14 property in fee. I do know we own easement
15 property.

16 Q. And you don't, you don't know where
17 that's at? You can't provide us with specificity
18 what those are?

19 A. No.

20 Q. Rock Island Clean Line has never
21 provided, provided electricity to anyone in Illinois
22 before, correct?

23 A. Correct.

24 Q. The wind farms proposed in the resource

1 area do not exist yet, correct?

2 A. I would say it is possible that some
3 existing wind farms will use our transmission line,
4 and I believe we've mentioned that possibility in
5 testimony. But at the same time, it's our intention
6 to facilitate new wind farms, and those new wind
7 farms by definition do not exist yet.

8 Q. You have no contracts -- Rock Island
9 Clean Line has no contracts with suppliers yet, is
10 that correct?

11 A. I'd say we do have contracts with
12 suppliers.

13 Q. With generators? Do you have any with
14 wind farms or any other generation source, do you
15 have any of those contracts?

16 A. We have numerous, numerous agreements
17 with those parties, we have nondisclosure agreements
18 to facilitate the disclosure of confidential
19 information and initial negotiations for capacity,
20 we have memoranda of understanding with several
21 generators, and this is noted in my testimony, that
22 state our intent to continue negotiations and pursue
23 the purchase of capacity.

24 Q. But there are no contracts that exist

1 that obligate either party that power will be
2 provided to the line, is that correct?

3 A. There are so such contracts.

4 Q. Rock Island Clean Line has no physical
5 transmission assets in Illinois, correct?

6 A. Define what you mean by physical
7 transmission assets.

8 Q. Things like poles, lines, things that
9 you would see when it's built, is that -- you don't
10 have any of those things in Illinois, is that
11 correct?

12 A. We do not have any poles or lines in
13 Illinois.

14 Q. Any other physical transmission assets
15 that would be used to build a transmission line in
16 Illinois?

17 A. I'm still unclear on what you mean by
18 physical transmission assets, so I can't answer that
19 question.

20 Q. Well, here's what I mean. When I drive
21 down the street and I see a transmission line,
22 there's going to be lines, poles, nuts, bolts,
23 things that I don't even know the full detail of.
24 Any of the things that take to build that go into

1 the transmission line, do you own any of those
2 physical assets in the state of Illinois?

3 A. We do own things that go into building the
4 transmission line, as I mentioned earlier. I can't
5 say whether you would see them from your car or not.

6 Q. But the ones you mentioned were permits
7 and things of that nature.

8 A. The ones I mentioned were the ones I
9 mentioned.

10 Q. So we can go through the list if you'd
11 like. Permits, and you said potentially easements
12 which you may or may not own in fee. Am I missing
13 any?

14 A. I don't know, I don't recall the
15 entirety of my answer. If you'd like to ask me
16 about individual items, I'd be happy to answer.

17 Q. I'd ask you to turn to your testimony
18 for your additional direct, which 10.13. Turn to
19 Page 4, please.

20 A. Okay. One moment.

21 Q. Sure.

22 A. I'm ready when you are.

23 Q. Lines -- it's contained within Lines 106
24 and 110, it states: Until the need for the project

1 is actually established through the market test of
2 transmission customers, contracting for sufficient
3 service on transmission line to support and justify
4 financings that raise sufficient capital to cover
5 the cost of the project.

6 And that's within the content, it's
7 stated that you'll not install facilities until that
8 is established.

9 Is that a fair representation of what
10 the testimony says?

11 A. Yes, it is.

12 Q. And does that representation remain true
13 today?

14 A. Yes.

15 Q. And isn't it true that, according to
16 your estimations, that 60 percent of transmission
17 service will need to be under contract to raise 70
18 percent of the financing?

19 A. Yes, I performed an illustrative
20 calculation in my testimony which showed that 60
21 percent of the capacity contract could support
22 raising 70 percent of the project's capital through
23 debt, that's correct.

24 Q. Previously you were shown a time line

1 and made some references to it. I don't know how
2 it's labeled, but it states Activity Description on
3 the top, and the anticipated completion date, it's
4 numbered 1 through 27. Do you know the number I'm
5 referring to?

6 MR. RIPPIE: It's Com-Ed Cross Exhibit
7 3.

8 THE WITNESS: Just to be clear, is this
9 also Rock Island Response To ILA 5.01, Attachment
10 01?

11 Q (By Mr. Davis) Yes.

12 A. I do have that document in front of me,
13 yes.

14 Q. Now this timeline, I see dates on the
15 right-hand side of it on anticipated completion
16 date. Isn't it true that these dates, the quarters
17 that are listed, that these are not set in stone
18 that you're absolutely certain they're going to be
19 accomplished by that date?

20 A. Schedules are subject to change, so I
21 think that's a fair assessment.

22 Q. And with respect to the regulatory
23 process here in Illinois and then in Iowa, they're
24 simply estimates, you don't have any guarantees as

1 to when any final opinions would come from the ICC
2 or from the Iowa Utilities Board, correct?

3 A. Indeed we do not control their
4 schedules.

5 Q. And so if, for those two examples, if
6 those were changed, it would be a domino effect,
7 that the rest of the things on this schedule would
8 be bumped back in effect, is that correct?

9 A. Indeed, if the Illinois Commerce
10 Commission delays issuance of a CPCN, it would
11 postpone our project schedule significantly, and
12 there are numerous activities which depend on the
13 issuance of the CPCN that would also be delayed.
14 And the same would also be true in Iowa.

15 Q. And so then some of the other things
16 listed other than those two items, it possible --
17 it's possible it could take longer to achieve those
18 milestones than what's stated in this list here,
19 correct?

20 A. It's possible.

21 Q. And is it true that you believe that
22 lenders will lend money when they have a high degree
23 of certainty on budget and time line?

24 A. I believe that statement is in the

1 context of construction financing, and I think
2 that's true for construction financing, yes.

3 Q. And as of today's date, Rock Island
4 Clean Line has not applied for a franchise in Iowa,
5 correct?

6 A. I know we've begun that process, I also
7 know we have more documents to submit in that
8 process. That's the extent of my knowledge.

9 Q. Is it true that it will, it can be
10 expected that it will take at least two years to
11 construct the project?

12 A. Yes.

13 Q. And the earliest that you'll be able to
14 construct the project will be after you receive --
15 you close construction financing for the projects
16 and submit documentation to ICC Staff for
17 conditions, is that correct?

18 A. That's true, assuming that the condition
19 proposed by ICC Staff is adopted.

20 Q. And that date on this timeline is for
21 closing construction financing and documentation ICC
22 Staff is quarter, fourth quarter of 2015, so if
23 we're talking about this two-year time period, at
24 the earliest it would start would be sometime in

1 2016, is that correct?

2 A. As I testified a moment ago, according
3 to the schedule we would start construction in Q
4 2015, but the first full year of construction would
5 be in 2016.

6 Q. You're not alleging in your testimony
7 that the Illinois Electricity System is not
8 reliable, correct?

9 A. I don't think my testimony covers
10 reliability. If you could point me to a specific
11 place, I could look, but...

12 Q. Moving on. Talking about the RPS
13 standard in Illinois, isn't it correct that RPS
14 credits could also be purchase, purchased to meet
15 the standard?

16 A. By RPS credits, you mean renewable
17 energy credits.

18 Q. Yes.

19 A. Yes, renewable energy credits can
20 satisfy the purchases of the Illinois RPS, yes.

21 Q. You make reference in your testimony to
22 solar and biomass projects. Did you -- is it
23 correct, do you have any professional experience
24 with solar or biomass projects in your career

1 between college and working for Clean Line Energy
2 Partners?

3 A. I never built any such projects, I
4 regularly reviewed the economics of them as I do
5 now, and evaluated opportunities to invest in those
6 kinds of projects, so I think I'm reasonably
7 knowledgeable about their cost structure.

8 Q. It's correct that Rock Island -- strike
9 that.

10 It's correct that Clean Line Energy
11 Partners and all of its subsidiaries, none of these
12 entities have ever built a transmission line,
13 correct?

14 A. Many of our employees and management
15 members have built transmission lines, but, so the
16 employees have. The entities, themselves, have not.

17 Q. Prior to your employment with Clean Line
18 Energy Partners, you never managed or had any direct
19 control over the construction or management of a
20 transmission line, correct?

21 A. Well, in Exhibit 2.6 to Michael
22 Skelly's, I believe it's his Rebuttal Testimony, he
23 lists numerous wind farms that had a generation
24 timeline attached to them, and I worked on many of

1 those wind farms, including the financing. So your
2 statement is true of a stand alone transmission
3 project, but it's not true of the transmission lines
4 in any respect.

5 MR. DAVIS: The only, the only questions
6 I have left, Your Honor, are the few questions that
7 I agreed with Mr. MacBride that should be held in
8 camera.

9 MR. RIPPIE: Your Honor, if I may, I
10 understand I'm not involved, but given the time
11 urgency, might we take the unusual step of
12 concluding any redirect and recross on the non-in
13 camera portions of testimony so that the shuffling
14 in and out of the various people could be minimized.

15 MR. MacBRIDE: That's fine with us.

16 MR. DAVIS: If I could respond, Judge, I
17 have no problem with that, my questions are very
18 limited in nature, and that would make logical sense
19 just from keeping it smooth.

20 JUDGE JONES: All right, explain again
21 what you were suggesting there.

22 MR. RIPPIE: That we permit Mr. MacBride
23 the opportunity to do whatever redirect, and then if
24 any recross that would relate to all of the cross

1 examination so far that is not in camera so that
2 people would only have to come in and out once for
3 the in camera examination.

4 MR. MacBRIDE: That's fine, all of that
5 will lead to me requesting a shuffle out right now
6 for a few minutes.

7 MR. RIPPIE: Oh. Well, then maybe
8 nevermind.

9 JUDGE JONES: And Mr. Davis, was an
10 effort made to try to find a way to make a record on
11 this without having to go in camera?

12 MR. DAVIS: We talked about it, I don't
13 know that it's possible, unless Mr. MacBride has
14 another idea, but I don't think it's possible.

15 JUDGE JONES: And you've completed the
16 rest of your questions?

17 MR. DAVIS: I have.

18 JUDGE JONES: All right. At this time
19 let the record show that we will need to, need to go
20 in camera in a few minutes. I will need to explain
21 that a little bit, since we'll be having to clear
22 the room temporarily for that to happen.

23 So when we go in camera, essentially
24 what's going to happen is anyone that, who needs --

1 let me back up a minute.

2 Somebody has designated something as
3 confidential, it's subject to some questions. Who
4 designated the items as confidential?

5 MR. MacBRIDE: Rock Island.

6 JUDGE JONES: All right. And so which
7 persons need to leave the room? What category of
8 persons need to leave the room?

9 MR. MacBRIDE: Well, this is
10 confidential information under the Protective Order
11 as opposed to the several other categories of the
12 Protective Order, so it would be, basically be
13 anyone who has not signed the form that's attached
14 to the Protective Order and returned it.

15 JUDGE JONES: All right. We need to be
16 clear who's being required to leave. So who would
17 that cover in here, do you know? That would be
18 easier to ask.

19 MS. ERICSON: Your Honor, Commission
20 Staff does not have to sign the Protective Order.

21 MR. MacBRIDE: Yes, I agree with that,
22 they are, Commission Staff is under other
23 obligations.

24 I think yes, it would be easier to, for

1 those who have signed the order to indicate that
2 they've done so, and others would have the --

3 JUDGE JONES: That's what you want to
4 happen next?

5 MR. MacBRIDE: Yes.

6 JUDGE JONES: All right. Do you want
7 those who have signed what, to indicate that?

8 MR. MacBRIDE: Those who have signed the
9 attachment to the Protective Order.

10 JUDGE JONES: Do you want them to tell
11 you, or do you want them to indicate that in some
12 manner?

13 MR. MacBRIDE: Just raise their hand or
14 something like that.

15 JUDGE JONES: All right. So Mr.
16 MacBride, those with their hands in the air are
17 permitted to stay under the terms of the Protective
18 Order, is that what you're --

19 MR. MacBRIDE: Correct?

20 JUDGE JONES: Is that what you're
21 saying?

22 MR. MacBRIDE: Yes.

23 (Whereupon those persons having signed the
24 attachment to the Protective Order raised their

1 hands at this time.)

2 JUDGE JONES: All right. So other,
3 other individuals will have to leave the hearing at
4 this point while we go in camera in order to, for
5 there to be some examination by Mr. Davis of the
6 witness, and we will, we will let you know when that
7 was finished so you can return.

8 MR. FOSCO: Your Honor, other than
9 myself and Staff Counsel, there's no one else in the
10 Chicago area.

11 JUDGE JONES: Okay. Thank you.
12 (Whereupon persons who had not signed the attachment
13 to the Protective Order left the meeting room at
14 this time.)

15 JUDGE JONES: All right, let the record
16 show we hereby go into an in camera segment of this
17 hearing.

18

19 (THIS PORTION OF THE HEARING WAS DEEMED CONFIDENTIAL
20 AND HELD IN CAMERA AND IS BOUND UNDER SEPARATE
21 COVER.)

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7 (BACK ON THE RECORD IN THE PUBLIC PORTION OF THE
8 TRANSCRIPT.)

9 JUDGE JONES: All right. As indicated,
10 we're now back on the record in the public portion
11 of the transcript.

12 Mr. MacBride, did you have a suggestion
13 to make?

14 MR. MacBRIDE: Yes, could I just have a,
15 five minutes with Mr. Berry prior to redirect?

16 JUDGE JONES: We hereby rule -- let's
17 let the, we need to give the people an opportunity
18 to come back in before we really do anything more,
19 and so you'll have to, have to wait a minute before
20 you can do that.

21 (Whereupon all participants who had previously left
22 the meeting room re-entered the room at this time.)

23 JUDGE JONES: Okay, as indicated, we are
24 now back in the public, public hearing, so this will

1 be in the public portion of the transcript.

2 The in camera portion is concluded, it
3 consisted of some cross examination by Mr. Davis and
4 some redirect examination by Mr. MacBride of this
5 witness. Just -- so now that we're back in, in the
6 public portion, the regular portion of the hearing
7 process, Mr. MacBride, did you have a request to
8 make?

9 MR. MacBRIDE: Yes, I request a
10 five-minute recess while I consult with Mr. Berry on
11 redirect.

12 JUDGE JONES: All right, we hereby
13 recessed for five minutes for that purpose.

14 (Discussion off the record.)

15 (Recess)

16 JUDGE JONES: Back on the record. Let
17 the record show there was off the record discussion
18 for purposes indicated; we're back.

19 Mr. MacBride, do you have cross
20 examination? Or I'm sorry, redirect examination for
21 your witness?

22 MR. MacBRIDE: Yes, Judge, we just have
23 one topic in the nature of a correction.

24 EXAMINATION

1 QUESTIONS BY MR. MacBRIDE

2 Q. Mr. Berry, during your cross by
3 Mr. Davis, you made reference to an exhibit
4 sponsored by Mr. Skelly which you referred to as
5 Rock Island Exhibit 2.6, do you recall that?

6 A. I do.

7 Q. And if I were to suggest to you that
8 Mr. Skelly's exhibits all start with the Number 1,
9 would that suggest to you the need for a correction?

10 A. Didn't even have to make that
11 suggestion. I have should have referred to Exhibit
12 1.6, I apologize.

13 Q. Thank you. That's all our redirect.

14 JUDGE JONES: Recross?

15 (No response.)

16 JUDGE JONES: Thank you, sir, that
17 completes your questioning.

18 Off the record regarding the status of
19 the matter in scheduling.

20 (Discussion off the record.)

21 JUDGE JONES: Back on the record. Let
22 the record show that there was an off the record
23 discussion for the purposes indicated. I had a
24 couple real quick things first, and then we'll move

1 along to some other things that hopefully will also
2 be pretty quick.

3 I indicated off the record that the,
4 there will be a, as part of the post-hearing process
5 the filing of the final exhibit list. It was noted
6 that there were some trade-offs there in terms of
7 when these things are filed, getting them -- doing
8 them sooner requires more work early in the
9 post-hearing process, but provides some information
10 that may be useful earlier rather than later. Was
11 that an item where there's going to be some
12 communications among the parties in the coming days
13 to just work out or attempt to work out what the,
14 what date for the filing of that would work best?
15 Is that the idea?

16 MR. MacBRIDE: I thought we said
17 December 27th, but anyone is free to file --

18 MR. RIPPIE: Yes, December 27th, or
19 earlier.

20 JUDGE JONES: Very good. So the date,
21 the date for that filing will be December 27th, or
22 at the outside the parties may do so sooner.
23 Anything else on that?

24 MR. MacBRIDE: Do we file those on

1 eDocket, Judge?

2 JUDGE JONES: Yes, let's do file those
3 on eDocket, I think that's a good question, and then
4 I think that would be the better course. Yes, sir.

5 MR. SHAY: We're talking about the
6 exhibit list, right?

7 JUDGE JONES: We are.

8 MR. SHAY: Okay. We're each going to
9 file our own rather than everybody -- or Owen
10 aggregating them?

11 MR. MacBRIDE: Yeah, just the way we did
12 it before, per your direction.

13 JUDGE JONES: That's actually a good
14 question. I mean that does occasionally happen
15 where somebody will put the whole thing together,
16 and it makes a nice list all in one place, but
17 normally that doesn't, doesn't happen that way.

18 All right, so those, each party will
19 file its own exhibit list. If, in the meantime,
20 parties decide that it would be better to put
21 together a combined list, I have no objection to
22 that.

23 Some brief discussion regarding Supreme
24 Court Rule 707, unless somebody has something they

1 want to state for the record today, I think the best
2 way to cover that, given the circumstances, is just
3 to send a ruling out in the coming days to, to speak
4 to that. Does anyone have anything they want to say
5 about that today?

6 (No response.)

7 All right, they do not, so we'll move
8 on. There was, I think there was an ILA Cross
9 Exhibit offered by Mr. Phillips during the, during
10 one of the hearings, there was an objection, but it
11 sounds like there may be an agreement at this point.
12 Would someone care to speak to that?

13 MR. PHILLIPS: Yes, Your Honor. There
14 was an agreement, and we just simply will not be
15 offering that into evidence. Oh wait. Sorry.

16 MR. SHAY: Yeah, this is on the ED
17 issue.

18 MR. MacBRIDE: Yes.

19 MR. SHAY: Yeah, we have an agreement, a
20 verbal agreement with Rock Island, and they've seen
21 the specific language, so all that remains to be
22 done is to sign it, and we'll get it filed, and I'll
23 take responsibility for doing that, file it next
24 week, if that's okay.

1 JUDGE JONES: Okay, what will be filed?

2 MR. SHAY: It's a stipulation, one-page
3 stipulation.

4 JUDGE JONES: All right.

5 MR. SHAY: To replace the proposed offer
6 into evidence of that Data Request.

7 JUDGE JONES: All right. So leave is
8 given to make that filing within, within seven days.

9 Let's see, there was an objection by Mr.
10 MacBride not to one of the pieces of no cross
11 testimony, but to the attachments to that. Is that
12 still the case?

13 MR. MacBRIDE: Yes, sir.

14 JUDGE JONES: And whose testimony does
15 that apply to?

16 MR. MacBRIDE: Those were exhibits to
17 the testimony of Mr. Larry Gerdes, G-E-R-D-E-S.

18 JUDGE JONES: And you want an
19 opportunity to file written objections to that, is
20 that --

21 MR. MacBRIDE: Yes.

22 JUDGE JONES: Is that correct?

23 MR. MacBRIDE: Yes. Can I make this
24 scheduled suggestion?

1 JUDGE JONES: Yes.

2 MR. MacBRIDE: Mr -- the Gerdes' counsel
3 filed a motion I believe earlier this week to admit
4 those exhibits, I suggest I simply file in
5 accordance with the normal dates and the rules of
6 procedure, I file a response within 14 days, and
7 then the, the Gerdes' attorney can file a reply if
8 he wishes in 7 days, but I'm suggesting that just
9 because he, he's, you know, he's not been present,
10 but he can look at the rules of practice and see
11 what the dates are for motion filings. So that
12 would be in accordance with the default dates set
13 forth in the schedule.

14 JUDGE JONES: Like in 14 days from the
15 data of filing would, anyway. Now that wouldn't
16 necessarily have it known then by the time the
17 exhibit lists were filed, but that said, is that
18 still your proposal?

19 MR. MacBRIDE: Well, I could do it
20 sooner, but...

21 JUDGE JONES: Okay.

22 MR. MacBRIDE: I think, let me, if you
23 give me till Thursday, next Thursday, I would just
24 suggest then that you would need to send out a

1 ruling of dates so the opposing counsel can see the
2 schedule and see what the dates is.

3 JUDGE JONES: Yeah, I mean I don't have
4 a problem with your 14 days, I'm just pointing that
5 out. If you want to it make it 14, we'll make it
6 14. December the 10th, which was the date that
7 motion was filed. So that would be December 24th,
8 and then some kind of reply period would be
9 necessary. Sort of hits two holidays in there, so
10 I'll put something, I could put something in a, in a
11 ruling that covers that, I just want to make sure,
12 we might as well figure out what you, what your
13 proposed timeframe is for your own filing first, and
14 I'll work off that. So do you still want the 14
15 days? If that's what you still propose, we'll do 14
16 days.

17 MR. MacBRIDE: No, let me -- give me
18 till next Thursday, whatever the date next Thursday
19 is.

20 JUDGE JONES: Okay.

21 MR. RIPPIE: The 19th.

22 MR. MacBRIDE: 19th. December 19th.

23 JUDGE JONES: All right, so -- thank
24 you. So that -- the filing now by, now by Mr.

1 MacBride will be made on or before Thursday,
2 December 19th. I will provide a response date
3 applicable to the other side on that, which I will
4 put in the ruling. Anything else on that?

5 MR. MacBRIDE: No.

6 JUDGE JONES: Let the record show there
7 is not.

8 During the off the record discussion
9 there was a very brief discussion regarding the
10 future of the various no Cross Exhibits and
11 affidavits for ILA. Is that something you wanted to
12 take up today or, or not?

13 MR. SHAY: Well, frankly, I'd just as
14 soon have it behind us if you are comfortable that
15 you've reviewed it and are ready to rule on it, and
16 there have been no objections, Mr. MacBride
17 indicated he won't object.

18 JUDGE JONES: All right. Do you have
19 the exhibit name, numbers and things in front of you
20 there?

21 MR. SHAY: Are you talking about the
22 citing every exhibit?

23 JUDGE JONES: We'll need to know that
24 to --

1 MR. SHAY: Well, it's all contained in
2 the, in the attachment to the motion, Exhibit A to
3 the motion that's on eDocket now. Do we need to
4 still recite them verbally into the record?

5 JUDGE JONES: If you want a ruling. I
6 mean if you don't want to, if you want to just make
7 sure there's no objections, we can certainly do
8 that; if you want them ruled on --

9 MR. SHAY: Yeah, I don't think we'll
10 want to do that. Let's don't take up more time now.

11 MR. MacBRIDE: Yeah, Rock Island has no
12 objection to the motion to admit those exhibits that
13 was filed by the ILA.

14 JUDGE JONES: Does anyone else have any
15 objections to the --

16 MR. RIPPIE: No, Your Honor.

17 MR. SHAY: I'm looking at Staff. Okay.

18 JUDGE JONES: Let the record show they
19 do not.

20 I'll just state for the record that that
21 motion will, it will be granted, I will include that
22 in some manner in a written, written ruling, which
23 we'll specify the, the exhibit, exhibit numbers and
24 file date. Okay. Anything else on that?

1 MR. SHAY: No, Your Honor.

2 JUDGE JONES: I think that might bring
3 us to briefing, briefing schedule. I think there
4 are some agreements there. Someone care to indicate
5 for the record what you believe that to be.

6 MR. BERNET: Yes, Your Honor. So the
7 parties have discussed off the record briefing
8 schedule, and it is as follows: The parties will
9 file simultaneous initial briefs on Thursday,
10 January 30th, simultaneous -- parties will file
11 simultaneous reply briefs on Wednesday, February
12 26th. And then the parties will file, if they so
13 desire, on Wednesday, March 5th, a proposed order
14 along with a statement of position, and that's a
15 voluntary filing. And with respect to that filing,
16 the party filing the document will outline the
17 evidence that supports that party's position, but no
18 other party's positions, but will identify place
19 holders where the identification of the other
20 parties will be inserted.

21 And the parties have also agreed to have
22 some discussions next week regarding a potential
23 common outline for the briefs, and will submit
24 something, will file something to that effect by

1 next Friday.

2 JUDGE JONES: Thank you. Are there any
3 corrections or clarifications with regard to that
4 scheduling proposal just read into the record?

5 MR. SHAY: I have a question,
6 clarification. Will the outline apply just to the
7 initial briefs, or apply to all of them? Both of
8 them?

9 MR. BERNET: We didn't discuss that. I
10 guess it could apply to all of them.

11 MR. MacBRIDE: Yeah.

12 MR. BERNET: Does anybody have a problem
13 with that?

14 MR. MacBRIDE: No, that makes sense. We
15 would lose the value of it if we --

16 MR. SHAY: Yeah, like blood sugar
17 dropping.

18 JUDGE JONES: Yeah, that's a good
19 question. All right. Any other clarifications with
20 regard to the above?

21 (No response.)

22 All right, there are not. Are there any
23 objections to it?

24 MR. MacBRIDE: No, sir.

1 JUDGE JONES: All right, let the record
2 show that that briefing schedule just read into the
3 evidentiary record and along with the draft or
4 suggested order or summary position filing and the
5 common or briefing outline element is hereby
6 adopted. I would ask that copies sent to me be
7 provided to me in Word format.

8 Does anybody have a, any problem using a
9 Table of Content for your briefs no matter what the
10 length? Any objections to that?

11 (No response.)

12 All right, there are no objections, so
13 the briefs and reply briefs will contain a Table of
14 Contents, regardless of the, of their length. One
15 moment.

16 Are there any other items, matters to be
17 taken up?

18 MR. MacBRIDE: No, sir.

19 JUDGE JONES: All right. Let the record
20 show, if there are not at this time then let the
21 record show that the hearings are concluded. The
22 post-hearing briefing -- post-hearing schedules are
23 in place. Thanks to the parties for your
24 participation and cooperation.

1 MR. MacBRIDE: Judge, are you intending
2 to mark the record to take it, or to wait to do that
3 to subsequent filing.

4 JUDGE JONES: Well, that's a good
5 question, I mean I would probably default to marking
6 it here and taking subject to those filings being
7 made, but I'm open minded to other suggestions in
8 that regard. Any, any thoughts?

9 MR. MacBRIDE: No, I'd just as soon have
10 you do it today subject to the leave to file --

11 JUDGE JONES: Yeah, that's -- all right.
12 Anybody -- everybody catch that?

13 MR. SHAY: Talking about marking the
14 record?

15 MR. RIPPIE: Subject to the late filed
16 exhibits and documents for which leave has been
17 granted.

18 JUDGE JONES: Right.

19 MR. RIPPIE: Yeah.

20 JUDGE JONES: All right. So we'll do it
21 in that manner. Anything else then before we
22 actually do that?

23 (No response.)

24 All right. At this time then let the

1 record show that today's hearing is over in
2 accordance with the above. This matter is hereby
3 marked heard and taken subject to the post-hearing
4 evidentiary filings for which leave has been given,
5 or for which there are schedules in place in cases
6 where there is objection to them. Is that
7 satisfactory?

8 MR. MacBRIDE: Yes.

9 MR. RIPPIE: Yes, sir.

10 JUDGE JONES: All right. Thank you all.

11 (At this point the hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, Pamela K. Needham, Certified Shorthand Reporter,
within and for the State of Illinois, do hereby
certify that the hearing aforementioned was held on
the time and in the place previously described.

Pamela K. Needham, CSR, CCR
Illinois CSR No. 084-002247
Missouri CCR No. 505