

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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Petition for an Order granting Rock )  
Island Clean Line LLC a Certificate of )  
Public Convenience and Necessity )  
pursuant to Section 8-406 of the Public )  
Utilities Act as a Transmission Public )  
Utility and to construct, operate and )  
maintain an electric transmission line )  
and authorizing and directing Rock )  
Island pursuant to Section 8-503 of the )  
Public Utilities Act to construct an )  
electric transmission line. )

No. 12-0560

**WIND ON THE WIRES' REPLY TO BRIEFS ON EXCEPTIONS**

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September 18, 2014

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NOW COMES Wind on the Wires through its Reply to Brief's on Exceptions, under Section 200.830 of the Rules and pursuant to the Administrative Law Judge's cover letter to the Proposed Order, dated August 15, 2014 and revised in the Administrative Law Judge's Scheduling ruling, dated August 26, 2014.

Wind on the Wires replies to Commonwealth Edison regarding its position that there is insufficient evidence to show that that Rock Island project will promote a competitive electricity market, its concern regarding the harm to the market if Clean Line does not move forward with the project and its unreasonable proposal that Rock Island not engage in any activities until all of the conditions the CPCN approval is subject to are met.

## I. REPLY

### 1. The Preponderance of the Evidence Demonstrates that the Rock Island Project will Promote a Competitive Electricity Market in Illinois

Commonwealth Edison (“ComEd”) challenges the Proposed Order’s approval of the certificate of public convenience and necessity (“CPCN”) pursuant to section 8-406(b)(1)<sup>1</sup>, stating that Rock Island has not presented sufficient evidence to meet the statutory requirement. The evidence that Rock Island and Wind on the Wires have presented in support of section 8-406(b)(1) have met this burden by a preponderance of the evidence.

In Commission proceedings, parties seeking relief must demonstrate that they are entitled to the relief sought.<sup>2</sup> More fundamentally, the standard of proof applicable to a particular type of adjudication must balance the private interest implicated with the governmental interest, and the permanency of the loss threatened by the government action.<sup>3</sup> The primary factor in determining the standard of proof in an administrative proceeding is the interest that will be affected by the administrative decision, viewed in the light of competing societal interests, rather than the conduct which forms the basis for the administrative action sought.<sup>4</sup>

In Illinois administrative proceedings, preponderance of the evidence is the standard, even in proceedings where both civil and criminal penalties could attach.<sup>5</sup> The protection of purely economic interests does not require a standard of proof as

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<sup>1</sup> 220 ILCS 5/8-406(b)(1).

<sup>2</sup> See Chicago and Eastern Illinois Ry. Co. v. Road Dist. No. 10, 353 Ill. 160, 166 (1933) *stating* the burden is on the petitioner to show, by a preponderance of the evidence, that it is entitled to the relief sought.

<sup>3</sup> Feliciano v. Illinois Racing Board, 110 Ill. App. 3d 997, 1000; 443 N.E.2d 261 (1st Dist. 1982).

<sup>4</sup> Sutton v. Edgar, 147 Ill. App. 3d 723, 730; 498 N.E.2d 295; 101 Ill. Dec. 113 (4th Dist. 1986).

<sup>5</sup> St. Charles Bd. of Education v. Adelman, 97 Ill. App. 3d 530, 532; 423 N.E.2d 254 (2nd Dist. 1981).

demanding as the protection of more fundamental rights, such as the individual liberty of parental rights.<sup>6</sup> Illinois courts have deemed the “preponderance” standard to adequately protect the rights of parties to administrative proceedings where the property interest at issue is a tenured teaching position<sup>7</sup>, a jockey’s license<sup>8</sup>, or the right to drive a motor vehicle<sup>9</sup>. Likewise, courts have deemed the “preponderance” standard to be proper before fire and police merit boards<sup>10</sup>, and civil service boards.<sup>11, 12</sup>

In this case, the testimony presented by Rock Island indicates that it is more likely than not that the Rock Island project will promote the development of an effectively competitive market. Rock Island witnesses Berry, Moland, Hassan and McDermott presented testimony showing that renewable resources delivered by Rock Island will meet demand for cost effective electricity<sup>13</sup> and will exert downward pressure on electricity and REC prices<sup>14</sup>. More specifically, the analyses performed by Rock Island shows that the Project (1) reduces total demand costs in both the PJM Illinois region and the MISO Illinois region in both study years under each of the four scenarios; (2) lowers LMPs in both the PJM Illinois region and the MISO Illinois region in both

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<sup>6</sup> Feliciano, 110 Ill. App. 3d at 1002.

<sup>7</sup> Chicago Bd. of Education v. State Board of Education, 113 Ill. 2d 173; 497 N.E.2d 984; 100 Ill. Dec. 715 (1986), Chicago Bd. of Education v. Payne, 102 Ill. App. 3d 741 (1st Dist. 1981), Adelman, at 532.

<sup>8</sup> Feliciano, at 1000.

<sup>9</sup> Sutton, at 730.

<sup>10</sup> McCoy v. Board of Fire & Police Commissioners, 54 Ill. App. 3d 276 (1977); Ritenour v. Police Board, 53 Ill. App. 3d 877 (1977).

<sup>11</sup> Drezner v. Civil Service Comm’n, 398 Ill. 219 (1947).

<sup>12</sup> The ability to exercise eminent domain is not authorized pursuant to 220 ILCS 5/8-406 and is granted through a separate proceeding.

<sup>13</sup> RICL IB at 38-47, *citing* Rock Island Exh. 10.0 at 14-15 and 17-21; Rock Island Exh. 10.5 at 2; Rock Island Exh. 10.14 REV. at 47.

<sup>14</sup> RICL IB at 42-44; *citing* Rock Island Exh. 3.3 at 1-3; Rock Island Exh. 3.5 at 2-3; Rock Island Exh. 4.0 REV at 2-4, 6, 7, 8, 20-26 and 35.

study years under each of the four scenarios; and (3) reduces total variable production costs in the eastern U.S. in both study years under each of the four scenarios.<sup>15</sup>

In addition, Staff witness Zuraski also prepared a specific analysis that in his ‘expert’ opinion that the project would promote an effectively competitive electricity market, but that the preponderance of the evidence was subject to considerable uncertainty.<sup>16</sup> When compared to the alternative of no new transmission from Iowa into Northern Illinois or no new generation in Northern Illinois, Rock Island witness Barry’s testimony shows that the Rock Island project is clearly beneficial.<sup>17</sup> Rock Island also looked at the benefits of the Project even if PJM were to restrict the operating requirements from 3,500 MW to 700 MW. For this analysis, Rock Island witness assumed that such an operating constraint would occur during 4.1% of the hours of the year.<sup>18</sup> Rock Island found that in this instance over 97% of the Projects economic benefits remain; that the average consumer benefits from the Project across a range of assumption scenarios are \$16.3 billion under Staff’s “Model A” and \$17.9 billion under Staff’s “Model B.”<sup>19</sup> Rock Island also looked at limiting LMP savings to five years. In that instance, the average consumer benefits from the Project are \$6.8 billion under Staff’s “Model A” and \$8.4 billion under Staff’s “Model B.” With these potential operating restrictions incorporated into the analysis, the Project still has a lower present value revenue requirement than building a comparable amount of new wind generation capacity in Illinois.<sup>20</sup>

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<sup>15</sup> Rock Island Exh. 3.0 at 10-11.

<sup>16</sup> Staff IB at 59-60, *citing* Staff Exh. 3 at 6.

<sup>17</sup> RICL Exh. 10.26 Surrebuttal Testimony of David Berry on Behalf of Rock Island Clean Line LLC at 39.

<sup>18</sup> RICL Exh. 3.7 Surrebuttal Testimony of Gary Moland on Behalf of Rock Island Clean Line LLC at 1-2.

<sup>19</sup> RICL Exh. 10.26 at 40-41.

<sup>20</sup> Id.

Even if the specific analyses were not accepted, Wind on the Wires presented a number of analyses and reports that demonstrate that wind and transmission, in combination, have lowered the cost of electricity in the wholesale market.<sup>21</sup> Moreover, the availability to the Illinois renewable energy market of additional low cost renewable energy will increase the competitive market for compliance with the state renewable portfolio standard and lower the cost of compliance.<sup>22</sup>

Thus, the totality of the evidence on record provides sufficient assurance that if the condition is met that the 3,500 MW of electricity delivered by the Rock Island project will promote a competitive electricity market in Illinois.

**2. Deny ComEd's Request to Prohibit Rock Island from Exercising Actions Pursuant to the CPCN Until All Conditions Are Met Because the Preponderance of The Evidence Demonstrates Compliance with the Section 8-406(b) and the Conditions Prevent Rock Island's Action in Furtherance of the CPCN from Harming Illinois Ratepayers**

In section V.C. of its' BOE, ComEd asks the Commission to add a condition "that Rock Island may not be able to undertake any activities to exercise the CPCN until all of the conditions used to find that it is entitled to a CPCN have been met." (ComEd BOE at 20). Currently, the Proposed Order allows Rock Island to survey and commence design, but does not allow Rock Island to install transmission facilities 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.<sup>23</sup> This condition unnecessarily delays the

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<sup>21</sup> WOW IB at 7-10, *citing* WOW Ex. 1.0 Direct Testimony of Michael Goggin on Behalf of Wind on the Wires at 13-18.

<sup>22</sup> WOW IB at 11-13 *citing* WOW Ex. 1.0 at 5-6 and 8-9; *see also* RICL IB at 47-48 and 50; *citing* Rock Island Ex. 4.0 REV. at 31-32, 36-39.

<sup>23</sup> *See* ALJPO at 145-46.

progress of this project when the conditions that are part of the CPCN protect Illinois ratepayers.

Pursuant to section 8-406(b)(3) the Commission is to make a finding that the “utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.”<sup>24</sup> Rock Island has set forth its plans for financing the project without any cost being imposed upon Illinois ratepayers subject to the following conditions (as best we can identify):

- Financing condition<sup>25</sup> which precludes Rock Island from commencing to construct transmission facilities on easement property unless and until Rock Island has raised the capital needed to finance the entire cost of constructing the Project. (RI RB at 36-37; RI IB at 104; RICL Exh. 10.13 at 2-3);
- Rock Island would not be allowed to recover any portion of its costs through PJM or MISO regional cost allocation to load unless it first seeks and obtains the Commission’s approval to recover its costs through cost allocation to load. (ALJPO at 115-116; RICL IB at 76-77, 106, citing RI Ex. 10.26 at 18, 21-22);
- Rock Island shall not attempt to effect the interconnection until it has fully complied with the applicable requirements of PJM and MISO and has signed all interconnection agreements. (ALJPO at 51 and 112; RICL IB at

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<sup>24</sup> 220 ILCS 5/8-406(b)(3).

<sup>25</sup> This condition 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 Rock Island’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.”

81-82 citing RI Exh. 2.11 REV at 8 and RI Exh. 10.14 REV at 30, 35, 37 and RI Exh. 10.26 at 27);

- Rock Island shall comply with the Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture which include a “tangent structure” provision, (ALJPO at 177);
- Rock Island shall avoid placing a structure that adversely affects Mr. Bedeker’s use of his mechanical irrigation system (ALPO at 186);
- Rock Island shall employ appropriate construction methods to limit and mitigate soil compaction under wet-ground conditions; (ALJPO 186);
- Rock Island shall span any wetlands on Mr. Bedeker’s property to the extent feasible, and if the Project were to impact the wetlands, Rock Island shall obtain the necessary permits from USACE prior to construction (ALPO at 187);
- Rock Island shall avoid or minimize the tree clearing to the extent practicable on Mr. Cole and Mr. Simpson’s lands (AJPO at 188);
- Rock Island shall use erosion control measures such as silt fences, erosion control blankets and construction matting, and shall follow the best management practices for erosion control as applicable to each location as promulgated by the IEPA (ALPO at 188);
- Rock Island shall conduct the survey and assessment of wetlands of the route, including Mr. Simpsons property, obtain the necessary permits, survey for eagle nests, and conduct archeological, historical, and environmental surveys and permitting (ALJPO at 189);

- Rock Island shall work with Mr. Jacobs to negotiate specific placement of the line and structures on his property so as to minimize impacts to aerial spraying activities for his operations (ALJPO at 190);
- if it is determined the placement of Project structures will impede access to Mr. Jacob's property, Rock Island shall offer and discuss alternatives with Mr. Jacobs to remove or mitigate such impacts (ALJPO at 190);
- if the Levee District and the USACE determine that removal of trees is a threat to the protection of the levied area, Rock Island shall determine ways to eliminate or mitigate such impacts, which may include use of other types of barriers to prevent erosion (ALJPO at 191);
- Rock Island shall discuss, with the landowner, the mitigation measures for soil compaction that it intends to employ before implementing them; and if the landowner objects to any of those measures, Rock Island shall not use them and shall instead negotiate alternative methods or measures with the landowner to prevent soil compaction (ALJPO at 197);
- Rock Island shall comply with the terms of the AIMA with respect to decompaction, and shall also permit landowners to self-perform decompaction activities on their land or retain a contractor, the reasonable cost of which shall be paid by Rock Island (ALJPO at 197);
- Rock Island shall adhere to the measures for locating drainage tiles, and avoid damaging them during construction, and shall take such other measures as are reasonably necessary to locate the tiles and avoid

damaging them, as described within the Proposed Order (ALJPO at 197 and 198);

- Rock Island shall avoid such interferences to the extent reasonably possible, including, where practicable, moving structures to a location elsewhere in the ROW, to avoid such interferences, if requested by the landowner (ALJPO at 198);
- Rock Island shall make such adjustments as are practicable in order to avoid impacts on Mr. Jacobs' CRP land (ALJPO at 198);
- Rock Island shall comply with this provision of the AIMA that provides that that the "use of guy wires will be avoided to the extent feasible" (ALPO at 199);
- Rock Island shall work with landowners to negotiate specific placement of the line and structures on their property so as to minimize impacts to aerial spraying activities for their operations (ALJPO at 199);
- Rock Island can maintain books and records at its principal office on the condition that it shall reimburse any Staff travel costs and expenses incurred in order to review these books and records (ALJPO at 210).

These conditions protect Illinois ratepayers. Rock Island's documentation of compliance with the conditions is subject to Staff review. If Rock Islands fails to comply with a condition, the Commission has the authority to terminate the CPCN. Any costs that are incurred are absorbed by Rock Island until it complies with all conditions. Illinois ratepayers incur no costs and no structures are installed until financing is

secured. Moreover, prohibiting Rock Island from taking steps to exercise the CPCN prevents it from demonstrating compliance with the CPCN. For example, the first few conditions relate to financing, which is predicated on Rock Island having the CPCN. If it does not have the CPCN it will not be able to obtain financing from lenders and will not be able to demonstrate compliance with the conditions. The majority of the conditions relate to surveys, design and construction practices, which cannot be complied with until Rock Island is granted the CPCN to start surveying and designing. The majority of these conditions, such as the construction conditions, apply to the actions Rock Island takes based on the CPCN approval, not actions it takes to obtain the CPCN.

Thus, the Commission should reject ComEd's recommendation.

## II. CONCLUSION

Wherefore, Wind on the Wires respectfully requests that the Commission reject ComEd's arguments that there is insufficient evidence to demonstrate that the Rock Island project will promote a competitive electricity market, and that Rock Island not be allowed to engage in any activities until all of the conditions of the CPCN approval are met. Moreover, Wind on the Wires requests that the Commission grant the arguments set forth in Wind on the Wires' brief on exceptions.

\_\_\_\_\_/s\_\_\_\_\_  
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September 18, 2014