

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

IN RE EXPLORER)
PIPELINE COMPANY)
)
PETITION PURSUANT TO SECTIONS) Docket No. 13-0433
8-503 AND 8-509 OF THE PUBLIC)
UTILITIES ACT FOR AUTHORITY)
TO CONSTRUCT AND OPERATE AN)
EXTENSION TO EXISTING FACILITIES)
AND WHEN NECESSARY TO TAKE)
PRIVATE PROPERTY AS PROVIDED)
BY THE LAW OF EMINENT DOMAIN)

NOTICE OF FILING

PLEASE TAKE NOTICE that on this date we have filed with the Clerk of the Illinois Commerce Commission, a Proposed Order on behalf of Explorer Pipeline Company, in the above-captioned matter. The Proposed Order has been reviewed and commented upon by Staff and the intervening parties and all comments received to date have been incorporated therein.

EXPLORER PIPELINE COMPANY

By: /s/ G. Darryl Reed
One of Its Attorneys

Dated: March 17, 2014

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CERTIFICATE OF SERVICE

I, G. Darryl Reed, an attorney, certify that I caused copies of the Proposed Order on behalf of Explorer Pipeline Company to be served on each of the parties listed on the service list via electronic or regular mail, this 17th day of March, 2014.

/s/ G. Darryl Reed

One of Its Attorneys

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authorizing Explorer to construct, operate and maintain the Manhattan Extension Project pipeline and to exercise eminent domain authority when necessary. On September 4, 2013, Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas") filed a petition to intervene in this matter. On September 5, 2013, a prehearing scheduling conference was held before Judge VonQualen at the offices of the Commission in Springfield, Illinois. Counsel for Explorer, Staff and Nicor Gas appeared and participated in the hearing. Nicor Gas' petition to intervene was also granted during the hearing. Following that hearing, on September 11, 2013, landowner Michael Wiksten filed a petition to intervene. On September 12, 2013, Explorer submitted the pre-filed testimony of Karen L. Kennedy, Terry V. Biehl and Neil K. Earnest.

Mr. Wiksten's petition to intervene was granted during a hearing on September 23, 2013. On October 22, 2013, Explorer submitted an errata sheet to revise Exhibits F, G and H of the Amended Petition to reflect changes in the route of the Manhattan Extension Project and to add a new Exhibit (O) to list the property owners that were added as a result of the changes. Staff submitted the direct testimony of Mark Maple, and the Affidavit of Ms. Sheena Kight-Garlish, dated November 25, 2013, on December 12, 2013, and a status hearing was held on December 17, 2013. Another status hearing was held on January 7, 2014. The rebuttal testimony of Karen L. Kennedy was filed on behalf of Explorer on February 4, 2014. At a status hearing on February 10, 2014, the deadline for filing any additional testimony of Staff witness Mark Maple was set for March 4, 2014. The matter was then continued to another status hearing on March 5, 2014. On February 24, 2014, the rebuttal testimony of Mark Maple was submitted on behalf of Staff.

An evidentiary hearing was held at the Commission's offices in Springfield, Illinois on March 5, 2014. Among others, Explorer, the Commission Staff and Nicor appeared and were represented by counsel.

Evidence submitted by Explorer included the testimony of Karen L. Kennedy (Direct and Rebuttal); Terry V. Biehl (Direct and Verification); and Neil K. Earnest (Direct and Verification) along with the exhibits accompanying their respective testimonies. During the evidentiary hearing, Explorer also entered into the record on behalf of Ms. Kennedy, Exhibit 5 (Explorer Responses to Staff Data Requests ENG 1.1 – 1.32); Exhibit L – Revised (Manhattan Extension Project Environmental Permits and Approvals—Illinois); Exhibit 8 (Open Tracts); and Exhibit 9 (Closed Tracts).

Evidence submitted by Staff included the testimony of Mark Maple (Direct, Rebuttal and Affidavit), and Sheena Kight-Garlish (Affidavit).

Nicor did not present evidence during the pendency of the proceeding.

With the consent of all parties, the Administrative Law Judge ordered that the matter be decided based on the pre-filed testimony and on the pleadings and evidence submitted during the March 5, 2014 evidentiary hearing. Upon the conclusion of the evidentiary hearing and the filing of Explorer Exhibits 8 and 9, the record was marked

“Heard and Taken.” A joint Proposed Order was submitted to the Administrative Law Judge on March 17, 2014.

II. STATUTORY PROVISIONS

Section 15-401(b) of the Common Carrier by Pipeline Law states:

Requirements for issuance. The Commission, after a hearing, shall grant an application for a certificate authorizing operations as a common carrier by pipeline, in whole or in part, to the extent that it finds that the application was properly filed; a public need for the service exists; the applicant is fit, willing, and able to provide the service in compliance with this Act, Commission regulations, and orders; and the public convenience and necessity requires issuance of the certificate.

In its determination of public convenience and necessity for a proposed pipeline or facility designed or intended to transport crude oil and any alternate locations for such proposed pipeline or facility, the Commission shall consider, but not be limited to, the following:

- (1) any evidence presented by the Illinois Environmental Protection Agency regarding the environmental impact of the proposed pipeline or other facility;
- (2) any evidence presented by the Illinois Department of Transportation regarding the impact of the proposed pipeline or facility on traffic safety, road construction, or other transportation issues;
- (3) any evidence presented by the Department of Natural Resources regarding the impact of the proposed pipeline or facility on any conservation areas, forest preserves, wildlife preserves, wetlands, or any other natural resource;
- (4) any evidence of the effect of the pipeline upon the economy, infrastructure, and public safety presented by local governmental units that will be affected by the proposed pipeline or facility;
- (5) any evidence of the effect of the pipeline upon property values presented by property owners who will be affected by the proposed pipeline or facility;
- (6) any evidence presented by the Department of Commerce and Economic Opportunity regarding the current and future economic effect of the proposed pipeline or facility including, but not limited to, property values, employment rates, and residential and business development; and

(7) any evidence presented by any other State agency that participates in the proceeding.

(220 ILCS 5/15-401(b)).

Section 8-503 of the Act states, in part:

Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or promote the development of an effectively competitive electricity market, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order authorizing or directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected at the location, in the manner and within the time specified in said order....

(220 ILCS 5/8-503).

Section 8-509 of the Act states, in part:

When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-503 or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain.

(220 ILCS 5/8-509).

III. BACKGROUND AND RELIEF REQUESTED

Explorer owns and operates a 1,900 mile common carrier pipeline system that transports refined petroleum products from the U.S. Gulf Coast to the American Midwest. This pipeline system extends from Port Arthur, Texas to Hammond, Indiana and traverses the states of Texas, Oklahoma, Missouri and Illinois. The system pipeline is 28-inches in diameter from Port Arthur, Texas to Tulsa, Oklahoma, and is 24-inches in diameter in the segment running between Tulsa and Hammond (in Texas, a 10-inch parallel line augments capacity between Houston and Arlington). The pipeline is centrally controlled from a computerized operations center located in Tulsa that is staffed 24/7 and that collects and analyzes over 6,000 pieces of data every few seconds. Pipeline maintenance and response personnel and equipment are located along the entire route, operating principally from Explorer's tankage and pumping facilities. Explorer's pipeline is capable of transporting a barrel of product from the Gulf Coast to the Chicago area in as little as eleven days. (Amended Petition, at 3-4).

Explorer transports a variety of refined petroleum products, including gasoline, diesel fuel, jet fuel (kerosene), feedstocks and diluents over this pipeline system. Explorer represents that the pipeline system serves over sixty different shippers that present for transport refined products with more than seventy-two different specifications. Through connections with other products pipelines, Explorer explains that it serves more than seventy major population centers in sixteen states; included are such cities as Houston, Dallas, Fort Worth, St. Louis and Chicago. According to Explorer, service is provided pursuant to tariffs filed with the Federal Energy Regulatory Commission ("FERC") and in compliance with federal regulations and requirements set by the U.S. Department of Transportation ("DOT"), primarily found in 49 C.F.R. Parts 194 and 195 and administered by the Pipeline and Hazardous Materials Safety Administration ("PHMSA"), Office of Pipelines Safety. Petitioner says that it operates as a provider of transportation service by common-carrier pipeline; it neither buys nor sells petroleum products. (Amended Petition, at 4).

Explorer Pipeline Company is a Delaware corporation. Its headquarters are located at 6120 South Yale Avenue, Suite 1100, Tulsa, Oklahoma 74136 (918-493-5100). The company was formed on September 27, 1967 by a consortium of different oil companies to develop a means of common-carrier transport of refined petroleum products from Gulf Coast refineries and import facilities to the Midwest. Petitioner says that Explorer remains wholly-owned by such companies or their successors; it is not publicly traded. As of year-end 2012, the seven owners of Explorer and their respective shares of its voting stock were as follows: Chevron Pipe Line Company – 16.69%; EXPL Pipeline Investment LLC – 6.80%; ConocoPhillips Pipe Line Company – 7.71%; Shell Pipeline Company, LP – 35.97%; MPL Investment LLC – 17.36%; Phillips Investment Company – 6.07%; and Sunoco Pipeline, LP – 9.40%. (Amended Petition, at 4-5).

Explorer says that it began operations in 1971 and completed construction of its pipeline system in the spring of 1972. Since then, Explorer claims that it has successfully transported over six billion barrels of refined products. In 2013, Petitioner says, the system is expected to move over 51,000 barrels-per-day ("bpd"). Explorer now employs over 200 people in the operation of its pipeline, including fourteen employees based in Illinois. (Amended Petition, at 5).

In Docket No. 56052, the Commission issued an order on December 23, 1970, granting Explorer a Certificate of Public Convenience and Necessity to construct, operate and maintain Explorer's then proposed pipeline through Illinois to Hammond, Indiana, as well as a 14-inch lateral line to East St. Louis and tankage facilities at Wood River. The Commission found that these lines would promote the public convenience and were necessary thereto. (Amended Petition, at 5). Eminent domain authority was not sought in the 1970 application but was subsequently requested and granted in Docket No. 56377 for a limited number of tracts – about 15% of the total 754 tracts comprising the route – in which Explorer had been unable to acquire easements by negotiations. (Order, ICC Dkt. No. 56377 (May 12, 1971)). Subsequently, the Commission approved three route variations required to accommodate development and utility issues along the original route. (Order, ICC Dkt. No. 56052 (July 7, 1971)).

Since that time, Explorer says that it has operated its pipeline without significant incident in Illinois and in compliance with Commission rules and requirements. (Amended Petition, at 5).

The Manhattan Extension Project involves the construction of a new 24-inch pipeline extension from Explorer's existing Peotone Station on its 24-inch mainline between Wood River, Illinois and Hammond, Indiana. This extension will traverse approximately eighteen miles of new route between the Peotone Station and Enbridge Pipeline's terminal in Manhattan, Illinois, at which point interconnection and delivery facilities will be constructed to allow shippers to transport diluents directly from Explorer to Enbridge's Southern Lights Pipeline, which originates at Manhattan. Explorer intends to obtain a small parcel adjacent to or on Enbridge's terminal site to construct a new Manhattan delivery station for the pipeline extension. Explorer explains that at Peotone, various facility modifications will be made to implement the Manhattan Extension Project, potentially including new meter and power equipment as well as a new remote-termination unit. Explorer says that the new pipeline will be piggable with a launching trap installed at Peotone and a receiving trap at Manhattan. According to Explorer, the pipeline extension will have an ultimate rate of 24,000 barrels-per-hour ("bph") (assuming additional pumping capacity additions) but will initially operate at a capacity of 18,500 bph using existing system pumps. Explorer states that the total cost of the Manhattan Extension Project is currently estimated at \$64.2 million. (Amended Petition, at 5-6).

IV. PROPERLY FILED

Mr. Maple, a Senior Gas Engineer in the Energy Engineering Program of the Safety & Reliability Division, testified that Explorer's Amended Petition was properly filed. (Maple, ICC Staff Ex. 1.0, at 4). The Commission finds that the Amended Application was properly filed in accordance with Section 15-401(b) of the Common Carrier by Pipeline Law (220 ILCS 5/15-401(b)).

V. PUBLIC NEED/PUBLIC CONVENIENCE AND NECESSITY

A. Explorer Position

In certificating Explorer in 1970, the Commission found that construction and operation of the then-proposed pipeline would serve the public convenience and necessity because the line would "provide a dependable economical and safe supply of petroleum products to the people of Illinois, in a manner unaffected by weather and without congesting the highways or railroads;" and that by serving Gulf Coast shippers and interconnecting with other petroleum products pipelines, Explorer's system would "give additional suppliers access to the Illinois market, thus extending the total supply base available for Illinois and the surrounding major consuming areas . . ." (Amended Petition, Exhibit B, at 4-5). The Commission further found that Explorer's proposed route was appropriate and that the pipeline should be constructed "along and upon the route [Explorer] described" in its certification application. (*Id.*).

Explorer argues that decades of operations have validated the Commission's 1970 conclusion. Since beginning operations, Explorer says that it has transported billions of barrels of vital refined petroleum products into and through Illinois to fuel Midwestern economies and has become one of the nation's preeminent providers of fuel transportation. Explorer says the gasoline, diesel fuel, jet fuel and other products Explorer's line carries remain essential today to the petroleum-consuming public in Illinois and surrounding states. Explorer states that as the Commission well knows, however, the nation's crude oil production and supply architecture -- which makes possible the provision by refiners of the petroleum products carried by Explorer and other products pipelines -- has changed dramatically since the 1970s. Explorer explains that whereas the latter part of the twentieth century was marked by declining domestic crude oil production and growing dependence on offshore supply sources, often located in unstable or hostile areas, the North American energy picture has changed drastically with the development of abundant and secure western Canadian and Williston Basin crude oil resources and the introduction of new drilling and production technologies. Explorer says that so fundamental has been the change that North America today stands on the threshold of energy independence/self-sufficiency for the first time in many decades. (Amended Petition, at 7-8).

Explorer says that refined petroleum products cannot be provided to the consuming public unless refiners have available to them adequate, secure and dependable supplies of crude oil. Different refineries and refiners have varying production facilities and equipment and so have unique preferences for their crude supplies, *i.e.*, their "slates." For this reason, according to Explorer, the nation's infrastructure of crude oil transmission lines has been substantially expanded and reconfigured in recent years to ensure delivery of essential crude oil. Explorer argues that the need for adequate transportation of crude oil is indisputable: It points out that the President declared in March of 2012 that the nation needs "an energy infrastructure system that can keep pace with advances in production" and that "we must be able to transport [crude] to our world-class refineries, and ultimately to consumers." Presidential Memorandum, March 22, 2012 (www.whitehouse.gov/the-press-office/2012/03/22/presidential-memorandum). He further declared that "... we must make pipeline infrastructure a priority" (*Id.*). (Amended Petition, at 8).

Explorer states that as the Commission knows from its decisions involving crude oil pipelines owned by carriers such as Transcanada (Keystone) and Enbridge, much of the crude oil supply responsible for the trend to energy self-sufficiency comes from Canadian oil-sands fields in western Alberta and is initially produced as bitumen, a highly viscous form of crude oil. Explorer explains that transporting this output by pipeline requires that it be blended with lighter, less dense hydrocarbons, that is, with "diluent," which are generally condensates and other light hydrocarbon mixtures produced during refinery operations. Explorer further explains that Western Canadian producers require substantial supplies of diluents to enhance the transportability of their crude output, yet Canadian diluent supply is itself flat to declining in quantity and additional sources of diluents are needed. Explorer says that Enbridge's Southern Lights Pipeline, certificated by the Commission in Docket No. 06-0470, was built to

transport U.S.-sourced diluents to the western Alberta producers and has been doing so at increasing volumes since its completion. Explorer states that much of the diluent supply carried by the Southern Lights Pipeline comes from refineries in the Gulf Coast area served by Petitioner's system and production areas, such as the Eagle Ford Shale play, accessible by Explorer's lines (as much as fifty percent of the Eagle Ford production is expected to be condensates suitable for use as diluents). Explorer further states that in recent years, substantial amounts of diluents have been shipped north from the Gulf Coast to Illinois to be picked up by the Southern Lights Pipeline and many of Explorer's shippers want to move diluents via the System to interconnect with Southern Lights. (Amended Petition, at 8-9).

Explorer argues that by facilitating the delivery of diluents to the Enbridge line for ultimate delivery to producers in Alberta, Explorer's proposed pipeline will enhance the crude oil supply capabilities of the nation's pipeline system and the output of refined products by refiners and their provision to consumers in Illinois, the Midwest and the nation as a whole. Explorer asserts this expansion of the pipeline network will serve the public interest in secure and adequate supplies of crude oil and refined products and thus help satisfy public needs locally, regionally and nationally. Explorer represents that the Manhattan Extension Project, in essence, will become a link in the infrastructure network by which inputs and outputs flow as needed to satisfy energy demand. Explorer argues that such benefit to the national economy is exactly the type of need satisfaction that the Commission has repeatedly recognized as compliant with the criteria of the Public Utilities Act/the Common-Carrier-by-Pipeline Law. Explorer also points out that specific and more parochial benefits will accrue to Illinois from the expenditures required to construct, operate and maintain the new pipeline as well as from its enhancement of Illinois' place in the national pipeline infrastructure. Such benefits have long been recognized as important to certification/authorization decisions. (Amended Petition, at 9).

Finally, Explorer argues that its proposed route is consistent with and conducive to the public's need and convenience in the nation's pipeline infrastructure. As shown in the route map (attached as Exhibit F to Explorer's Amended Petition) and the legal description sections (attached as Exhibit G to Explorer's Amended Petition), the route is generally straight and efficient, avoids developed areas and minimizes its general impact. It traverses primarily rural areas of four Will county townships -- Will, Peotone, Green Gardens and Manhattan. Explorer says that its proposal is to create a 50-foot wide permanent easement for the pipeline's right-of-way and to center the 24-inch pipe in that right-of-way, thus allowing substantial protective space on each side of the center line. Explorer represents that during construction, additional temporary workspace, generally 50-feet in width, will be required on one side of the permanent easement area (additional temporary workspace may be required in some locations such as at road and water crossings). Explorer also represents that the pipeline will be constructed using standard industry procedures, including open-cut trenching, auguring and directional-drill boring, and that also advanced soil-separation and restoration procedures will be used. Explorer says the pipeline will generally be placed with at least four to five feet of cover and Explorer is working with the Illinois Department of Agriculture on an Agricultural Impact Mitigation Agreement. Although in the preliminary

stages of finalizing its route, Explorer represents that it will consult with landowners, public entities, utilities and other potentially interested parties as it refines its route through land surveys and inspections. (Amended Petition, at 10).

Supporting testimony was filed by Karen L. Kennedy and Neil K. Earnest. Ms. Kennedy, Manager, Project Engineering, Explorer Pipeline Company, stresses that Explorer's view of the need and demand for the new pipeline is as positive -- if not more so -- than when Explorer filed its initial petition on July 3, 2013. Moreover, Ms. Kennedy notes that Explorer's capacity of 250,000 bpd is based on Explorer's current mainline capacity, less forecasted demand for refined products into Chicago. She points out that the new line segment capacity is necessarily designed not to impede throughput (overall capacity) of the Mainline System. Instead, Ms. Kennedy says the extension line is primarily expected to carry diluents, which are various forms of light hydrocarbons, for ultimate delivery to Canadian production fields. She refers to the testimony of Explorer witness Mr. Earnest, who notes that Canadian supplies of diluents are expected to be essentially flat through about 2020 and so the demand for imported diluents, such as condensates, is expected to grow from the current level of roughly 200,000 bpd to over 500,000 bpd by about 2020. Ms. Kennedy states that Explorer currently has shipper commitments for, or is negotiating for, initial volumes of about 50,000 bpd and expects to increase traffic to about 100,000 bpd in the near future. The balance will be available for future growth and/or other products off the mainline. (Kennedy, Expl. Ex. 1, at 5-6).

Mr. Earnest is the President and Director at Muse, Stancil & Co. ("Muse"). Muse is an international energy consulting firm with its headquarters in the Dallas-area with additional offices in Houston and London. Muse professionals provide a wide variety of technical and economic services, often blending expertise in both areas to assist clients in the evaluation of issues and opportunities in the energy sector. (Earnest, Expl. Ex. 3, at 2). Explorer engaged Mr. Earnest to provide expert witness testimony addressing the need for the Project. (Earnest, Expl. Ex. 3, at 4).

Mr. Earnest testifies that the Manhattan Extension Project is designed to transport up to 18,500 bph of refined products, such as diluents, from Explorer's Peotone Station to the Enbridge Pipeline terminal at Manhattan, Illinois. The Peotone Station is on Explorer's mainline between Wood River, Illinois, and Hammond, Indiana. The Enbridge Manhattan terminal is the origination point for the Enbridge Southern Lights Pipeline, which transports diluents to various destinations in Alberta, Canada. (Earnest, Expl. Ex. 3, at 4).

The diluent transported by the Manhattan Extension Project, Mr. Earnest explains, is a mixture of mostly light hydrocarbons. The oil industry commonly refers to the typical hydrocarbon mixtures used for diluent as natural gasoline (in the U.S.), pentanes plus (in Canada) and condensate. The diluent transported by the Project will be blended in Canada with various grades of extra-heavy Canadian crude oils so that they can be transported by pipeline. As a practical matter, these Canadian crude oils are too heavy and viscous to be transported by long-distance pipelines and, therefore, must be blended with lighter and less viscous hydrocarbons to produce a blend that is suitable for pipeline transport. (Earnest, Expl. Ex. 3, at 5-6).

Mr. Earnest states that there is significant demand for diluent in Canada. Historically, Canadian diluent demand had been primarily satisfied by light hydrocarbons, referred to as “pentanes plus” by the Canadian oil industry, recovered from the processing of raw natural gas. With flat to declining local production of pentanes plus, the Canadian oil industry increasingly has been turning to supplemental sources to satisfy rising diluent demand. Mr. Earnest notes that the National Energy Board (“NEB”) of Canada undertakes periodic assessments of the Canadian energy markets. The most recent forecast, dated November 2011, projects that diluent imports will reach almost 700 kb/d by the end of the forecast period. (Earnest, Expl. Ex. 3, at 6-7).

Most of the diluent that will be transported on the pipeline extension is expected to be sourced from the Gulf Coast, with lesser contributions from the Midcontinent. There are a number of natural gas liquid (“NGL”) fractionation facilities located on the Gulf Coast that produce natural gasoline, and many of these facilities are in the Houston-area. Mr. Earnest says that such facilities are a major source of the type of light hydrocarbon mixtures that are very suitable for use as a diluent. In addition, there are smaller volumes of natural gasoline imported into the Gulf Coast from other countries. Refineries can also produce light hydrocarbon mixtures, usually called light straight run, with physical properties that are very similar to that of natural gasoline. Mr. Earnest also explains that a second source for diluent supply is the increasing volumes of condensate being produced on the Gulf Coast. Condensate is a somewhat heavier hydrocarbon mixture than natural gasoline, essentially an extra-light crude oil, but nonetheless it also can be used as a diluent in Western Canada. (Earnest, Expl. Ex. 3, at 8-9).

Mr. Earnest provides an explanation of the fundamental sources of the oil which, once processed in refineries or blended at terminals in the Midwest, satisfy most of the consumer demand for petroleum products in the region. He says that while the contribution of renewable to total oil supply has increased over the last ten years, for the foreseeable future, crude oil will be the predominant fundamental source of oil that satisfies consumer demand for petroleum products. He also notes that according to information provided by the Energy Information Administration (“EIA”), over the last ten years, pipelines have made 99.4% of the total crude oil deliveries to Midwest refineries. He states, “The delivery of crude oil to regional refineries, particularly by pipeline, is an absolutely essential component of the total supply chain that delivers petroleum products to the Midwestern consumers.” (Earnest, Expl. Ex. 3, at 10-11).

Mr. Earnest also addresses the importance of the Western Canadian crude oil supply. After accounting for changes in Canadian crude oil consumption, the crude oil supply that is available for export has increased by about 1,000 kb/d in the last ten years. Moreover, he says that it is the wide-spread industry view that Western Canadian crude oil production will be rising significantly, and that much of this increase will find its way to the U.S. crude oil markets. (Earnest, Expl. Ex. 3, at 12-13). In 2012, local PADD II production comprised 31% of the total crude oil supply, while imports (almost entirely Canadian) totaled 47%, and the balance (22%) was the net receipts of crude oil from other regions of the U.S. The term PADD stands for Petroleum

Administration for Defense District, and PADD II refers to the EIA's designation for the Midwestern states. (Earnest, Expl. Ex. 3, at 13-14).

Crude oil supply patterns in PADD II have been shifting in recent years. Mr. Earnest notes that since 2005, the volume of crude oil in PADD II that is sourced from Canada has risen by over 700 kb/d, with much of the increase concentrated in the most recent years. (Earnest, Expl. Ex. 3, at 14-15). Canada now provides over 98% of PADD II's total crude oil imports. This shift in supply patterns has been driven by both rapidly increasing crude oil production in Canada and major investments that Midwestern refiners have made to process more Canadian crude oil. (Earnest, Expl. Ex. 3, at 15).

Mr. Earnest testifies that the Manhattan Extension Project facilitates the supply of Western Canadian crude oil to the U.S. Much of the Western Canadian crude oil production requires diluent before it can be transported via pipeline to the U.S., and the Manhattan Extension Project provides the diluent needed by the Canadian oil industry. Additionally, the Manhattan Extension Project is one of the manifestations of the need to enhance the pipeline infrastructure in North America so that crude oil can be delivered safely and efficiently from the field to the refineries that produce the finished petroleum products consumed by the public. (Earnest, Expl. Ex. 3, at 16).

In his testimony, Mr. Earnest also addresses the national security implications of dependence on non-Canadian sources of U.S. oil imports. He observes that non-Canadian crude oil imports remain an important component of the total crude oil supply for U.S. refiners. Saudi Arabia is second only to Canada in terms of importance to total U.S. crude oil supply. However, the Mideast is a region that historically has been a volatile source of supply. Additionally, a second key source of crude oil imports for the U.S., and the Gulf Coast in particular, is Latin America. Mr. Earnest explains that Mexican and Venezuelan crude oil imports to the U.S. have fallen in recent years. (Earnest, Expl. Ex. 3, at 18-19).

Mexico and Venezuela are also the primary sources for the sizable volumes of heavy sour crude oil that are processed by Gulf Coast refineries. Notably, Western Canada also produces large volumes of heavy crude oil, much of it blended with diluent such as that provided by the Manhattan Extension Project. The Project, by facilitating the transportation of Western Canadian crude oil to the U.S., will act to further improve U.S. security of supply by reducing the need for crude oil imports from the Mideast, and lessening the dependence of the U.S. on the heavy crude oil supply from Mexico and Venezuela. (Earnest, Expl. Ex. 3, at 19-20).

Moreover, the Manhattan Extension Project will decrease the time it takes finished petroleum products to reach the Midwest from the Gulf Coast because the Project will increase total diluent shipments on Explorer. The time required to ship a barrel of finished petroleum product from Houston to Chicago equals the pipeline inventory (the volume of hydrocarbon in the pipeline itself) divided by the pumping rate. For example, a pipeline with 1,000 barrels of inventory, pumping at a rate of 100 bpd, would require ten days to ship a barrel from its origin to the destination ($1,000 \div 100$). If

the pumping rate is increased to 200 bpd, then the transit time drops to five days. Accordingly, the transportation of diluent from the Gulf Coast (or the Midcontinent) to Chicago on Explorer acts to reduce the required transit time for all products being shipped on Explorer. Mr. Earnest says, "This potential reduction in transit time is relevant to the Illinois finished product consumers because Explorer currently ships thousands of barrels per day of finished petroleum products from the Gulf Coast to the Midwest." (Earnest, Expl. Ex. 3, at 20-21).

Mr. Earnest further explains that a reduction in transit time is a clear benefit to the Illinois public that consumes finished petroleum products. Local finished petroleum product prices are responsive to the local supply-demand balance, and supply shortages generally result in higher prices. Shipments of diluent on Explorer, which are facilitated by the Manhattan Extension Project, act to reduce the transit time between the Gulf Coast and Chicago, and thus reduce the period of time that the Illinois public endures price spikes created by local supply shortfalls. (Earnest, Expl. Ex. 3, 22-23).

B. Staff Position

Staff Witness Mark Maple states that Explorer plans to ship diluents over its proposed pipeline via the interconnection to the Enbridge Southern Lights Pipeline. He notes that the Commission has previously held that pipelines carrying diluents serve a public need. In ICC Docket No. 06-0470, the Commission found that there was a public need for Enbridge's Southern Lights Pipeline. While only one of the two pipelines in that docket was a diluent line, the Commission discussed that the demand for diluents and for crude oil is related, because diluents aid in the transportation of the other. In its Order, the Commission indicated the following about the need for petroleum products and the pipeline capacity to transport them:

The Commission is also satisfied and finds that the Applicants have demonstrated that there exists a public need for the provision of common-carrier-by-pipeline transportation service by both the proposed crude petroleum line and the diluent line. Producers and shippers of crude petroleum and of light hydrocarbons need the increased pipeline capacity represented by Enbridge's projects; Illinois and Midwestern refiners need secure, reliable, and efficient access to a dependable source of crude petroleum, which source exists in the oil sands production areas of Alberta and which the Enbridge lines will help make available; and the petroleum consuming public in Illinois and the PADD II region needs a secure, dependable, and cost-effective source of crude petroleum for refining into the myriad of refined products demanded on a daily basis in Illinois and other states, which needs will be served by the construction and operation of Enbridge's new pipeline facilities.

(Enbridge Energy Partners, L.P. and Enbridge Energy, Limited Partnership, Docket No. 06-0470, at 20 (April 4, 2007)). (Maple, ICC Staff Ex. 1.0, at 5-6).

Mr. Maple testifies with respect to Explorer's proposed pipeline that there remains a public need for diluents and the pipelines that transport them. He notes that the use of Canadian crude by both the Midwestern region and the U.S. as a whole has been steadily increasing. (Earnest, Expl. Ex. 3, at 14-16). Both the National Energy Board of Canada and the Canadian Association of Petroleum Producers have forecasted that Western Canadian crude oil supplies will grow for the next few decades. (*Id.* at 12). Given the close proximity to the U.S., and the safety and security of the supply relative to other sources in the world, it is very likely that U.S. imports of Canadian crude will also continue to rise. This creates an increased demand for diluents, as they are required to lower the viscosity of Western Canadian crude to a point that it can be transported via pipeline. (*Id.* at 16). Mr. Maple concludes by stating that "there will continue to be a growing need for diluents and for the pipelines that transport them to the production and shipping regions." (Maple, ICC Staff Ex. 1.0, at 6).

Mr. Maple explains that his acknowledgment of the public need is based upon the needs of the general public, and not just the needs of a few individuals or private entities. He explains that virtually every U.S. citizen uses petroleum products either directly or indirectly. The additional diluents transported by this pipeline will, in turn, help to ensure that the U.S. has continued access to Canadian crude oil, which will impact individuals, as well as the state and the country as a whole. Mr. Maple notes that he presented this same broad view of the public need in ICC Docket No. 07-0446, and the Commission agreed with this argument. (Enbridge Pipelines (Illinois) L.L.C., Docket No. 07-0446, at 46-47 (July 8, 2009)). He quotes Explorer's petition as stating, "By facilitating the delivery of diluents to the Enbridge line for ultimate delivery to producers in Alberta, Explorer's proposed pipeline will enhance the crude oil supply capabilities of the nation's pipeline system and the output of refined products by refiners and their provision to consumers in Illinois, the Midwest, and the nation as a whole. This expansion of the pipeline network will serve the public interest in secure and adequate supplies of crude oil and refined products and thus help satisfy public needs locally, regionally, and nationally." (Amended Petition, at 9). Mr. Maple concludes by stating that he has found no reason to dispute this assessment. (Maple, ICC Staff Ex. 1.0, at 6-7).

In addition, Mr. Maple notes that shippers have already shown an interest in using the proposed pipeline. He explains that Explorer has completed negotiations for shipping over 25,000 bpd and is very close to completing negotiations for an additional 30,000 bpd. (Maple, ICC Staff Ex. 1.0, at Attachment B). Explorer expects to increase traffic to about 100,000 bpd in the near future. (Kennedy, Expl. Pipeline Ex. 1, at 6). However, he acknowledges that because the pipeline has a capacity of 250,000 bpd, this means that the pipeline is currently only 10% subscribed, with hopes of it being 22% - 40% subscribed soon. Despite this partial subscription, Mr. Maple testifies that the Commission should find that there is a need for the pipeline as proposed. He explains that there is clearly *some* demand, given the current and likely future shipper commitments. In addition, he notes there is also a growing demand for diluents and other petroleum products, which means there will be a growing need for new pipelines to ship these products. He explains that if Explorer were asking permission to build a 50,000 bpd pipeline, the public need would be clear, as the pipeline would be mostly, if

not fully subscribed. In this case, Mr. Maple supports the wisdom in over-sizing the pipeline relative to the current demand because it causes no additional easements and no further disruption to landowners than would the construction of a smaller pipeline. And by building extra capacity now, it may delay or prevent the need for additional pipelines in the future. Mr. Maple concludes by stating that “If Explorer is willing and able to take on the additional financial burden to over-size the pipeline, I see no logical reason to oppose the project on the basis of public need.” (Maple, ICC Staff Ex. 1.0, at 7-8).

Mr. Maple also testifies that Explorer demonstrated that it met the public convenience and necessity requirements for the pipeline. He explains that in its determination of public convenience and necessity for a proposed pipeline or facility designed or intended to transport crude oil and any alternate locations for such proposed pipeline or facility, the Commission must consider a number of factors listed in Section 15-401(b) (220 ILCS 5/15-401(b)), including evidence presented by the Illinois Environmental Protection Agency, the Illinois Department of Transportation, and the Department of Natural Resources. He notes that none of these Departments or agencies have presented evidence or reports regarding the proposed pipeline. In addition, Mr. Maple reaffirms the earlier statements in his direct testimony noting that there is a growing demand for diluents as well as Canadian crude, for which diluents are crucial for transportation. He explains that this proposed pipeline would serve the public by facilitating the importation of Canadian crude, which will give the U.S. a secure and friendly source of energy for years to come. He further argues that it will also help ensure that Illinois and the rest of the country have an adequate supply of oil, which can mitigate price spikes and support the economy. (Maple, ICC Staff Ex. 1.0, at 8-9).

Finally, Mr. Maple testifies that he considers Explorer’s negotiations with landowners as a factor when evaluating public convenience. He explains that Explorer is obligated to treat landowners in a fair manner when attempting to acquire easements. Mr. Maple argues that the public convenience and necessity would not be served if Explorer failed to communicate adequately or refused to negotiate in good faith. However, he notes that, thus far, there have not been any allegations of bad faith negotiations. He explains that Explorer has obtained survey permission from landowners on 98% of the tracts. (Maple, ICC Staff Ex. 1.0, at Attachment E). In addition, the Company has successfully negotiated easements on over 16% of the tracts, despite having just started contacting landowners in October or November of 2013. (Maple, ICC Staff Ex. 1.0, at Attachment F). Ultimately, Mr. Maple reserves the right to change his opinions and recommendations upon review of any intervenor testimony alleging poor negotiation tactics on the part of Explorer. (Maple, ICC Staff Ex. 1.0, at 12-13).

C. Commission Analysis And Conclusion

Both Explorer and Staff agree that the proposed pipeline extension will serve both a public need and the public convenience and necessity. Explorer presented considerable evidence tending to show that the requisite standards were met. Staff examined this evidence in detail, conducted its own analyses, and concluded that the

Commission should issue a certificate authorizing Explorer to operate as a common-carrier-by-pipeline.

Staff witness Mr. Maple notes that Explorer plans to ship diluents over its proposed pipeline via the interconnection to the Enbridge Southern Lights Pipeline, and that the Commission has previously held that pipelines carrying diluents serve a public need. As the Commission discussed in ICC Docket No. 06-0420, the demand for diluents and for crude oil is related. Mr. Maple testifies that there remains a public need for diluents and the pipelines that transport them. He testifies that based on reliable projections, it is very likely that U.S. imports of Canadian crude will also continue to rise. This, in turn, Mr. Maple points out, creates an increased demand for diluents, as they are required to lower the viscosity of Western Canadian crude to a point that it can be transported via pipeline.

Mr. Maple explains that this public need is based upon the needs of the general public, not just the needs of a few individuals or private entities. The additional diluents transported by this pipeline will help to ensure that the U.S. has continued access to Canadian crude oil, which will impact individuals, as well as the state and the country as a whole.

In addition, Mr. Maple notes that shippers have already shown an interest in using the proposed pipeline. And he supports Explorer's proposal to over-size the pipeline relative to the current demand because it causes no additional easements and no further disruption to landowners than would the construction of a smaller pipeline and that by building extra capacity now, it may delay or prevent the need for additional pipelines in the future.

The Commission accepts and finds that the evidence presented by Explorer and Mr. Maple's analysis demonstrate that the pipeline extension meets the public convenience and necessity requirements. Moreover, the Commission regards it as significant that none of the Departments or agencies listed in Section 15-401(b) of the Act (220 ILCS 5/15-401(b)), including the Illinois Environmental Protection Agency, the Illinois Department of Transportation, and the Department of Natural Resources have presented evidence or reports regarding, or in any way opposing, the proposed pipeline or denying that it meets the public convenience and necessity requirements.

VI. FIT, WILLING AND ABLE

A. Capacity to Construct And Operate The Extension Pipeline

1. Explorer Position

Explorer asserts that it is entirely capable of successfully engineering and completing the pipeline involved in the Manhattan Extension Project. First, Explorer claims that it has the requisite experience. In addition to having built, and now having operated, its 24-inch line continuously for over four decades, Explorer points out that it constructed a sixteen-mile extension to Fort Worth in 1993 and undertook a substantial expansion (130,000 bpd) of the system in 2002-2003 in order to increase overall

capacity. This expansion project involved the addition of several new pump stations, new storage tanks at Wood River, Illinois, and enhancements and upgrades to power stations and pumping equipment. Overall, Explorer says that the expansion project cost \$145 million and was completed on time and budget. (Amended Petition, at 10-11).

Second, Explorer argues that the project will be carried out in an efficient, effective and professional manner, and in adherence with all applicable governmental and regulatory standards and requirements. Explorer says the Manhattan Extension Project will be carried out under the supervision and direction of Explorer's Engineering Department, which will identify and engage experienced pipeline contractors to construct the line, select a qualified pipe fabricator and assure satisfaction of all federal and industry standards for steel pipelines, and which will engage qualified environmental consultants and independent construction inspectors for the work. Explorer explains that the approximately eighteen miles of new pipeline will be installed as one continuous work spread with construction starting in 2014 and the line becoming operational in the second quarter of 2015 after final inspections by PHMSA personnel based in the area (Kansas City, Missouri and Des Plaines, Illinois) and successful completion of all commissioning steps. Explorer says the line will be hydrostatically tested to establish appropriate operating limits before entering service (actual operating pressure is generally 72% of the pipe's specified minimum yield strength). In constructing the line, Explorer states that it will adhere to all DOT regulations for hazardous material pipelines as well as industry -- *i.e.*, American Petroleum Institute ("API") -- standards and practices. To assure quality, Explorer represents that it will perform tests and inspections exceeding regulatory requirements, such as x-ray inspection of 100% of field welds rather than the 10% required by regulation. According to Explorer, it is financially capable of financing construction of the new line to the point of commercial service. Explorer's Board of Directors, representing its seven owners, approved funding of the project on March 26, 2013 (Amended Petition, at Exhibit I). Explorer says that financing will be provided through the Company's comprehensive revenue from operations, which totaled \$228 million for the year ending December 31, 2012, and through credit arrangements with JP Morgan Chase, Bank of Oklahoma and U.S. Bank, including an \$80 million revolving credit agreement. (Amended Petition, at 11-12).

Explorer argues that its ability to safely and efficiently operate the proposed pipeline is also clear, as its forty-plus years of operating the existing mainline demonstrate. While transporting billions of barrels of petroleum products, Explorer says that it has pioneered new transportation techniques, such as mixed carriage of batches of refined product and crude oil in one pipeline, has established high safety standards, and has received safety awards and recognition from the National Safety Council and API. According to Explorer, in over forty years of operation in Illinois, Explorer has had only twenty-one DOT-reportable releases, only three of which occurred off company premises (seventeen of these reports were made after the DOT-release volume was reduced to five gallons in 2002). Explorer represents that it intends to maintain this record for the Manhattan Extension Project and thus will install signage and warnings per DOT regulations on the new line and work with landowners, fire departments and other local agencies such as JULIE to create pipeline safety awareness and

responsibility. Further, Enbridge says, the new line will be fully monitored and integrated into the SCADA system of the Tulsa operations center. (Amended Petition, at 12).

In securing the requisite property interests for the new pipeline, Explorer assures that it will adhere to the Commission's notice and information requirements and will employ the "best practices" approach common to pipeline projects in Illinois. Thus, for example, Explorer says that it will consult with landowners along the route and will seek to acquire all necessary easements and other interests through good-faith negotiations. To that end, Explorer explains that it has engaged experienced land valuation and right-of-way consultants/land agents for its project, is undertaking land-valuation analyses, is preparing to conduct all requisite surveys, and has established a field office in Joliet, Illinois to be its contact with landowners. Explorer says that it intends to make offers for its right-of-way based on the full fee value of the necessary acreage even though the land will actually be impressed only with an easement interest (except for actual fee purchases). Explorer assures that it will fully compensate landowners for construction as well as crop damages and will restore all right-of-way areas as closely as possible to their pre-construction state. Explorer explains that it is also working with the Illinois Department of Agriculture to develop an "Agricultural Impact Mitigation Agreement" modeled after those reached by the Department and other certificated Illinois pipelines. Explorer further explains that it is pursuing all necessary federal and state environment and other permits as well as working with local authorities. Explorer says that it has developed a standard easement document template to use in negotiations (Amended Petition, at Exhibit M) and has notified appropriate agencies, authorities and utilities of this filing (Amended Petition, at Exhibit N). Explorer also says that requisite informational filings have been or are being made as required by 83 Ill. Admin. Code Part 300. Finally, Explorer's request for eminent domain authority is purely contingent. Explorer represents that any recourse to condemnation would be only as a last resort, and efforts to reach agreement will continue even if the condemnation process has to be invoked. (Amended Petition, at 12-13).

In her initial testimony, Karen L. Kennedy of Explorer says that as far as when the various permits identified in Exhibit L to Explorer's Amended Petition are expected to be received, based on the estimates of Explorer's outside engineering firm responsible for this work, Explorer believes that all relevant permits will be in hand within forty to fifty weeks, well in advance of pipeline construction activities. Also, according to Ms. Kennedy, initial contacts have been made with all permitting agencies, and preparation of the permit applications is underway. (Kennedy, Expl. Ex. 1, at 5).

2. Staff Position

Mark Maple, testifying on behalf of Staff, states that Explorer has demonstrated it is fit, willing and able to construct and operate the pipeline. (Maple, ICC Staff Ex. 1.0, at 13). In support of this statement, Mr. Maple summarizes the testimony of Explorer witness Terry Biehl. He states that Mr. Biehl testifies that the Company is financially fit to construct and operate the proposed pipeline. (Biehl, Expl. Ex. 2, at 3-4). In addition, Mr. Biehl explained that Explorer has a long history of safely operating pipelines. He

also states that Explorer's finances are stable, secure and profitable. Mr. Maple also notes that the Company's Amended Petition states that in over forty years of operating in Illinois, Explorer has had only twenty-one DOT reportable releases, only three of which occurred off Company premises. (Amended Petition, at 12). In summary, Mr. Maple states that he "agree[s] with the assertions by Mr. Biehl and Explorer's petition that the Company is fit, willing, and able to construct and operate the proposed pipeline." (Maple, ICC Staff Ex. 1.0, at 13).

Mr. Maple notes that before Explorer starts construction, it must obtain a number of federal, state and local permits. He states that in its Amended Petition, Explorer lists numerous permits and approvals that it must obtain from various governmental bodies. (Amended Petition, at Exhibit L). Moreover, he explains that the project must meet the minimum pipeline safety construction and maintenance standards contained in 49 C.F.R. § 195 and administered by the United States Department of Transportation. (Maple, ICC Staff Ex. 1.0, at 14).

3. Commission Analysis And Conclusion

Explorer presented evidence intended to show that it is "fit, willing, and able to provide the service in compliance with this Act, Commission regulations and orders" within the meaning of Section 15-401(b) of the Act, including its ability to construct and operate the pipeline efficiently and safely. Explorer claims that it has the requisite experience, having built, and then operated its 24-inch mainline continuously for over four decades, and having more recently constructed a sixteen-mile extension to Fort Worth (in 1993) and having undertaken a substantial expansion of its system in 2002-2003 in order to increase overall capacity. Explorer also presented evidence that it will engage experienced pipeline contractors to construct the line, select a qualified pipe fabricator, and assure satisfaction of all federal and industry standards and requirements. In addition, Explorer points to its good safety record in operating its pipelines, and assures that it will adhere to the Commission's notice and information requirements and will employ the "best practices" approach common to pipeline projects in Illinois, including all necessary federal and state environmental and other permits.

Staff witness Mark Maple reviewed all of the foregoing and other evidence, and concluded that he agrees that Explorer is fit, willing and able to construct and operate the proposed pipeline. In particular he notes that in over forty years of operating in Illinois, Explorer states it has had only twenty-one DOT reportable releases, only three of which occurred off Company premises. He also notes that before starting construction, Explorer recognizes it must obtain requisite federal, state and local permits, and in constructing the pipeline must meet the minimum pipeline safety construction and maintenance standards contained in 49 C.F.R. § 195 and administered by the United States Department of Transportation.

The Commission has reviewed the record in this case, and agrees with Staff that Explorer is fit, willing and able to construct the extension pipeline as required by Section 15-401(b) of the Act.

B. Financial Ability To Support Constructing And Operating The Extension Pipeline

1. Explorer Position

Terry V. Biehl, Chief Financial Officer for Explorer Pipeline Company, testifies that Explorer is capable and qualified from a financial perspective to construct and operate the proposed Extension Pipeline. (Biehl, Expl. Ex. 2, at 3). Mr. Biehl notes that Explorer has a long and stable history of both solid earnings and safe operations of its pipeline system. Explorer began operations in 1971 and has shown solid performance and earnings since the system was fully complete and start-up issues overcome. Mr. Biehl states that from 2008 through 2012 Explorer's per year averages reflect revenue streams of \$227 million, EBITDA of \$126 million, and operating net income (after income taxes) of \$48 million. In addition, he notes that for 2013 Explorer forecasts a revenue stream of \$296 million, an EBITDA projection of \$161 million, and operating net income (after income taxes) of \$74 million. Mr. Biehl further testifies that the Board of Directors as representatives of their owners regularly reviews and monitors Explorer's financial position in order to assure stability and protect its interests and the longevity of its operations. Moreover, he explains that Explorer enjoys dependable revenue streams from major oil companies and shippers sufficient to fund operations and keep all trade receivables current. Mr. Biehl summarizes Explorer's record as "that of providing a consistent dividend stream to [its] owners, consistent payment of all debt obligations, and consistent reporting to all interested parties." (*Id.*)

Mr. Biehl further testifies that Explorer's most recent estimate of the cost to construct the new pipeline and place it into commercial service is approximately \$70 million, with a margin of plus/minus ten percent. He explains that Explorer can finance the project through either cash flows from current operations or by bank financing from its regular banking relationships. Mr. Biehl acknowledges that the Board of Directors has not yet determined which of these methods Explorer will use; however, he affirms the Board's commitment to the project. He notes that Explorer's cash balances during 2013 have been consistently above \$30 million, forecasting year end 2013 to be approximately \$28 million. In addition, he notes that the leverage ratios of Explorer Pipeline have been consistently below the tolerances for all debt holders (3.5 to 5.0). Moreover, he states that the forecast of obtaining additional debt continues to produce leverage ratios below the target ratios as required by the loan agreements. Mr. Biehl concludes that Explorer fully anticipates "sufficient demand and shipper support to either fund the project on a current basis or to repay any bank borrowing incurred." (Biehl, Expl. Ex. 2, at 2-3).

Mr. Biehl concludes by summarizing the current financial position of Explorer, with reference to the audited financial statements for the year ending December 31, 2012 that were included with the application filing. He explains that the statements show "that the current financial position of Explorer Pipeline is secure, that it is able to complete the project as described, and able to make appropriate payments to interested parties for the project." (Biehl, Expl. Ex. 2, at 4). Mr. Biehl adopts these statements as part of his testimony and appends copies thereto. (*Id.* at Exhibit A). In addition, Mr.

Biehl appends to his testimony the most recent reports on Explorer from both Moody's Investors Service ("Moody's") and Standard & Poors ("S&P"). (*Id.* at Exhibit B). He summarizes these reports, noting Moody's long-term rating as of September 30, 2012, was Baa1 and its commercial paper/short-term rating was P-2 with a "stable" outlook. The S&P long-term corporate credit rating is BBB/Stable, and both the short-term corporate credit and commercial paper ratings are A-2. Mr. Biehl concludes by noting that these reports "show a robust, stable, profitable entity." (Biehl, Expl. Ex. 2, at 4).

2. Staff Position

Staff witness Kight-Garlich, a Senior Financial Analyst of the Financial Analysis Division, addressed the financial strength of Explorer to verify that it was indeed able to build and operate the pipeline. As set forth in her affidavit, Staff witness Kight-Garlich did not find anything that would challenge the Company's assertion that it is financially fit to construct and operate the pipeline. (Kight-Garlich, ICC Staff Ex. 2.0, at 1).

3. Commission Analysis And Conclusion

On the issue of whether Explorer has the financial capability to construct, operate and maintain the extension pipeline, Mr. Biehl, testifying for Explorer, describes how Explorer has a long and stable history of both solid earnings and safe operations of its pipeline system. Mr. Biehl explains that Explorer can finance the project through either cash flows from current operations or by bank financing from its regular banking relationships. He affirms the Board's commitment to the project.

Ms. Sheena Kight-Garlich, Senior Financial Analyst with the Finance Department of the Commission's Financial Analysis Division, submitted an affidavit stating that the evidence she has reviewed indicates the Company has met the requirements for a Certificate in Good Standing and finds no financial reason to dispute the Company's request in this proceeding.

The Commission finds persuasive the testimony of Mr. Biehl and the affidavit of Ms. Kight-Garlich, and therefore concludes that Explorer has the financial wherewithal to construct, operate and maintain the extension pipeline.

C. Location and Routing – Related Issues

1. Explorer Position

Explorer represents that it has carefully analyzed possible routes for the Manhattan Extension Project and has, subject to survey and inspection, identified the pathway set forth in revised Exhibits F, G and H to its Amended Petition as the most feasible and publicly convenient alternatives. Explorer describes how the route originates at the Peotone Station southeast of Peotone and travels northwesterly to the Enbridge facility at the southern edge of Manhattan, traversing approximately ninety different on-line tracts along the way. Explorer explains that the total cost of the Manhattan Extension Project is currently estimated at \$64.2 million. (Amended Petition, at 6).

In her initial testimony, Karen L. Kennedy, Manager, Project Engineering for Explorer, explains that as usual in a project of this nature, Explorer has been constantly refining the proposed route as it is able to survey properties, talk with landowners, work with local authorities and agencies, and learn about other projects in the area. Ms. Kennedy explains that since Explorer filed the Amended Petition, it has through this process made a number of adjustments to the route and some properties originally identified as potentially affected have been removed and others have been added. The owners of any newly identified properties have been contacted and provided all the information previously provided to everyone on the initial list. According to Ms. Kennedy, the net effect of this effort is the identification of what Explorer believes is a more effective and efficient route. The number of potentially affected properties or tracts, including those that are merely abutting the proposed right-of-way but which Explorer needs to survey for environmental matters, is now 125. Of these, Ms. Kennedy says that only seventy-three are actually "on-line," that is will contain the pipe; the other fifty-two are "abutters." Abutting properties are either work-space areas or areas where Explorer needs to do environmental surveys. According to Ms. Kennedy, Explorer is also working to minimize the interface of Explorer's pipeline route and the tentative highway project known as the Illiana Expressway. Through careful route analysis and discussions with representatives of the Illinois Department of Transportation ("IDOT"), Explorer has identified a better path for its pipeline through the highway corridor should that project ever materialize. (Kennedy, Expl. Ex. 1, at 3-4).

With regard to the status of Explorer's survey and property inspection efforts, Ms. Kennedy testifies that in the response to Data Request ENG 1.24, Explorer stated that as of August 23, 2013, about 67% of the landowners along the route had granted survey access. Since that time, Ms. Kennedy clarifies that Explorer has obtained access to additional tracts so that the percentage of survey access is now about 79%. Ms. Kennedy says that the few remaining tracts where there is as yet no survey access are generally ones where Explorer has been unable to meet with the landowner or needs to provide more information. She states that efforts are continuing and Explorer believes that these efforts should be successful. Explorer began field-survey work the week of August 26, 2013, on tracts it could survey and continues as it secures access. (Kennedy, Expl. Ex. 1, at 4).

2. Staff Position

Staff Witness Mark Maple and his supervisor, Eric Lounsberry, met with Karen Kennedy and Michael Hayden of Explorer on August 8, 2013, to discuss and review the route selection of the proposed pipeline. He explains that they viewed aerial maps of the entire proposed route that showed every potential concern when constructing the pipeline, including wetlands, archeological sites, roads, buildings, elevation changes and other items of concern. He notes that for every place along the route where the proposed line deviates from a straight line, Explorer gave an explanation for the necessity of the changes and why Explorer deemed those changes provided the best option. Mr. Maple testifies that he does not see any problems with Explorer's proposed route. (Maple, ICC Staff Ex. 1.0, at 9-10).

Mr. Maple explains that the chosen route passes mainly through rural, undeveloped land and minimizes the impact on major roadways, high density population areas, and environmentally sensitive areas. In addition, he notes that Explorer has refined its route as it has surveyed properties, talked with landowners, worked with local authorities and agencies, and learned about other projects in the area. (Kennedy, Expl. Ex. 1, at 3). Mr. Maple notes that there is a tentative highway project called the Illiana Expressway that could potentially be an obstacle; however, he explains that Explorer has been proactive by meeting with IDOT and altering the pipeline route to minimize the interference between the two projects. (Maple, ICC Staff Ex. 1.0, at 10).

In addition, Mr. Maple offers an Explorer document, Attachment C, to his testimony, that describes their route selection process. He notes that this document describes how Explorer evaluated four different routes before selecting the route presented in this docket. He argues that each of the three rejected routes had negative attributes, such as permanent structures encroaching on the proposed right-of-way, stray electrical currents from a ComEd substation that could affect corrosion, and other obstacles such as sewer facilities. On the other hand, the chosen route traverses around Peotone and exists almost exclusively in rural, agricultural areas. Mr. Maple argues that Explorer chose the route that had the fewest negative traits while also keeping the overall distance covered relatively equivalent to the other routes. He concludes by stating that based upon the information that he has seen there is no better proposed route. (Maple, ICC Staff Ex. 1.0, at 11).

Mr. Maple notes that while a more linear route would be shorter, Explorer tries to follow existing roads and rights-of-ways for much of the route, while attempting to avoid bisecting private property when possible. He notes that the route avoids residential and commercial areas to maximize convenience and public safety. He argues that while there are multiple paths that Explorer could choose for the pipeline, the Company has given careful thought to its options and chosen the one that it believed was the best considering aspects such as operations, cost, safety and land impact. (Maple, ICC Staff Ex. 1.0, at 11).

Mr. Maple acknowledges that as the Company has discussions with landowners, it may come to light that the proposed route is in conflict with certain landowner structures or personal or business uses of the land. He states that this means it may be necessary to make minor deviations around such obstacles. However, he concludes that Explorer's proposed route is the best at a macro level given the information currently available, and it may be improved by altering it slightly based on future landowner feedback. In summation, Mr. Maple testifies that he "currently [has] no reason to think there is a route that would be superior to the one selected by Explorer." (Maple, ICC Staff Ex. 1.0, at 11-12).

3. Commission Analysis And Conclusion

Explorer proposes to install a 24-inch outside diameter, high-grade steel products pipeline together with necessary appurtenance and modifications to existing facilities. This extension pipeline is to run from Explorer's existing Peotone Station on its 24-inch

mainline between Wood River, Illinois and Hammond, Indiana. This extension will traverse approximately eighteen miles of new route between the Peotone Station and Enbridge's terminal in Manhattan, Illinois, at which point interconnection and delivery facilities will be constructed to allow shippers to transport diluents directly from Explorer to Enbridge's Southern Lights Pipeline, which originates at Manhattan. Explorer intends to obtain a small parcel adjacent to or on Enbridge's terminal site to construct a new Manhattan delivery station for the pipeline extension. At Peotone, various facility modifications will be made to implement the Manhattan Extension Project, potentially including new meter and power equipment as well as a new remote termination unit.

Exhibit G to the Amended Petition contains a legal description of the proposed pipeline extension route (by sections). Exhibit F is the Project Route Map.

With regard to the location or routing of the proposed pipeline, Section 15-401(b) of the CCPL states in part:

In its determination of public convenience and necessity for a proposed pipeline or facility designed or intended to transport crude oil and any alternate locations for such proposed pipeline or facility, the Commission shall consider, but not be limited to, the following:

- (1) any evidence presented by the Illinois Environmental Protection Agency regarding the environmental impact of the proposed pipeline or other facility;
- (2) any evidence presented by the Illinois Department of Transportation regarding the impact of the proposed pipeline or facility on traffic safety, road construction, or other transportation issues;
- (3) any evidence presented by the Department of Natural Resources regarding the impact of the proposed pipeline or facility on any conservation areas, forest preserves, wildlife preserves, wetlands, or any other natural resource;
- (4) any evidence of the effect of the pipeline upon the economy, infrastructure, and public safety presented by local government units that will be affected by the proposed pipeline or facility;
- (5) any evidence of the effect of the pipeline upon property values presented by property owners who will be affected by the proposed pipeline or facility;
- (6) any evidence presented by the Department of Commerce and Economic Opportunity regarding the current and future economic effect of the proposed pipeline or facility including, but not limited to, property values, employment rates, and residential and business development; and

- (7) any evidence presented by any other State agency that participates in the proceeding.

(220 ILCS 5/15-401(b)).

The right-of-way requirements for the Manhattan Extension Project include a 50-foot wide permanent pipeline right-of-way and up to 50-feet of temporary work space area running from the Peotone Station to Enbridge's terminal in Manhattan, Illinois. Also, extra temporary workspace areas beyond the typical size will be required in some locations, such as road crossings, railroad crossings, wastelands and water body crossings.

Explorer witness Karen L. Kennedy describes how Explorer has been constantly refining the proposed route and as a result has made a number of adjustments to the route such that some properties originally identified as potentially affected have been removed and others have been added. The net result of this effort, according to Ms. Kennedy, is a more effective and efficient route. The number of potentially affected properties or tracts is now 125, of which seventy-three are actually "on-line" (will contain the pipe) and fifty-two are "abutters" (work space areas or areas where Explorer needs to do environmental surveys). Explorer has identified a path for its pipeline through the corridor of the proposed Illiana Expressway that minimizes the interface of Explorer's pipeline route and that corridor.

Staff witness Mark Maple testifies that he does not see any problems with Explorer's proposed route and does not believe that there are any routes that would be better for this project. (Maple, ICC Staff Ex. 1.0, at 11). He reaches this conclusion after he and his supervisor, Eric Lounsberry, met with Karen Kennedy and Michael Hayden of Explorer on August 8, 2013, to discuss the route selection. He explains that "for every place along the route where the proposed line deviates from a straight line, Explorer gave an explanation as to the necessity of the changes and why Explorer deemed these changes provided the best option. He further describes how he and Mr. Lounsberry viewed aerial maps of the entire proposed route that showed every potential concern when constructing the pipeline, including wetlands, archeological sites, roads, buildings, elevation changes and other items of concern, and satisfied themselves that Explorer was adequately addressing such matters in its route selection. (Maple, ICC Staff Ex. 1.0, at 9-10).

Staff found that this route was chosen only after Explorer evaluated other alternative routes. Mr. Maple testified that while there are multiple paths that Explorer could choose for the pipeline, the Company has given careful thought to its options and chosen the one that it believed was the best considering aspects such as operations, cost, safety and land impact. (Maple, ICC Staff Ex. 1.0, at 11).

Based on the record of this proceeding and other findings in this Order, the Commission finds Explorer's proposed route for the pipeline is reasonable and it is hereby approved. As Staff notes, there is no reason to think there is a route that would be superior to the one selected by Explorer.

The Commission also notes no evidence was presented by any of the Departments or agencies identified in Section 15-401(b). All the routing-related evidence contemplated under Section 15-401 has been duly considered by the Commission, to the extent presented, and such evidence does not support a finding that the proposed route should be rejected or that some alternate location is preferable.

VII. SECTION 8-503 OF THE PUA

Explorer also requests an order pursuant to Section 8-503 of the PUA. That section provides in part as follows:

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

Having reviewed the record, the Commission finds that the necessary showings under Section 8-503 have been made and that the proposed pipeline project should be authorized. In addition, for the reasons discussed below, although the Commission believes that additional negotiations would be appropriate and should be conducted, if Explorer is unsuccessful in obtaining the land rights required to build the pipeline along the approved route, it should be authorized to exercise eminent domain authority.

VIII. EMINENT DOMAIN

A. Explorer Position

Explorer's request for eminent domain authority is supported by the testimony of Karen L. Kennedy, Manager, Project Engineering for Explorer. With respect to making actual offers to the landowners of tracts identified as on the pipeline right-of-way, she testifies that a professional study of land values in the area has been completed and the report received by Explorer's Right-of-Way team. Ms. Kennedy represents that this report was done by highly experienced local appraisers, although it is not an actual appraisal, and provides Explorer a basis for making specific offers for each property based on the range of values identified in the area. Ms. Kennedy says that Explorer has been formulating its proposals using the survey data to determine the size of easements and work spaces. Explorer needs the initial survey data to make the calculations but for those properties already surveyed -- 79% -- Explorer's land agents are now beginning to make calls and present offers. Ms. Kennedy reiterates that

Explorer's policy is to make offers based on the full fee values of the permanent easement areas and 30% of fee value for the temporary work spaces. Ms. Kennedy says Explorer will advise landowners of the calculations and invite their consideration and discussion thereof with Explorer's agents. Ms. Kennedy stresses that Explorer will consider any valuation information a landowner wishes to share with it and in fact has already done so in some instances. (Kennedy, Expl. Ex. 1, at 4-5).

In her Rebuttal Testimony, Ms. Kennedy provides additional and updated information in response to certain observations by Staff witness Mark Maple about Explorer's efforts to acquire the requisite right-of-way easements for the Explorer pipeline.

Ms. Kennedy first addresses Mr. Maple's testimony that as of the time he prepared his Direct Testimony, he did not feel he had sufficient information about Explorer's efforts in negotiating with landowners to conclude that Explorer should be granted eminent domain authority, and asked that Explorer "adequately demonstrate" that it has negotiated in good-faith with landowners. (Maple, ICC Staff Ex. 1.0, at 2, 12-19). Ms. Kennedy points out that, as Mr. Maple admits, no allegations of bad-faith negotiations have been raised by anyone and he has no reason to believe Explorer is negotiating in bad faith. (Maple, ICC Staff Ex. 1.0, at 12; Kennedy, Expl. Ex. 4, at 3). She also notes that as to such negotiations, Mr. Maple acknowledges that Explorer has adequately explained the basis of its compensation offers to landowners; is basing its offers on paying 100% of the full fee value of the easement areas for permanent easements, and 30% of those values for temporary easements, premised on land value studies by a certified real estate appraiser; makes the same easement offers to all landowners; and has entered into an Agricultural Impact Mitigation Agreement to address landowner concerns about construction. (Maple, ICC Staff Ex. 1.0, at 10, 17-18; Kennedy, Expl. Ex. 4, at 3). Ms. Kennedy testifies that Mr. Maple's hesitation to conclude that Explorer should be granted eminent domain authority appears therefore to be based on a lack of examples of ways Explorer has addressed landowners' concerns as they may have arisen. (Kennedy, Expl. Ex. 4, at 3).

Regarding Explorer's contacts with landowners, Ms. Kennedy points out that when Mr. Maple prepared his testimony, Explorer had "only recently" started making specific offers to landowners, although even at that point, as Mr. Maple acknowledged, Explorer had "successfully negotiated easements on over 16% of the tracts" needed for the pipeline right-of-way. (Kennedy, Expl. Ex. 4, at 4). Since that time, Ms. Kennedy testifies, Explorer has both continued and enhanced its right-of-way acquisition efforts by retaining a new supervisor for the land agents and adding experienced right-of-way agents to the team. She says these efforts have been fruitful as Explorer now has successfully negotiated, or "closed on," easements in approximately 35% of the sixty-two privately held properties on the right-of-way. Moreover, she points out that even this figure understates Explorer's success, because in addition to doubling the number of acquired tracts, Explorer through careful analysis of survey data and route adjustments has also very substantially reduced the number of properties impacted by its route by removing from the right-of-way twenty-nine of the ninety-one tracts that were originally listed. (Kennedy, Expl. Ex. 4, at 4). Explorer Pipeline Exhibit 8 (Attachment A

to this Order) lists the currently opened tracts on the pipeline extension route, and Explorer Exhibit 9 (Attachment B to this Order) lists the currently closed tracts on the pipeline extension route. (Notice of Filing, Docket No. 13-0433, Explorer Pipeline Ex. 8 (Open Tracts) and Explorer Pipeline Ex. 9 (Closed Tracts), March 5, 2014).

Ms. Kennedy further testifies that Explorer's agents always try to have personal contacts with landowners and to engage in face-to-face discussions with either the landowner or a designated representative or counsel. (Kennedy, Expl. Ex. 4, at 4). She says that regarding the as-yet unsecured tracts, Explorer's agents have met, often repeatedly, with virtually all landowners on a face-to-face basis with the exception of those who reside out of state, refuse to meet with Explorer's agents (a handful at most), or who have asked to postpone meeting because they are vacationing or wintering in warmer climates. (Kennedy, Expl. Ex. 4, at 4-5). Ms. Kennedy points out that by the end of January, Explorer had made over 700 contacts with the fifty-four individual landowners (some hold multiple tracts) and well in excess of 100 personal, face-to-face meetings with owners and/or their representatives. (Kennedy, Expl. Ex. 4, at 5).

With respect to Explorer's efforts to accommodate "landowner concerns" and examples thereof, Ms. Kennedy notes first that Explorer has had very few such concerns brought to its attentions (other than by some landowner who do not want the pipeline). She testifies that the only significant accommodation request involved the property owned by the Wiksten intervenors who were concerned about the effect of the construction process on their dog-breeding operation and wanted Explorer to relocate the planned easement areas farther away from their dog kennels. Explorer studied the property, determined it could move the pipeline several hundred feet south on their tract without significantly increasing the line's length or impacting other tracts, and re-routed the line's path to accommodate their concerns. (Kennedy, Expl. Ex. 4, at 5). The result, says Ms. Kennedy, is that the Wiksten intervenors accepted Explorer's offer and granted it the permanent and temporary easements it sought. (*Id.*). Ms. Kennedy testifies that Explorer has also made other minor adjustments and deviations in the right-of-way path for other landowners. (*Id.*).

Ms. Kennedy testifies that Explorer is continuing to make progress on easement acquisition. (Kennedy, Expl. Ex. 4, at 5). She says that as can be expected, the biggest issue is the level of compensation offered for each tract. She states that while Explorer is perfectly willing to entertain landowner counter-offers and/or value analyses based on real market data, and has accepted various counter-offers, in some instances Explorer is seeing demands for substantially greater compensation based on knowledge that other pipeline companies have purchased easements at greatly inflated, non-market prices. In at least one case, she says, the pipeline company did so because it decided not to seek certification and authority from the Commission and is facing severe time pressure. (Kennedy, Expl. Ex. 4, at 6). This approach is not Explorer's method, nor what is required for good faith negotiating.

Ms. Kennedy testifies that another issue Explorer has seen arise from time to time involves tracts where the route traverses the property on a diagonal. Ms. Kennedy asserts that in every case on this pipeline route where this occurs, traversing the

property on a diagonal is unavoidable because efficient pipeline routing requires minimization of twists and turns in the right-of-way. Furthermore, she explains, deviating to accommodate one landowner means only that other landowners are increasingly burdened or the route becomes degraded because pipelines cannot make sharp turns and so a route change can affect numerous properties, including ones not originally on line. Ms. Kennedy says that some landowners feel that a diagonal-crossing devalues their property for development, but Explorer's research, and the growth history of Will County, which is substantially occupied by numerous pipeline routes, show that is not the case. Ms. Kennedy testifies that Explorer endeavors to explain these facts to landowners in the negotiation process. (Kennedy, Expl. Ex. 4, at 6).

Ms. Kennedy stresses that Explorer's efforts to obtain easements and its successes to date do not mean it is not necessary for Explorer to have eminent domain authority. She testifies that Explorer already knows that there are a few tracts that will have to be condemned because the landowners will not negotiate with Explorer, either at all or on any rational basis. As well, she states, there are a number of other landowners that have made it clear that they will only meaningfully negotiate with Explorer *after* it receives both certification *and* eminent domain authority. Ms. Kennedy represents that experience teaches that in such cases, once the ability to extract above-market values by employing holding-out and rent-seeking tactics is removed, reasonable compromises are fairly rapidly reached. In some cases, she says, this may require an actual condemnation filing, but the negotiation process does not stop in such instances and generally provides resolution prior to the filing. Ms. Kennedy stresses that it is neither Explorer's desire nor its intent to condemn any property if it can be avoided. She says that condemnation is a costly, burdensome process that Explorer prefers to avoid. However, she says, given the reality of the schedule for constructing the Extension Pipeline and placing it in service to meet the demonstrated public need, delaying the grant of such authority is counter-productive. (Kennedy, Expl. Ex. 4, at 7).

Ms. Kennedy further notes that the success of the Manhattan Extension Project, which Mr. Maple found is needed and serves the public convenience and necessity (Maple, ICC Staff Ex. 1.0, at 8-12), may well depend on the ability to condemn rights-of-way essential to completing the pipeline. She points out that the project is not a long route capable of making significant detours around obstructionist properties, being only about eighteen miles in length and designed to connect efficiently two specific facilities, *i.e.*, Explorer's Peotone Station on the Explorer Mainline and Enbridge Pipelines' diluents terminal on the edge of Manhattan. She stresses that the approach to that facility is both critical and constrained because its location determines how and where Explorer interconnects the pipelines and the area is already laden with pipeline and industrial facilities. She states that as she previously related, the line cannot just twist and turn around tracts. For reasons such as these, she says, almost any tract on the right-of-way can create a barrier to approaching the terminal and thus blockade Explorer's line. Thus, she reiterates that absent the ability to condemn, it is entirely possible for landowners to demand easement prices that will make the project uneconomical and thus infeasible. Another scenario, she testifies, is that landowners who just oppose pipelines generally can refuse to deal and frustrate the entire project,

thereby denying benefits determined to be needed and convenient to the petroleum-using public in Illinois and the nation. Ms. Kennedy points out that Explorer has already committed and expended substantial amounts on acquiring easements on the route it determined is "best considering aspects such as operations, cost, safety and land impact," a conclusion that Mr. Maple accepts. (*Id.* at 11). To prevent Explorer from utilizing that route by denying, or even delaying, eminent domain authority threatens the viability of the project and may strand many millions of dollars of investment in needed but unusable infrastructure. (Kennedy, Expl. Ex. 4, at 7-8).

Ms. Kennedy further points out that the Commission in similar circumstances granted Explorer eminent domain authority in order to complete a pipeline route. She stresses that no evidence exists that Explorer ever abused such authority. Ms. Kennedy states that Explorer's current Amended Petition presents the same circumstances, except for the fact that current practice at the Commission combines the certification and authorization of eminent domain processes. (Kennedy, Expl. Ex. 4, at 8).

Finally, Ms. Kennedy addresses how Mr. Maple and the Commission can feel assured that Explorer will not cease to negotiate in good-faith if its request for eminent domain authority is granted. She testifies that Explorer's values include doing the right thing and being a good neighbor. Thus, she says, Explorer will not engage in conduct that is detrimental to its relations with the public in Illinois and with the Commission. Ms. Kennedy states that as energy-availability in the United States continues to improve, it is possible that Explorer will need to enhance its transport capacities and facilities further. She stresses that for this reason alone, Explorer would be ill-advised to act in a manner that betrays its duties as a common-carrier-by-pipeline and/or the confidence placed in it by the Commission in granting certification as a common-carrier-by-pipeline. Ms. Kennedy states that Explorer has not prospered for almost forty years by being short-sighted. Moreover, she points out that to her understanding, any landowner that feels Explorer has not negotiated in good-faith can challenge on that basis any attempt to condemn and force Explorer to prove the good-faith of its offers in court under evidentiary standards stricter than those applied by the Commission. Ms. Kennedy asks, why would Explorer take such a risk just to save a few dollars on the price of an easement interest? After all, as she points out, Explorer is already offering and paying above-market prices for its easements, given that a partial interest such as an underground easement is inherently worth less than the full fee value per acre Explorer uses in making its offers. She testifies that although Explorer understands Mr. Maple's concerns and appreciates his position, Explorer submits that its conduct as discussed, the logic of Explorer's request, and the conclusion that Explorer's project warrants certification all support a concurrent grant of certification and eminent domain authority. (Kennedy, Expl. Ex. 4, at 9).

B. Staff Position

Staff Witness Mark Maple argues in his direct testimony that he is unable to recommend that the Commission grant Explorer's request for eminent domain authority due to the current status of Explorer's negotiations with landowners. He notes that in

order to obtain Commission approval to exercise eminent domain, Explorer must show that it has made reasonable attempts to acquire the outstanding land rights through the negotiation process, but that further attempts to acquire the necessary land rights are not expected to be successful. He states that in evaluating whether a petitioner has made that required showing, the Commission generally considers a variety of factors, including but not limited to: (1) the number and extent of contacts with the landowners; (2) whether the utility has explained its offers of compensation; (3) whether the offers of compensation are comparable to offers made to similarly situated landowners; (4) whether the utility has made an effort to address landowner concerns; and (5) whether further negotiations will likely prove fruitful in reaching negotiated settlements. (Maple, ICC Staff Ex. 1.0, at 15-16).

Mr. Maple testifies that Explorer has not provided an explanation of how it made some of its landowner contacts, and the Commission has not precisely defined what constitutes a contact or how many contacts a petitioner must make to satisfy this factor. He explains that while it appears that Explorer has made contact with virtually all of the landowners, some concern remains regarding the number and method of some of those contacts. Mr. Maple states that although Explorer has contacted many of the landowners multiple times, it has contacted some landowners only once. He notes that it is unclear from Explorer's response what method it used to contact some landowners, but that it appears that Explorer may have made some of the single-contacts by email. Mr. Maple states that it is unclear if these landowners agreed to negotiate by email or if they even received the email messages from Explorer. He argues that email messages do not constitute a dialog of negotiation with the landowners that would be present in a face-to-face or phone conversation. In addition, Mr. Maple expresses concern that Explorer has only recently begun to contact landowners with easement offers, with some of those contacts occurring as recently as mid-November. (Maple, ICC Staff Ex. 1.0, at Attachment F). He concludes by stating that "the lack of personal contacts with some landowners, coupled with the very recent occurrence of these contacts makes it difficult ...to conclude that Explorer has met this criterion necessary for eminent domain." (Maple, ICC Staff Ex. 1.0, at 16-17).

Putting aside the issue of whether sending an email message to a landowner is an adequate contact, Mr. Maple testifies that Explorer has adequately explained its offer of compensation to landowners. He notes that Explorer has contacted virtually every landowner along the route with an easement offer. (Maple, ICC Staff Ex. 1.0, at Attachment F). He explains that it is in these offers where Explorer would explain the compensation that it is proposing. Mr. Maple also points to the Company offering the full fee value of the land to landowners when obtaining easements as support for his contention that Explorer has satisfied this criterion for eminent domain. (Maple, ICC Staff Ex. 1.0, at 17).

Mr. Maple also argues that the offers to landowners affected by Explorer's eminent domain request are comparable to offers made to other similarly situated landowners. He points to Explorer's use of Joseph E. Batis, a certified real estate appraiser, to perform a study of land values in the area. (Maple, ICC Staff Ex. 1.0, at Attachment D). Mr. Maple notes that the study determined a matrix of price ranges for

land based on the size of the parcel and the township where the land is located. (Maple, ICC Staff Ex. 1.0, at Attachment G). He explains that Explorer then used this study as a basis for making specific offers for each property along the proposed route. (Kennedy, Expl. Ex. 1, at 4). In addition, Mr. Maple notes that Explorer is offering the same percentages – 100% of fee value for permanent easements and 30% of that amount for temporary workspace – to all landowners along the route. (Maple, ICC Staff Ex. 1.0, at 17-18).

Mr. Maple also states that he is unable to determine whether Explorer made an effort to address landowner concerns. He explains that because Explorer only recently initiated negotiations with a large number of landowners, it is not clear of how many landowners' concerns the Company is aware. Mr. Maple acknowledges that Explorer has made modifications to the route, but states that this may be as much of a benefit to the Company as it is to landowners. He argues that Explorer's testimony is lacking in examples of ways that the Company has addressed landowner concerns. However, Mr. Maple praises Explorer's efforts to work with the Illinois Department of Agriculture to develop an Agricultural Impact Mitigation Agreement. (Amended Petition, at 13). Moreover, he explains that there are not many intervening landowners in this docket, and reiterated that he has not received many calls or correspondences from landowners alleging bad faith negotiations. (Maple, ICC Staff Ex. 1.0, at 18).

Finally, in his direct testimony, Mr. Maple argues that it is reasonable to expect that further negotiations will be fruitful, likely resulting in Explorer signing easement agreements with more landowners. He states that Explorer also believes that further negotiations will be fruitful, as the Company notes in its response to Staff Data Request ENG 1.30 that it recently signed several new agreements and expects to close on more in the next few weeks. Moreover, he notes that the Company also stated that at this point, only four tracts appear problematic for obtaining easements. (Maple, ICC Staff Ex. 1.0, at Attachment F). Mr. Maple concludes by stating that while eminent domain might eventually be necessary to acquire a few of the necessary easements, it is premature to grant it now, as the negotiations have just begun and they are fruitful by Explorer's own admission. (Maple, ICC Staff Ex. 1.0, at 19).

Mr. Maple changes his recommendation on eminent domain authority in his rebuttal testimony. There he states that he now recommends that the Commission grant Explorer's request for eminent domain authority based upon his reading of Explorer's rebuttal testimony and supporting materials. Of the five factors for granting eminent domain authority listed in his direct testimony, Mr. Maple testifies that he had originally determined that Explorer had satisfied factor #2 (whether the utility has explained its offer of compensation) and factor #3 (whether the offers of compensation are comparable to offers made to similarly situated landowners). He reiterates that he was unclear at that time whether Explorer had satisfied Factor #1 (the number and extent of contacts with the landowners), Factor #4 (whether the utility has made an effort to address landowner concerns), and Factor #5 (whether further negotiations will likely prove fruitful in reaching negotiated settlements). However, he notes that Explorer witness Karen Kennedy submitted rebuttal testimony that speaks directly to the concerns he raised about each of these factors. (Maple, ICC Staff Ex 3.0, at 1-2).

With regard to the number and extent of contacts with landowners, Mr. Maple testifies that Ms. Kennedy addressed his earlier concerns by indicating that Explorer has increased the percentage of properties for which it has obtained easements to 35% from the previous 16% due to both closing on agreements with landowners and eliminating unnecessary tracts from the route. (Kennedy, Expl. Ex. 4, at 4). In addition, he notes that that number may be even higher in light of email updates he has recently received from the Company. Moreover, Mr. Maple explains that he was originally concerned by the low number of contacts for some of the landowners due to Explorer having just started the negotiation process at the time of his direct testimony. However, he explains that several months have now passed and Ms. Kennedy has noted that by the end of January 2014, Explorer had made over 700 contacts with the fifty-four individual landowners. (*Id.* at 5). Mr. Maple states that the updated status report delivered by the Company on February 7, 2014, shows that Explorer has contacted every landowner multiple times in an attempt to negotiate. Finally, Mr. Maple explains that he had been concerned about the quality of the contacts, with some landowners having only been contacted once or twice by email or writing. However, Mr. Maple testifies that during the last few months, Explorer has been able to make more personal contacts with landowners, and has had well over 100 face-to-face meetings with landowners. (*Id.*). He notes that Ms. Kennedy has explained that while Explorer always strives to have personal contacts with landowners, there are a few landowners who live in distant states and a personal contact is neither possible nor desired by the landowner. Mr. Maple argues that this seems to be a small percentage of the overall landowners, and thus Explorer has met with virtually all of them on a face-to-face basis. (*Id.* at 4). He concludes by stating that Explorer has satisfied Factor #2 by recently increasing both the quality and the quantity of its negotiation contacts with landowners and has demonstrated that it has adequately attempted to negotiate with every landowner on the route. (Maple, ICC Staff Ex 3.0, at 2-4).

With regard to whether Explorer had made an effort to address landowner concerns, Mr. Maple argues that Ms. Kennedy addressed his earlier concerns by highlighting how Explorer worked with the lone intervening landowner, Mr. Wiksten. Mr. Maple explains that as a result of Mr. Wiksten's concerns, Explorer was willing to move the pipeline route several hundred feet south to accommodate him to his satisfaction. (Kennedy, Expl. Ex. 4, at 5). He notes that Explorer claims that it has been presented with very few landowner concerns, but that it has made other minor deviations in the right-of-way path for various landowners. (*Id.*). Moreover, Mr. Maple states that he has not received any other evidence that would challenge Ms. Kennedy's claim that Explorer has adequately attempted to address those few landowner concerns. He explains that no intervenor has filed testimony alleging poor negotiation tactics on the part of Explorer and that the date for such an intervenor filing has passed and no landowner has come forth with any such allegations. Mr. Maple concludes by stating that Explorer has satisfied factor #4 by making an effort to address landowner concerns. (Maple, ICC Staff Ex 3.0, at 4-5).

Mr. Maple reiterates that in his direct testimony he had stated that he believed that further negotiations would likely prove fruitful in reaching negotiated settlements due to the fact that Explorer had only recently begun to negotiate with landowners and

that recent negotiations had been successful. He argues that subsequent negotiations have indeed proven fruitful, as Explorer has continued to sign more easement agreements and has raised its completion percentage from 16% to above 35%. (Kennedy, Expl. Ex. 4, at 4). He explains that Ms. Kennedy agreed with this assessment and confirmed that negotiations have indeed been fruitful. (*Id.* at 5). Mr. Maple argues that still further negotiations will likely continue to be fruitful in the short-term as Explorer will continue to obtain additional easements along the route. However, he states it is very possible that Explorer will encounter a stalemate in negotiations with certain landowners prior to obtaining 100% of the easements. In supporting this claim, he points to Ms. Kennedy's assertions that she is aware of several landowners who are unwilling to negotiate at all or want to wait until condemnation proceedings are inevitable. (*Id.* at 7). Mr. Maple states that he has no reason to disbelieve her, and notes that he has seen similar instances in other eminent domain pipeline cases. In addition, he explains that the pipeline route is rather short and thus leaves the Company with fewer alternatives to reroute the pipeline when a single landowner is unwilling to negotiate. In conclusion, Mr. Maple reiterates that a public need exists for this project and Explorer has already met the public convenience and necessity requirement in its certificate request. He notes that pipelines take a long time to design and build, which means there is also a time-sensitive component to the project. Mr. Maple explains that Explorer is building the pipeline to satisfy market conditions that exist today or will exist shortly. He argues that this time-sensitivity means that it is not in the public's interest to compel Explorer to negotiate fruitlessly for years to obtain the last few easements. As such he concludes that eminent domain may be necessary to complete the project and that Explorer has satisfied all of the criteria that the Commission has used previously when evaluating whether a petitioner has made the required showing for an eminent domain application. (Maple, ICC Staff Ex 3.0, at 5-6).

C. Commission Analysis And Conclusion

The Commission accepts and agrees with the conclusions and recommendations of the Staff, as discussed above and in Mr. Maple's testimony, with regard to the authorization under Section 8-509 of the Act for Explorer to enter upon, take or damage private property under the law of eminent domain. It is clear, and the Commission so concludes, that Explorer has complied with the requirements of 83 Ill. Admin. Code Part 300 and is negotiating in good faith for the acquisition of necessary property interests, as is evidenced from both its declared policy to secure easements, etc. by negotiation and its willingness to pay at least fair-market values for such interests.

The Commission is also persuaded that a grant of eminent domain authority is warranted in this case because the pipeline route is rather short and thus leaves Explorer with fewer alternatives to re-route the pipeline when a landowner is unwilling to negotiate at all or on reasonable terms. Also, and relatedly, the route is designed to connect efficiently two specific facilities, Explorer's Peotone Station on the Explorer Mainline and Enbridge Pipelines' diluents terminal on the edge of Manhattan, that are only eighteen miles apart and thus cannot twist and turn around tracts. Under these circumstances, a landowner, by virtue of a refusal to deal, could block or cause great

difficulty and expense to the Explorer Manhattan Extension Project if eminent domain authority were not granted.

IX. FINDINGS AND ORDERING PARAGRAPHS

1. Explorer Pipeline Company (“Explorer” or “Petitioner”), is a Delaware corporation and certificated Illinois public utility/common-carrier-by-pipeline authorized to conduct business in the State of Illinois;
2. the Commission has jurisdiction over the parties hereto and the subject matter hereof;
3. the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
4. within the meaning of Section 15-401(b) of the Common Carrier By Pipeline Law, the Amended Petition was properly filed; a public need for the proposed service exists to the extent certificated herein; the Petitioner is fit, willing and able to provide service in compliance with this Act, Commission regulations, and orders; and the public convenience and necessity require issuance of a certificate in good standing to the extent approved herein; accordingly, a certificate in good standing authorizing Petitioner to operate as a common-carrier-by-pipeline should be granted;
5. the area to be covered by the certificate generally should consist of (subject to agreed deviations) a 50-foot permanent easement for the pipeline’s right-of-way along the overall route of approximately eighteen miles identified in Exhibits F and G to the Amended Petition in this proceeding; up to 50-feet of temporary work space area on one side of the permanent easement; and extra temporary workspace areas beyond the typical 50-feet in some locations, such as road and water crossings;
6. in reaching its conclusions in this proceeding, the Commission has considered all evidence presented including that enumerated in Section 15-401(b) of Common Carrier By Pipeline Law;
7. the authority to construct the proposed pipeline shall be subject to the conditions imposed in the prefatory portion of this order;
8. Petitioner shall comply with Section 15-401(c) of the Common Carrier by Pipeline Law;

9. the proposed pipeline is necessary, and should be constructed, to promote the security or convenience of the public, pursuant to Section 8-503 of the Public Utilities Act;
10. any objections, motions, or petitions filed in this proceeding that remain unresolved should be deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order;
11. Petitioner should be required to file, within ninety days from the entry of this Order, a Compliance filing in this docket providing the legal description of the area covered by the certificate granted herein to reflect any revisions resulting from the findings and conditions in this Order and any revisions resulting from the negotiation process upon agreement among all parties affected by the revision.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Explorer Pipeline Company, is hereby granted a Certificate in Good Standing pursuant to Section 15-401 of the Common Carrier By Pipeline Law to operate as a common carrier by pipeline and that said Certificate in Good Standing shall be the following:

CERTIFICATE IN GOOD STANDING

IT IS HEREBY CERTIFIED, subject to the conditions imposed in this order, that Explorer Pipeline Company is authorized, pursuant to Section 15-401 of the Common Carrier By Pipeline Law, to construct, operate and maintain the proposed maximum 24-inch outside diameter pipeline as described in this order and to operate as a common carrier by pipeline within an area that, subject to agreed deviations, is a 50-foot permanent easement for the pipeline's right-of-way along the overall route of approximately eighteen miles identified in revised Exhibits F and G to the Amended Petition in this proceeding.

IT IS FURTHER ORDERED that the proposed pipeline is necessary and should be constructed, to promote the security or convenience of the public, pursuant to Section 8-503 of the Public Utilities Act.

IT IS FURTHER ORDERED that Petitioner's request under Section 8-509 of the Public Utilities Act for authorization to "take or damage private property in the manner provided for by the law of eminent domain" is granted in this docket.

IT IS FURTHER ORDERED that all petitions for leave to intervene are granted, to the extent not yet ruled upon, and that any other petitions, objections or motions filed

in this proceeding that remain unresolved are hereby deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this ____ day of _____, 2014.