

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Rock Island Clean Line LLC)	
)	
Petition for an Order granting Rock Island)	
Clean Line LLC a Certificate of Public)	
Convenience and Necessity pursuant to)	
Section 8-406 of the Public Utilities Act as a)	Docket No. 12-0560
Transmission Public Utility and to Construct,)	
Operate and Maintain an Electric Transmission)	
Line and Authorizing and Directing Rock Island)	
Clean Line Pursuant to Section 8-503 of the)	
Public Utilities Act to Construct an Electric)	
Transmission Line.)	

EXCEPTIONS OF TO PROPOSED ORDER

Illinois Landowners Alliance

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EXCEPTIONS TO PROPOSED ORDER

Pursuant to Section 10-111 of the Illinois Public Utilities Act (“Act”) (220 ILCS 5/10-111), Section 200.830 of the Rules of Practice (83 Ill. Admin. Code §200.830) of the Illinois Commerce Commission (“Commission”), and the Ruling of the Administrative Law Judge (“ALJ”) entered August 26, 2014, the Illinois Landowners Alliance (“ILA”), through its attorneys, Shay Phillips, Ltd., submits its Exceptions to the Proposed Order of the ALJ (“ALJPO”), entered on August 11, 2014. The ILA separately prepared its Initial Brief on Exceptions.

1. Revise pages 26 and 27, starting half way down on p. 26 and through the end of that section on p. 27, of the ALJPO as follows:

The Commission has reviewed the arguments of the parties. As with most of the issues in this case, an assessment of the “public use” issue is complicated by the many uncertainties associated with the “merchant” nature of the proposed transmission line project.

As indicated above, the FERC approved Rock Island’s proposal to pre-subscribe “up to” 75 percent of transmission capacity to anchor customers. 139 FERC ¶ 61,142 at Para 28-30.

The FERC also approved Rock Island’s request to sell the remaining 25 percent of the capacity using an open season auction. (*Id.* at Para. 28-30) As

explained by Staff, this means that Rock Island would be required to offer its service to all customers in a non-discriminatory manner subject to a regional transmission organization (“RTO”) open access transmission tariff (“OATT”). In fact, Staff suggested that the requirement of non-discriminatory open access “could arguably overcome the public use hurdle” since all customers would have an equal right to use the utility on the same terms, as required for public use under Section 3-105 of the Act. (Staff IB at 16). However, those open-season auctions may result in terms that differ from those who are anchor tenants. 139 FERC ¶ 61,142 at Para 30.

RI represents that it will comply with this FERC requirement. RI also asserts that potential users of transmission service to the Collins Substation, via the open-access tariff, would include parties seeking transmission capacity for delivery of electricity to northern Illinois. The Commission finds this assertion to be reasonable.

~~Given the considerations in the two paragraphs immediately above, and subject to the conditions below, the Commission finds that Rock Island’s proposal does not satisfy the public use standard. The Commission wishes to emphasize that this finding does not reach the question of whether Rock Island has made the showings required by Section 8-406(b)(1), and no presumptions are created with respect thereto.~~

~~As noted above, Staff argues that Rock Island has not provided any evidence that it would be willing and able to expand the capacity of the project at issue to provide service to eligible customers if and when it becomes oversubscribed. Staff cites the FERC Order, which states, “Rock Island asserts that it would be unable to resize the Project were the solicitation process to reveal market interest in excess of its planned transmission capacity because it would result in delays and additional costs.” 139 FERC ¶ 61,142 at Para. 22. Staff also notes that in a subsequent FERC matter, 142 FERC ¶ 61,038, the FERC stated that “Public utility transmission providers are subject to the Commission’s OATT transmission requirements, including the obligation to expand their transmission systems, if necessary, to provide transmission service.”~~

~~On this issue, it is not known whether the FERC will allow Rock Island to implement a tariff that deviates from the above policy pronouncement. If Rock Island is required to file a FERC tariff which complies with that pronouncement, Rock Island will need to obtain approval from the Illinois Commerce Commission before undertaking any such expansion.~~

2. Revise pages 113-116, starting with the last paragraph on p. 113 and ending at the end of the section on p. 116, of the ALJPO as follows:

Having reviewed the record regarding the studies provided by Rock Island and Staff, the Commission finds, for the reasons explained by Staff and as summarized above, that the analysis presented by Mr. Zuraski is the more reliable and provides a better comparison of the benefits and costs of the Project in the context of assessing whether the Project will promote the development of an effectively competitive electricity market that operates efficiently, including with respect to renewable energy; is equitable to all customers; and is the least cost means of satisfying those objectives. The Commission also believes Mr. Zuraski's findings may be relied upon in making the necessary determinations on this issue.

ILA witness Dr. Gray testified that in the absence of actual subscribers, or customers, Rock Island's assumed traits and characteristics about generators that could potentially connect to the Project cannot be substantiated. Similarly, ComEd argues that the Project is little more than a concept, has attracted no customers or committed lenders and investors. IAA makes similar arguments.

As observed above and elsewhere in this Order, the uncertainties associated with this merchant project present many challenges in assessing and deciding the issues in this proceeding. The competitive prong criterion in Section 8-406(b)(1) is obviously no exception to this "chicken-egg" dilemma.

Rock Island has presented analyses purporting to show that the wind-rich conditions in the targeted resource area will prompt the development of wind farms there if transmission service becomes available. The WOW witness agrees with this assessment.

Based on the evidence, particularly the analysis of Mr. Zuraski, who explained the significance of favorable capacity factors in the wind-rich resource area and expressed his expectation, albeit with reservations, that the Project's benefits will exceed the costs, and will promote the development of an effectively competitive electricity market, the Commission believes there is a strong potential for such wind-farm development and use of the proposed line if such a line is available. ~~While such potential alone, however, is arguably not sufficient to satisfy Section 8-406(b)(1) in light of the many uncertainties, the Commission believes that important the safeguards in that respect are provided by the financing condition which is imposed below in order to satisfy Section 406(b)(3) are insufficient to overcome or compensate for such uncertainties.~~

~~Under that condition, "Rock Island will not install transmission facilities for the Project on easement property until such time as [it] has obtained commitments for funds in a total amount equal to or greater than the total project cost."~~

~~The Commission believes that this condition also provides a level of assurance on the Section 8-406(b)(1) issue, since lenders and investors will~~

~~presumably assess the status of wind farm projects and of RI's efforts to obtain commitments from those developers before agreeing to lend or invest such large sums of money. As stated by the FERC in 139 FERC ¶ 61,142 at page 10, "As Rock Island points out, it must secure long-term commitments from creditworthy anchor customers to support financing the Project." Accordingly, the findings on Section 8-406(b)(1) are subject to fulfillment by RI of the financing condition.~~

ComEd also challenges the assumption that 100% of the generation flowing on the line will be wind energy. The Commission notes that the line has been characterized as a 500-mile lead line from O'Brien County, Iowa, where the potential wind farms would be located, to the Collins substation in Grundy County, Illinois. In view of this and other information in the record, it seems reasonably likely that the line would be used primarily if not entirely for delivery of wind energy from O'Brien County to the Collins substation.

Staff, ComEd, ILA and IAA also take issue with RI's repeated claims that Illinois customers will pay none of the cost of Project, because, as a merchant project, all such costs will be paid by the generators. On this point, FERC stated, "Rock Island meets the definition of a merchant transmission owner because it assumes all market risk associated with the Project and has no captive customers. Rock Island has agreed to bear all the risk that the Project will succeed or fail based on whether a market exists for its services. Rock Island also has no ability to pass on any costs to captive ratepayers." 139 FERC ¶ 61,142 at 6.

Mr. Zuraski testified that "there is a risk that the project will not be financially viable as a subscription service sold at market-based rates, in which case RICL would be more likely to seek FERC approval to recover its costs through a more general levy on electric market participants, such as an 'inter-regional allocation of the costs,' as described by RICL witness Skelly in his ... testimony." (Staff Ex. 3.0 at 5-6, Zuraski; see also ILA Ex. 7.0 at 9-10, Gray)

To mitigate this concern, RI has proposed a condition which states:

Prior to recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation, Rock Island will obtain the permission of the Illinois Commerce Commission in a new proceeding initiated by Rock Island. For the purposes of the prior sentence, any system upgrades set forth in an interconnection agreement with PJM or MISO and the costs of which are allocated to Rock Island will be considered "Project costs." For the avoidance of doubt, the phrase "recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation" includes the recovery of costs though PJM and MISO transmission service charges that are paid by retail electric suppliers in respect of their electric load served in Illinois.

ILA and ComEd view this condition as superficial and inadequate. Staff witness Zuraski also has misgivings, although he suggests the outcome of concern – where ratepayers would end up bearing the costs of the Project -- would be less likely if Rock Island were to make the type of assurances discussed in the condition proposed by Rock Island.

If the Commission were to approve the Project, As a condition of this such an Order, the Commission finds would find that Rock Island shall abide by the terms of the condition set forth above. Prior to recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation, Rock Island ~~shall~~ would be required to seek and obtain the permission of this Commission in a proceeding initiated or sought by Rock Island. Absent such approval, Rock Island ~~shall~~ would not be entitled or permitted to recover any such costs.

In conclusion, upon consideration of the record and the determinations contained above, ~~and subject to the conditions set forth above and elsewhere in this Order,~~ the Commission finds that the Project, while it may will provide an opportunity for the delivery of more renewable energy into Illinois, ~~and it cannot be concluded that the Project~~ will promote the development of an effectively competitive electricity market that operates efficiently, including with respect to renewable energy; is equitable to all customers; and is the least cost means of satisfying those objectives, within the meaning of Section 8-406(b)(2).

3. Revise pages 113-115 of the ALJPO as follows:

One of the required showings in Section 8-406(b) is that the utility demonstrate that it is “capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof.”

Staff contends that Rock Island has not made the necessary showing. The Staff witness testified that neither Rock Island nor its parent company had ever managed or supervised a transmission line project, let alone a \$2.0 billion DC project; that many positions at Rock Island remain unfilled; and that high-voltage DC lines are rare. ComEd, ILA and IAA agree with Staff. ComEd asserts that Rock Island plans to rely on third-party firms to provide much of the needed construction management expertise, but no construction or construction management contracts have been entered into at this time.

The Commission has reviewed the argument of the parties. As with many of the issues in this case, an assessment of the issue at hand is complicated by the many unknowns associated with the “merchant” nature of the proposed transmission project.

~~The Commission believes that under the circumstances, Rock Island has not made the required showing, subject to the conditions set out below. While the Staff witness raised several pertinent concerns, †The Commission believes Rock Island has not adequately addressed or overcome the several pertinent concerns raised by the Staff witness them in its rebuttal testimony. While Rock Island has designed a comprehensive construction management organization, and a few members of the management team have experience in overseeing the construction of large electric projects, those factors do not overcome Rock Island's lack of experience itself with large transmission line project construction. Many lead positions have been filled. While many positions are unfilled, and while Rock Island contends it would be premature to fully staff them at this point in the process, the Commission is unable under the statute to find such factors to be sufficient. The Commission finds this explanation to be reasonable.~~

With respect to third-party contractors, it appears the ones Rock Island has engaged to date for various purposes have relevant experience and expertise, including transmission line and converter station design and construction. While uncertainties presented by a long high-voltage DC line are a concern for the reasons explained by Staff, Rock Island offered testimony that DC applications are not uncommon and are increasing; and that National Grid, which is a principal owner of Clean Line and is one of the largest owners and operators of electric transmission facilities in the world, including DC transmission, will be available to support RI in the Project. The record shows, however, that Rock Island has not engaged any contractors for the construction of major portions of the Project. The Commission has no assurance that Rock Island will, within its budgetary constraints, elect or be able to engage contractors with the requisite experience and expertise required by such a large, complex Project.

~~The Commission also notes that its findings on Rock Island's capability to finance the Project, addressed in the next section of this Order, are subject to a condition proposed by Staff, and approved by the Commission, whereby Rock Island will not install transmission facilities for the Project on easement property until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost. The Commission believes that this condition also provides a level of assurance on the management capability issue, since lenders and investors will presumably assess Rock Island's capability to manage and supervise the construction of the Project before committing to lend or invest such large sums of money. Accordingly, the findings on Rock Island's managerial and supervisory capabilities are subject to fulfillment by Rock Island of the financing condition.~~

4. Revise the Conclusion portion of pages 145-146 of the ALJPO as follows:

One of the requirements in Section 8-406(b) is that the utility demonstrate that it is “capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.”

Through the testimony of ComEd witness Ms. Lapson, and in its briefs, ComEd contends that Rock Island has not made the required showing. ILA and IAA agree with ComEd.

The positions of the parties are summarized at some length above and will not be repeated here.

As observed elsewhere in this Order, the assessment of statutory criteria and other issues is complicated by the many uncertainties associated with the “merchant” nature of the proposed transmission line project. The issue at hand is one of those issues that present such challenges.

In response to these challenges, Staff witness Pregozen, Manager of the Finance Department in the Financial Analysis Division at the Commission, proposed a condition. He explained, “To ensure that Rock Island does not begin construction of the project without sufficient funding in place to complete it, I recommend that the Commission impose the conditions set forth in Rock Island Ex. 10.13 lines 36-94 in any order that grants a certificate of public convenience and necessity to Rock Island to construct the proposed transmission line.” (Staff Ex. 4.0 at 2)

Environmental Intervenors and the IBEW recommend adoption of the Staff condition. ComEd, ILA and IAA do not.

The terms of the Staff-proposed condition, which were accepted by RI, are set forth on pages 63-64 of Staff’s initial brief, and in this order above under “RICL’s Position.”

The first sentence of the condition reads, “Rock Island will not install transmission facilities for the Rock Island Clean Line Project on easement property until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost.” The terms used therein are defined.

The condition also provides, “To allow the Commission to verify its compliance with this condition, Rock Island shall submit [certain] documents to the Director of the Financial Analysis Division and the Director of the Public Safety & Reliability Division at such time as Rock Island is prepared to begin to install transmission facilities.” All such documents are listed.

~~The Commission agrees with Staff’s assertions that under the circumstances, the condition strikes an appropriate balance and should be~~

~~imposed, and that “Section 8-406(b)(3) is met if the Commission adopts the Staff/RICL agreed-to condition.” As Staff explains, “If RICL does not raise all the capital needed to construct the entire project, construction will not begin and RICL and its ‘customers’ will not suffer significant adverse financial consequences.” Also, Rock Island will not be able to install transmission facilities on landowner’s property unless such commitments are obtained. does not believe the financing condition, while providing some safeguards, can or should serve as a substitute for the statutory requirement that Rock Island demonstrate its financing capability. As the cross-examination of Rock Island’s lead finance witness Mr. Berry showed, significant contingencies and risks exist that serve to cast doubt on the credibility of the financing plan for the Project. The Commission concludes has not met its burden under Section 8-406(b)(3).~~

~~A noted above, the condition requires Rock Island to submit certain documents “to allow the Commission to verify its compliance with this condition.” As part of its approval of the condition, the Commission finds that Rock Island shall file a petition with the Commission requesting such verification.~~

5. Revise the Findings and Ordering Paragraphs, starting at p. 215, as follows:

XIII. FINDINGS AND ORDERING PARAGRAPHS

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

- (1) the Commission has jurisdiction over Rock Island and the subject matter of this proceeding;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the evidence and are hereby adopted as findings herein;
- (3) ~~subject to the conditions imposed and determinations made in this order,~~ the Commission finds, pursuant to Section 8-406 of the Act, that Rock Island has not shown that the proposed line will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives; that Rock Island is has not demonstrated it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision of the construction; and that Rock Island has not shown that it is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers;

- (4) pursuant to Section 8-406 of the Act, a Certificate of Public Convenience and Necessity should not be issued to Rock Island as ordered below.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a Certificate of Public Convenience and Necessity is hereby issued denied to Rock Island Clean Line LLC pursuant to Section 8-406 of the Public Utilities Act, and that said certificate shall read as follows:

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

~~IT IS HEREBY CERTIFIED that the public convenience and necessity require (1) construction, operation, and maintenance by Rock Island Clean Line LLC of the proposed DC and AC transmission lines over the Preferred routes found appropriate above and as described and depicted on Appendices A and B of the filing made by Rock Island Clean Line LLC on March 6, 2014, and (2) the transaction of an electric public utility business by Rock Island Clean Line LLC, as a transmission public utility, in connection therewith, all as set forth above.~~

IT IS FURTHER ORDERED that Rock Island's other requests, including its request to maintain its books and records at its principal office and that of its ultimate parent company, Clean Line Energy Partners, in Houston, Texas, to submit annual financial information required by ICC Form 21, 83 Ill. Adm. Code 210, and Section 5-109 of the Act, by using the FERC Uniform System of Accounts to complete ICC Form 21, are rendered moot as a result of the preceding portion of this Order is approved, subject to the condition that that Rock Island shall promptly reimburse any Staff travel costs and expenses incurred in order to review these books and records.

~~IT IS FURTHER ORDERED that Rock Island's request to submit annual financial information required by ICC Form 21, 83 Ill. Adm. Code 210, and Section 5-109 of the Act, by using the FERC Uniform System of Accounts to complete ICC Form 21, is granted.~~

IT IS FURTHER ORDERED that all information treated as confidential pursuant to rulings made in this proceeding shall continue to be treated as proprietary and confidential for a period of two years from the date of this Order.

IT IS FURTHER ORDERED that the request for relief pursuant to Section 8-503 of the Act is not granted at this time; this determination is without prejudice to the filing of a request for such relief in the future.

IT IS FURTHER ORDERED that any and all motions, objections and requests not ruled upon in this proceeding are hereby deemed disposed of in a manner consistent with the determinations and ultimate conclusions herein.

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

Respectfully submitted,
Illinois landowners Alliance, NFP
By its Counsel



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