STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Rock Island Clean Line LLC	**:**	
	:	
Petition for an Order granting Rock Island Clean Line LLC a Certificate of Public Convenience and Necessity pursuant to Section 8-406 of the Public Utilities Act as a Transmission Public Utility and to Construct, Operate and Maintain an Electric Transmission Line and Authorizing and Directing Rock Island Rock Island pursuant to Section 8-503 of the Public Utilities Act to Construct an Electric Transmission Line.	**:**	**12-0560**

<u>ORDER</u>

DATED: November 25, 2014

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ORDER

By the Commission:

I. PROCEDURAL HISTORY

In this proceeding, Rock Island Clean Line LLC ("Rock Island," "RICL" or "RI") filed the above-referenced petition with the Illinois Commerce Commission ("Commission" or "ICC") pursuant to Sections 8-406 and 8-503 of the Public Utilities Act ("Act" or "PUA"), 220 ILCS 5/1-101, et seq.

Rock Island therein requests an order granting it a certificate of public convenience and necessity ("CPCN" or "Certificate"), pursuant to Section 8-406 of the Act, authorizing it to operate as a transmission public utility in the State of Illinois and to construct, operate and maintain an electric transmission line ("Project"); and authorizing and directing it, pursuant to Section 8-503 of the Act, to construct the proposed line. Rock Island also seeks authorization to use the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts to file annual financial information required by ICC forms, and to maintain its books and records at a location outside of Illinois.

Petitions for leave to intervene were filed by Commonwealth Edison Company ("ComEd"); Locals 51, 9, 145, and 196, International Brotherhood of Electrical Workers, AFL-CIO ("IBEW"); the Illinois Agricultural Association a/k/a Illinois Farm Bureau ("IAA" or "Farm Bureau"); the Illinois Landowners Alliance, NFP ("ILA"); Wind on the Wires ("WOW"); the Environmental Law & Policy Center ("ELPC") and the National Resources Defense Council ("NRDC"), also collectively referred to "Environmental Intervenors" or "EI"); the Building Owners and Managers Association of Chicago ("BOMA"); Dynegy Midwest Generation, LLC and Dynegy Kendall Energy, LLC; Ameren Transmission Company of Illinois; Midwest Generation, LLC; John L. Cantlin; Joseph H. Cantlin;

Timothy B. Cantlin; Jason D. James; James Bedeker, Sally Bedeker and First Midwest Bank Trust #6243 ("Bedeker Intervenors"); Friesland Farms LLC, Larry Gerdes and Steven Gerdes ("Gerdes Intervenors"); and the Illinois Department of Agriculture ("IDOA"). IDOA later filed a motion to withdraw which is granted.

Motions to Dismiss were filed by ILA and IAA. With respect to Rock Island's request for relief under Section 8-406, the Motions to Dismiss were denied in a written ruling.

Pursuant to due notice, a prehearing conference, status hearings and evidentiary hearings were held in this matter before an Administrative Law Judge at the Commission's offices in Springfield, Illinois.

Public Forums were held on September 18 and October 28, 2013, and were well attended. Numerous landowners and others expressed their objections to the proposed transmission line.

At the evidentiary hearings, Rock Island presented the filed testimony and exhibits of its witnesses: Karl McDermott, Michael Skelly, Gary Moland, Rudolph Wynter, Matthew Koch, Leonard Januzik, Hans Detweiler, David Loomis, Wayne Galli, Neil Wallack, Pierre Adam and David Berry.

The Commission Staff ("Staff"), ComEd, ILA and WOW also presented the filed testimony and exhibits of their respective witnesses. IBEW and BOMA also presented previously filed witness testimony. Testimony was also filed by the Bedeker Intervenors and Gerdes Intervenors. The IAA did not offer witness testimony; it did cross-examine witnesses.

ComEd witnesses were Steven T. Naumann and Ellen Lapson. Staff witnesses were Yassir Rashid, Daniel G. Kahle, Richard Zuraski and Alan Pregozen. ILA witnesses were Jeffrey Gray, Paul Marshall, Curtis Jacobs, Randy Rosengren, Sid Nelson, Ed Simpson and Bill Cole.

Many of the witnesses identified by name above were cross-examined at the hearings.

The WOW witness was Michael Goggin. The IBEW witness was James Bates. The BOMA witness was Michael Cornicelli.

The Gerdes Intervenors' witnesses were Larry and Steve Gerdes. The Bedeker Intervenors' witness was James Bedeker.

Post-hearing initial briefs ("IBs") and reply briefs ("RBs") were filed by Rock Island, ComEd, Staff, ILA, IAA, WOW and Environmental Intervenors. An initial brief was filed by IBEW. Suggested orders were filed by Rock Island and ComEd, and a summary of its position was filed by ILA.

ComEd, ILA and IAA oppose the petition. WOW, Environmental Intervenors and IBEW support the petition.

A Proposed Order was served. Briefs on exceptions ("BOEs") were filed by Rock Island, ComEd, ILA, IAA, WOW, IBEW and Environmental Intervenors. Except as otherwise noted, suggested replacement language was provided in the BOEs or in separate filings referred to as "Exceptions." Rock Island's BOE and Exceptions also propose revisions to the summaries of its positions and to findings and ordering paragraphs, and Rock Island proposes that appendices be added to the order. The Commission Staff also filed a BOE in which it states that it takes no exception to the Proposed Order.

Reply briefs on exceptions ("RBOEs") were filed by Rock Island, ComEd, ILA, IAA, WOW, IBEW, Environmental Intervenors and the Commission Staff.

The positions of the Parties on the issues are summarized below. The Commission observes that these summaries are intended to identify the positions of the Parties, not the findings of the Commission, except as otherwise noted.

II. DESCRIPTION OF ROCK ISLAND AND THE PROJECT

Rock Island is a Delaware limited liability company with principal offices in Houston, Texas, and is authorized to do business in Illinois. Rock Island is a wholly owned subsidiary of Rock Island Wind Line, LLC, a Delaware limited liability company, which is in turn a wholly owned subsidiary of Clean Line, also a Delaware limited liability company. The owners of Clean Line are GridAmerica Holdings Inc., Clean Line Investor Corp., Michael Zilkha, and Clean Line Investment LLC. GridAmerica Holdings Inc. is a subsidiary of National Grid USA. (RI IB at 2)

The transmission line planned by Rock Island would be 500 miles long and would originate at a converter station in O'Brien County, Iowa, "traverse Iowa" for 379 miles, cross the Mississippi River near Princeton, Iowa, and then enter Illinois south of Cordova, Illinois.

From there, the proposed line would extend for approximately 121 miles in Illinois to the Collins Substation in Grundy County.

The primary purpose of the 500-mile line is connect unidentified unbuilt wind generation facilities in northwest Iowa and nearby areas in South Dakota, Nebraska, and Minnesota ("Resource Area") with electricity markets in northeast Illinois and elsewhere in the PJM grid.

Except as noted below, the transmission line would be a direct current ("DC") line. The energy generated in wind farms is in alternating current ("AC") form. To transmit this energy over a HVDC or "DC" transmission line, the energy must be converted to DC form.

The DC portion of the proposed transmission line would originate from an AC-to-DC converter station at O'Brien County in Iowa and terminate at a DC-to-AC converter station located approximately four miles north of the Collins Substation in Grundy County. From the converter station, a four-mile AC segment, consisting of two parallel 345 kilovolt ("kV") AC lines, would connect to ComEd's existing 765 kV AC transmission system at or near the Collins substation.

The DC transmission line's nominal voltage will be ± 600 kV direct current. It is described as the first DC transmission line proposed in Illinois.

RI characterizes the line as a "merchant project." As such, Rock Island asserts that it will recover its costs of construction and operation solely through the revenues it receives from the specific transmission customers that purchase capacity and take transmission service on the Project. As discussed below, the FERC approved Rock Island's proposal to pre-subscribe "up to" 75 percent of transmission capacity to anchor customers. The FERC also approved Rock Island's request to sell the remaining 25 percent of the capacity using an open season auction.

III. APPLICABLE STATUTORY AUTHORITY

Section 8-406 (a) of the Act states:

> No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

Section 8-406 (b) provides as follows:

> No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity.

It then provides:

> The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction 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; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers.

Section 8-503 of the Act provides, in part, as follows:

> Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility . . . are necessary and ought reasonably to be made or that a new structure or structures is or are necessary and should be erected, to promote the security or convenience of its employees or the public or 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; ...

IV. MOTIONS TO DISMISS

Separate Motions to Dismiss ("Motions") were filed by the IAA and ILA. The Motions sought dismissal of the application of Rock Island.

A ruling on the Motions was issued March 18, 2013. The ruling denied the Motions with respect to Rock Island's request for relief under Section 8-406.

In their post-hearing briefs, IAA and IAA again argue that their Motions should be granted.

In its Motion, IAA argues, in part, "Rock Island is not a public utility under [Section 3-105 of] the PUA because it does not own infrastructure for electric transmission in Illinois, therefore it cannot be granted relief under Section 8-406 of the PUA." (IAA Motion at 5, 12) According to IAA, "…Rock Island does not meet the threshold criteria required

to be deemed a public utility and therefore, as a matter of law, is not eligible for relief under Sections 8-406 or 8-503 of the PUA." (*Id.* at 5) IAA concludes, "Therefore, Rock Island's Verified Petition should be dismissed with prejudice." (IAA Motion at 12; see also IAA BOE at 4)

In its Motion, the ILA, whose members include persons who own or farm land on or near an "identified potential route" for the proposed line, expresses a similar position with respect to Section 8-406. The ILA argues, in part, "Both § 8-406(a) and (b) identically require that a petitioner for a Certificate be a public utility: only a public utility may obtain a § 8-406(a) Certificate to transact business and only a public utility may obtain a § 8-406(b) Certificate to construct facilities." (ILA Motion at 3) ILA contends that Rock Island "lacks transmission infrastructure – a threshold requirement of Illinois law" under Section 3-105, and that "the entity aspiring to become a public utility must have in place qualifying infrastructure before it may be granted public utility status." (ILA Motion at 5-6)

Rock Island, IBEW and Wind on the Wires filed responses in which they oppose the Motions.

ComEd filed a response in which it opposes the Motions with respect to Section 8-406. According to ComEd, "While Section 8-406 imposes restrictions on utilities' transacting business and constructing facilities, Section 8-406 does not limit the applicants for CPCNs [certificates of public convenience and necessity] to entities that are already utilities as suggested by Movants." (ComEd Response at 4)

ComEd argued, "Section 8-406(a) places no limitation on who may seek a CPCN. It does not state that CPCNs can only be issued [to] utilities, let alone that applicants must be utilities when they file." In ComEd's view, Section 8-406(a) is written as a prohibition on activity absent a CPCN by stating that "[n]o public utility … shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business," and nowhere does it state that the required CPCN could only be obtained after the party was already functioning as a utility or owned utility assets. ComEd continues, "Rather, the Public Utilities Act allows non-utility applicants to both become public utilities and to subsequently operate, for public use, plant and equipment that transmit electricity. If Section 8-406 required applicants to be public utilities even prior to obtaining a CPCN, it would create a nonsensical Catch-22 whereby non-utilities could not receive approval to become utilities before such time as they were already violating the law by acting as a utility without a CPCN." (*Id.*)

Similarly, Rock Island argued, "IAA's and ILA's construction of the PUA sets up a classic 'catch-22': Under their construction, an entity cannot apply for a certificate to construct public utility facilities and transact public utility business unless it already owns public utility plant, equipment or property, but constructing the public utility facilities needed (according to IAA and ILA) in order to apply for a certificate, without already possessing a certificate authorizing construction of those facilities, is prohibited by §8-406(b) ('no public utility shall begin the construction of any new plant, equipment, property

or facility . . . unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction')." (RI Response to Motions at 6; see also WOW Response to Motions at 2 and RI RBOE at 3-4)

ILA and IAA filed replies to the responses.

Ruling Issued March 18, 2013

A ruling on the Motions was issued March 18, 2013. The ruling denied the Motions with respect to Rock Island's request for relief under Section 8-406. The ruling stated, in part:

> First of all, despite Movants' [ILA and IAA] repeated assertions that the applicant must have qualifying transmission infrastructure in place in order to satisfy Section 3-105 before it may file an application under Section 8-406, a reading of Section 3-105 reveals no references to such a term or anything similar to it.
>
> Furthermore, as observed by several parties, Movants' interpretation of the statute creates an unworkable "Catch-22." Under their theory, an entity could not apply for a certificate to construct public utility facilities and transact public utility business unless it already owns public utility plant, equipment or property. Under Section 8-406(b), however, constructing the public utility facilities needed in order to apply for a certificate, without already possessing a certificate authorizing construction of those facilities, is prohibited. That section provides that "no public utility shall begin the construction of any new plant, equipment, property or facility . . . unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction."
>
> The more relevant issue is whether an applicant is able to meet the criteria in Section 8-406(b) of the Act. In fact, Movants' concerns about qualifying transmission infrastructure appear to relate more to the criteria in 8-406(b) than to the definition of a public utility in Section 3-105. In that regard, given that the proposed line route is an issue to be considered under Section 8-406, it is difficult to see how Movants expect an applicant to already have the transmission infrastructure in place over a line route that Movants themselves are placing at issue.

The ruling further stated:

> In any event, unless those criteria in Section 8-406 are met, the Commission may not grant a certificate of public convenience and necessity and public utility status under Section 8-406(b) authorizing an applicant to proceed with construction of a transmission line. In the instant case, the applicant has sought authority under 8-406(b) and has filed extensive proposed evidence

> in purported support thereof, and other parties will be given an opportunity to address those issues.
>
> In that respect, this case is clearly distinguishable from the Arkansas case cited by Movants and addressed in Rock Island's response. In the Arkansas case, unlike the current case, the Rock Island affiliate did not seek authorization to undertake construction of a transmission line, and therefore did not present information in support thereof. For that reason, the Arkansas case was dismissed, essentially as premature, without prejudice to refiling.
>
> It is also observed, as noted by Rock Island and others, that the Commission has not limited the application process in Section 8-406 to those entities who are already certificated utilities. For example, in Docket No. 06-0179, one of the applicants that was granted a certificate to construct an electric transmission line and operate as a public utility in connection therewith, Ameren Illinois Transmission Company, was not an existing certificated public utility at the time of filing.

The ruling of March 18, 2013 concluded, "In conclusion, the Motions are denied with respect to Rock Island's request for relief under Section 8-406."

Commission Conclusion

In the instant Order, the Commission concurs in the rationale and determination contained in the ruling of March 18, 2013 which denied the Motions with respect to Rock Island's request for relief under Section 8-406. The Commission observes that the question of whether Rock Island should be granted a Certificate under Section 8-406 was extensively addressed on the merits in the course of the proceeding, and is considered in this Order below.

With respect to the request to dismiss the relief sought under Section 8-503, the ruling of March 18, 2013 stated, in part, "Assuming without argument that Section 8-406 relief is granted to the applicant, the question of whether Rock Island should also be granted relief under Section 8-503 at the same time is an issue that can be further addressed in the course of the proceeding as has been done in prior cases, and will not be further ruled upon at this time." The Commission observes that the question of whether Rock Island should be granted relief under Section 8-503 was in fact addressed on the merits in the course of the proceeding, and findings are contained in this Order below.

V. SECTION 8-406(A)

In the post-hearing briefs, Section 8-406(a) issues were addressed by ComEd, ILA, IAA, Staff and Rock Island. It is noted that Staff did not file a BOE on Section 8-406(a) issues.

Section 8-406 (a) of the Act states:

> No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

A. Rock Island Position

Rock Island states that in the context of this proceeding, it should be granted a CPCN for the Project in order to also receive a CPCN to transact a public utility business, and that the determination that "the public convenience and necessity require the transaction of such business" under §8-406(a) of the PUA is dependent on a determination under §8-406(b) that Rock Island's construction and operation of the Project will promote the public convenience and necessity in accordance with the provisions of that subsection. (RI IB at 24-25)

Although RI believes its Project will be the first merchant transmission project in Illinois, it states that the Commission has previously granted CPCNs as transmission public utilities to at least two companies. In Docket 01-0142, the Commission granted CPCNs to American Transmission Company L.L.C. ("ATC"), which had been formed to take ownership of and operate the transmission facilities of Wisconsin electric utilities, some of which were located in Illinois, and to ATC's affiliate ATC Management, Inc. ATC's petition in that docket stated that ATC would own, control, operate and manage, within Illinois, facilities used for the transmission of electricity, and that its transmission lines would transmit electric energy within Illinois for use by the public to serve Illinois customers. The Commission found that the petitioners' transmission lines were transmitting power within Illinois to serve Illinois customers and that ATC and ATC Management fell within the definition of "public utility" in the PUA. (RI IB at 25, citing *American Transmission Company L.L.C. and ATC Management Inc*., Docket 01-0142, Order Jan. 23, 2003 ("*ATC Order*") at 5; RI Ex. 10.13 at 16-17)

In Docket 06-0179, the Commission granted CPCNs to Illinois Power Company ("IPC") and to a newly-formed entity, Ameren Illinois Transmission Company ("Ameren Transco"), to construct three new 345 kV transmission lines for the purpose of enabling electricity to be delivered from a single wholesale generation source, the Prairie State Generating Company plant (an independent power producer), into the bulk electric system. The petition in that case stated that "Ameren Transco will own, control, operate and manage, within this State, for public use, facilities for the transmission of electricity" and that it would be "transmitting electricity for use by the public at rates, terms, and conditions subject to regulation by the FERC." Rock Island states that the Commission

found Ameren Transco to be a public utility and granted CPCNs to Ameren Transco and IPC to construct, operate and maintain the three new 345 kV transmission lines. (RI IB at 26, citing *Illinois Power Company d/b/a AmerenIP and Ameren Illinois Transmission Company*, Docket 06-0179, Order dated May 16, 2007; RI Ex. 10.13 at 17-18)

In Docket 06-0706, the Commission granted CPCNs to Ameren Transco and IPC to construct, operate and maintain a new transmission line in the area of Ottawa, Illinois. Ameren Transco stated in its petition that it would be "transmitting electricity for use by the public at rates, terms, and conditions subject to regulation by the [FERC]." The Commission found that Ameren Transco and its proposed transmission activities satisfied the definition of a public utility and that Ameren Transco was a public utility. *Ill. Power Co. d/b/a AmerenIP & Ameren Ill. Transmission Co*., Docket No. 06-0706, Order on Reopening June 23, 2010. In Docket 12-0598, the Commission granted a CPCN to Ameren Transco to build new transmission facilities in Illinois collectively referred to as the Illinois Rivers Project, finding that Ameren Transco is a public utility pursuant to the PUA. (RI IB at 25-26, citing *Ameren Transmission Company of Illinois*, Docket 12-0598, Order dated Aug. 20, 2013)

Rock Island asserts that like ATC and Ameren Transco, Rock Island will be owning, operating and managing transmission facilities in Illinois to transmit electricity for use by the public at rates, terms and conditions regulated by the FERC, and that it will construct and operate the Project for public use for the transmission of electricity and will hold itself out to serve the public. Rock Island states that it will offer and provide non-discriminatory, open access transmission service to eligible customers, as defined by its Open Access Transmission Tariff ("OATT") in conformance with FERC regulations, specifically, the service of transmitting electricity delivered to Rock Island's western converter station in O'Brien County, Iowa, to an interconnection point with the PJM grid at the Collins Substation in Grundy County, Illinois. (RI IB at 26-27, citing RI Exs. 10.13 at 4-6, 14-15; 10.26 at 35-36)

Rock Island expects that its transmission customers will fall into three categories. The first is owners of generation resources located in the Resource Area that will contract for transmission capacity to deliver the output of their plants into the PJM transmission network at the Collins Substation. These customers can be expected to have contracted with one or more suppliers to the retail market -- e.g., a utility, an ARES or other competitive supplier, a wholesale power marketer, a municipal electric utility, or an electric cooperative -- to purchase the generator's output; the electricity delivered to the purchasing entity would ultimately be sold to and used by thousands of individual retail electricity customers. (RI IB at 27, citing RI Ex. 10.13 at 12-13; see also RI RB at 39-40)

The second is wholesale purchasers of electricity, such as electric utilities, competitive retail suppliers, municipal electric utilities, electric cooperatives, and wholesale power marketers, who would contract for their own transmission capacity and use that transmission capacity to have delivered, to northern Illinois, electricity that they purchase from generators located in the Resource Area. The electricity transmitted by

the Project to northern Illinois for these customers would ultimately be sold and distributed to thousands of individual retail electricity customers. (*Id.*, citing RI Ex. 10.13 at 13)

Regarding the third category, RI states that while it would be impractical for residential and smaller non-residential customers to contract directly for bulk transmission service on the Project, it would be possible for larger retail customers to contract directly for transmission capacity and service on the Project to facilitate their procurement of electricity from the Resource Area, such as, for example, a large institutional electricity user or a government entity that wishes to obtain a portion of its electric supply from renewable resources and to negotiate for and purchase the renewable energy directly from the producer rather than through an intermediate supplier. Rock Island states that the definition of "eligible customer" under the FERC pro forma OATT, to which Rock Island's OATT will be required to conform, includes retail customers taking unbundled transmission service. (*Id.*, citing RI Ex. 10.13 at 13-14)

Rock Island asserts that the Project will provide 3,500 MW of transmission capacity and is projected to deliver over 15 million MWh of electricity annually from the Resource Area to northeast Illinois and the PJM grid. (*Id.* citing RI Ex. 10.13 at 15)

According to Rock Island witness Mr. Berry, any eligible customer under its OATT will be able to request and, subject to the overall capacity of the Project, obtain transmission service on the Project in "multiple ways." First, during Rock Island's initial process to identify and contract with anchor tenants, any eligible customer may request to negotiate a precedent agreement with Rock Island for long-term firm transmission service. Second, any eligible customer may participate in Rock Island's enrollment process, referred to as an "open season," to award the remaining capacity on the Project; and in the open season, all eligible customers have an equal opportunity to procure long-term firm transmission service. Third, if Rock Island does not sell all of the Project's capacity during the anchor tenant and open season processes, any eligible customer may request service from the remaining firm service under Rock Island's OATT. (RI IB at 28, citing RI Ex. 10.13 at 10)

Fourth, Mr. Berry asserted that upon expiration or termination of the initial transmission service contracts entered into during the anchor tenant and open season processes, any eligible customer may request the freed-up capacity under Rock Island's OATT. Fifth, any eligible customer may request non-firm service on the Project at any time, and Rock Island is obligated to grant these requests so long as the transmission capacity is not in use by firm service customers. Finally, Rock Island will create a secondary market for the Project's transmission capacity, in which holders of contracted capacity will be able to make their contracted capacity available to other eligible customers. (*Id.*, citing RI Ex. 10.13 at 10)

Response to IAA and ILA

In response to ILA's and IAA's arguments in Section III of their initial briefs, Rock Island submits that IAA and ILA rely on the same argument on which their Motions to

Dismiss were based, i.e., that only an entity that is already a public utility can apply for and be granted a CPCN as a public utility, and since Rock Island does not currently own any plant, equipment or property in Illinois and has no assets or real property in Illinois that could be used to sell, transmit or deliver electricity, Rock Island is not currently a public utility and therefore cannot be granted a CPCN as a public utility. Rock Island asserts that IAA's and ILA's argument regarding Rock Island's request for a CPCN as a public utility should be rejected for the reasons stated in Rock Island's response to the IAA and ILA Motions to Dismiss. (RI RB at 34)

Rock Island states that ILA cites several decisions for the proposition that in order to grant a CPCN, the Commission must find that the proposed service is necessary for the public convenience and necessity. Rock Island states that the cases cited by ILA emphasize that "necessity" as used in this context does not mean "indispensably requisite," that necessity has been construed to mean "needful, requisite or conducive," and that the Commission has broad discretion to determine what constitutes the public convenience and necessity in a particular case. (RI RB at 34-35)

Response to ComEd

In ComEd's view, to be a utility, RI must establish that it has or will have Illinois customers, and RI has not done so. (ComEd IB at 14) Rock Island states that §3-105 says no such thing and does not even use the word "customers." (RI RB at 39; see also RI RBOE at 8)

Rock Island states that ComEd points to the fact that Rock Island has "assumed" that all of its customers will be wind generators located outside Illinois in the Resource Area (ComEd IB at 16-17). RI asserts that this assumption, and Rock Island's justification for it, was made in the context of responding to the arguments of other parties that the generator customers that will connect to the western end of the Project may not be limited to wind generators. Rock Island states that the FERC's pro forma OATT requires that Rock Island's transmission service tariff include as eligible customers, "Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for resale." Additionally, under the terms of the FERC's pro forma OATT, Rock Island must, and will, offer transmission service on the Project to any retail customer taking unbundled transmission service pursuant to a State requirement for such service, which exists in Illinois under Article 16 of the PUA, or a voluntary offer of retail unbundled transmission service which Rock Island will include in its tariff. (RI RB at 36-37, citing RI Ex. 10.13 at 5, 12-14)

Rock Island responds to ComEd's argument that based on the decision in *Mississippi River,* Rock Island will not be a public utility because it will only serve a fixed and limited number of customers (ComEd IB at 15, 18-19). Rock Island states that Mississippi River Fuel, an interstate pipeline, expressly contracted with its local gas distribution company customers not to sell gas to any of their retail customers other than the specific, identified retail customers it had already contracted with, and it refused requests from additional industrial gas customers to sell them gas, which is something RI

could not do under the OATT. (RI RB at 37, citing 1 Ill. 2d at 511-513) Rock Island states that the decision emphasized that "it is entirely clear from the record that Mississippi has never intended to assume the status of a public utility or professed to devote its property to 'public use'", and that Mississippi River Fuel "has done no act by which it has given the reasonable impression that it was holding itself out to serve gas to the public, or to any class of the public generally." (RI RB at 37, citing 1 Ill. 2d at 515-518)

Rock Island asserts that, in contrast to the facts in *Mississippi River*, it is expressly holding itself out to serve the public and to dedicate its property, plant and equipment to public use. In support of that argument, RI cites a passage of testimony from Mr. Berry. (RI RB at 37, citing RI Ex 10.13 at 14-15)

Rock Island also responded to ComEd's argument that a retail user or a utility or other wholesale retailer does not become a transmission customer of a transmission owner or operator simply because the power the retail user, utility or other wholesale buyer consumes or resells has been transported by the transmission owner/operator's transmission line. (ComEd IB at 17) Rock Island states that it will offer transmission service on the Project to, and expects its customers to include, both (1) owners of generation resources located in the Resource Area that will contract for transmission capacity to deliver their output into the PJM transmission network at Collins Substation; and (2) wholesale purchasers of electricity, such as electric utilities, competitive retail suppliers, municipal electric utilities, electric cooperatives, and wholesale power marketers, which would contract for their own transmission capacity and use that transmission capacity to have delivered, to northern Illinois, electricity that they purchase from generators located in the Resource Area. Rock Island states it is also possible that large retail purchasers of electricity may purchase unbundled transmission service on the Project, in order to transport electricity that they purchase on an unbundled basis from sellers in the Resource Area. (Petition ¶17; RI Exs. 1.0 at 14-15; 10.0 at 18; 10.13 at 12-14; 10.19; RI IB at 27; RI RB at 39-40)

Rock Island argues that ComEd's reliance on the decision of the Arkansas Public Service Commission ("PSC"), *Ark. Pub. Svc. Comm'n* Docket No. 10-041-U, Order No. 9 (Jan. 11, 2011) ("*Arkansas Order*"), concerning a subsidiary of Clean Line, Plains and Eastern Clean Line LLC ("Plains and Eastern"), is unfounded. (RI RB at 43-44, citing ComEd IB at 19-20) Rock Island states that in the Arkansas case, Plains and Eastern was only applying for a certificate of public utility status, and not for a certificate to build its transmission line in Arkansas. The filing in Arkansas stated that the applicant "does not seek authorization to begin construction of a transmission line, which authorization Clean Line will seek pursuant to a separate application." (RI RB at 43, citing *Arkansas Order* at 1) According to Rock Island, the Arkansas case is similar to Rock Island's previous filing in Docket 10-0579, in which Rock Island sought only a CPCN as a public utility and did not request a CPCN for its transmission line nor present the detailed information necessary to support a request for a CPCN for a transmission line. In Docket 10-0579, Rock Island states that it ultimately agreed with Commission Staff that the request for a CPCN as a public utility should be considered in conjunction with a request

for a CPCN for a specific public utility project, which Rock Island has filed for in the instant docket. (RI RB at 43)

Rock Island also states that Plains and Eastern, at the time of the Arkansas PSC decision, planned to construct a "through" transmission line through Arkansas to the line's ultimate destination in a state to the east of Arkansas, with no plans to directly deliver electricity into Arkansas to wholesale or retail customers in that state through an interconnection in Arkansas. (*Id.*, citing *Arkansas Order* at 2, 4, 5 and 11) Rock Island states that the Arkansas PSC found, based on this, that it could not find that Plains and Eastern met the statutory test of transmitting power "to or for the public for compensation," stating that its "decision is based on the fact that it cannot grant public utility status to Clean Line based on the information about its current business plan and present lack of plans to serve customers in Arkansas." (*Id.*, citing *Arkansas Order* at 11-12) Rock Island asserts that, in contrast, it will be, by tariff, expressly offering transmission service to customers in Illinois, and all of the electricity transported by the Rock Island Project will be delivered into Illinois. (RI RB at 43-44)

Rock Island states that several other states have granted certificates to Clean Line subsidiaries as public utilities and/or to construct their specific proposed transmission projects, under the laws of those states. According to RI, the Oklahoma Corporation Commission granted, to Plains and Eastern, electric transmission-only public utility status; the Kansas Corporation Commission granted Grain Belt Express Clean Line LLC ("Grain Belt") a Limited Certificate of Public Convenience to Transact the Business of a Public Utility in the State of Kansas; the Kansas Corporation Commission granted Grain Belt a siting permit, which is the authorization required under Kansas law to build the Kansas portion of the Grain Belt transmission project; the Indiana Utility Regulatory Commission granted Grain Belt authority to operate as a transmission-only public utility in Indiana. (*Id.* at 44-45)

Response to Staff

In response to Staff's statement that Rock Island witness Mr. Berry "essentially concedes in its testimony that no need for the proposed Project has actually been established" (Staff IB at 9), Rock Island asserts that Staff's characterization is incorrect and the testimony it cites is taken out of context. Rock Island explains that in the testimony cited by Staff, Mr. Berry was discussing the proposed financing condition to Rock Island's CPCN that was proposed by Staff and accepted by Rock Island. RI provides a quotation of this passage of testimony in its reply brief. (RI RB at 36-37)

Rock Island states that Staff's Initial Brief provides a discussion of court cases on the topic of what constitutes a "public utility," along with a discussion of the FERC's requirements for merchant transmission providers such as Rock Island to provide non-discriminatory open access transmission service to eligible customers, but that Staff does not reach a specific conclusion on whether Rock Island will be a "public utility." (Staff IB at 10-15) Rock Island asserts that a common theme in many of these cases in which an entity was found not to be a public utility is that the entity disclaimed any intention to be a

public utility, to hold itself out to provide service to the public, or to devote its plant, property and equipment to the public use. (Rock Island RB at 46-47)

Rock Island states that Staff's statement that 75% of the capacity of the Project will be pre-subscribed to "pre-selected customers" and only 25% will be available through "open auction" (Staff IB at 15) is an incomplete description of the ways in which customers will be able to obtain transmission service on the Project. (Rock Island RB at 47-48) Rock Island asserts that it is authorized by the FERC to contract with anchor tenant customers for "up to" 75% of the capacity of the Project; therefore, the 75% figure is a ceiling not a floor. (*Id.*, citing RI Ex. 10.13 at 6)

According to Rock Island, the overriding principles are that Rock Island will offer all eligible customers the opportunity to purchase transmission service on the Project; Rock Island will not deny any eligible customer the opportunity to purchase transmission service; and Rock Island will not unduly discriminate against any transmission customer in favor of another eligible customer, and that what is relevant to Rock Island's public utility status is that the service will be offered to the entire universe of eligible customers, not just to the number that actually elect to take service. (*Id.* at 47-49, citing RI Ex. 10.13 at 6) Rock Island states that Staff acknowledged that the FERC requirement to provide non-discriminatory open access, which Rock Island will comply with, "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." (RI RB at 48-49, citing Staff IB at 13)

Rock Island responded to Staff's concern that the FERC's order granting Rock Island's request for negotiated rate authority observed that Rock Island stated it would be unable to resize the Project if its customer solicitation process reveals market interest in excess of the planned transmission capacity. Staff also noted that the FERC's Final Policy Statement on the allocation of capacity on new merchant transmission projects, which was issued after the FERC's order granting Rock Island negotiated rate authority, specifies that "all merchant transmission developers and non-incumbent cost-based, participant-funded transmission projects become public utilities at the time their projects are energized" and therefore are subject to "the obligation to expand their transmission systems, if necessary, to provide transmission service." Staff stated that in the current docket, Rock Island has not provided any evidence that it would be able to increase the capacity of the Project if the Project becomes oversubscribed. (RI RB at 49-50, citing Staff IB at 13-15)

In response, Rock Island asserts that Staff is criticizing Rock Island for not responding to an issue that Staff never raised in the evidentiary phase of this case. According to Rock Island, its statement in its FERC negotiated rate application -- that it would be unable to resize the capacity of the Project if market interest exceeds capacity of the Project without undue delay -- is a simple fact of the line as currently proposed. Rock Island asserts that if the line were oversubscribed, it would first construct the Project as designed and proposed in the instant proceeding, and then seek subsequent authorizations to expand the Project. Rock Island states it does not object to the obligation

to expand its facilities or service offering to meet an increased demand for its transmission service after the Project, as now proposed, is completed. Rock Island asserts that it has such an obligation based on the provisions of the FERC's pro forma OATT. (RI RB at 50-51; see also RI RBOE at 14-17, responding to ILA, IAA and ComEd BOEs)

According to Rock Island, an obligation to expand a transmission provider's service offering in response to increased demand is embodied in §15.4 of the FERC's pro forma OATT, and while a transmission provider can propose deviations in its tariff from the pro forma OATT, these must be approved by the FERC. Based on the FERC's pronouncements in the Final Policy Statement cited by Staff, Rock Island "believes the FERC would not approve a tariff provision that deviated from §15.4, and therefore the obligation to expand applies to Rock Island." (Rock Island RB at 51)

Rock Island suggests it would be unacceptable to the parties for Rock Island to propose in the context of this case that it be allowed to increase the size or capacity of the Project as conditions warrant, but that does not mean that Rock Island is unwilling or unable to increase the transmission capacity it is offering in the future. (*Id.* at 51-51)

Rock Island also argues that the cases cited by Staff indicate that an obligation to expand the capacity of the applicant's equipment and facilities to accommodate increased demand is not necessarily a requirement for public utility status, and that the utility's obligation to offer service may be limited by the capacity of its facilities and equipment. (Rock Island RB at 52) For example, *in Illinois Highway Transportation Co. v. Hantel,* 323 Ill. App. 364, 376 (3d Dist. 1944), the Court stated, "A common carrier of passengers has been defined as one who undertakes to carry all persons indifferently who may apply for patronage so long as there is room . . . [T]hey serve all the public alike who apply to them for carriage, so long as they have room . . . carrying all who apply and refusing none unless they have no room or for some other legal reason may refuse." RI also cites *State Public Utilities Commission ex rel. Macon County Telephone Co. v. Bethany Mutual Telephone Ass'n*, 270 Ill. 183, 185, 110 N.E.334 (1915), where the Court stated, "The words 'public use' mean of or belonging to the people at large, open to all the people to the extent that its capacity may admit of the public use." (RI RB at 53)

BOE and RBOE

In its BOE, Rock Island suggests that the Order should include additional discussion of its evidence and arguments regarding Section 8-406(a). (RI BOE at 30-32; Exceptions at I and II)

In its RBOE, in response to BOEs filed by IAA, ILA and ComEd, Rock Island argues, "The record shows that Rock Island satisfies the 'for public use' requirement to be a public utility…." (RI RBOE at III)

In support of that conclusion, Rock Island addresses "Customers to be Offered Transmission Service on the Project," "Finite Number of Customers," "Expanding the

Capacity of the Project if it is Over-Subscribed," and "Other Arguments." (RBOE at III. A, B, C and D)

B. Positions of Staff and Intervenors

Staff

Preliminarily, it is noted that Staff did not file a brief on exceptions on this issue or any issue. Prior to that, Staff addressed the issue in its briefs as discussed below.

According to Staff, Rock Island essentially concedes that no need for the proposed Project has actually been established. Rock Island witness Berry states that "permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost." (Staff IB at 9, citing RI Ex. 10.13 at 3-4)

Under Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105, "Public Utility" means and includes, among other things:

> … every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers and appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, *for public use*, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, or permit or right to engage in: (1) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communication purposes ....
> (Staff IB at 9-10, emphasis added)

As an initial matter, Staff asserted that while Rock Island has not adequately shown that it currently owns, controls, operates or manages any plant, equipment or property to be used in transmission of electricity, it would be illogical to suggest that an entity cannot apply for a certificate to construct public utility facilities and transact public utility business unless it already owns public utility plant, equipment or property. Illinois courts have indicated that a literal reading of a statute will not be followed where it would lead to consequences that the legislature could not have contemplated or intended. (Staff IB at 10, citing In re *Marriage of Eltrevoog*, 92 Ill. 2d 66, 70 (1982))

According to Staff, "To restrict entities seeking to engage in utility business in Illinois in such a manner would reach the undesired and absurd result of erecting barriers of entry from participation in the industry or imposing requirements on existing public utilities in Illinois from which non-certificated entities would effectively be exempt." (Staff IB at 10) Staff further argues, "Therefore, a more logical assessment of the provision is

that the Commission may assess whether a petitioner's proposal would meet the CPCN criteria of the statute if and when approved. Such provides the Commission with the flexibility of assessing an application and any public need for particular projects on a case by case basis." (*Id.*)

Staff stated that the next inquiry is the issue of whether the Company has shown that the plant, equipment or property at issue is for "public use." According to Staff, courts have interpreted Section 3-105 to require that all persons must have an equal right to use the utility, and it must be in common and upon the same terms. (Staff IB at 10-11, citing *Palmyra Tel. Co. v. Modesto Tel. Co*., (336 Ill. 158 (1929)) Whether a given business is a public utility depends upon the public character of the business or service rendered which makes its regulation a matter of public consequence and concern because it affects the whole community. (*Id.*, citing *Illinois Highway Transp. Co. v. Hantel*, 323 Ill. App. 364 (1944))

Staff maintained that in interpreting Section 3-105, the courts have been clear that the service must be made available to all persons on the same terms and conditions, not confined to privileged persons, such as one group or type of customer as is the case here. A "public utility" implies a public use of an article, product, or service, carrying with it the duty of the producer or manufacturer, or one attempting to furnish the service, "to serve the public and treat all persons alike, without discrimination. . ." (*Id.*, citing *Highland Dairy Farms Co. v. Helvetia Milk Condensing Co*., 308 Ill. 294, 300, (1923)) The term "public utility" as used historically, implied a public use carrying with it the duty to serve the public "and treat all persons alike, and it precluded the idea of service which was private in its nature and was not to be obtained by the public." (*Id.*, citing *Springfield Gas & Electric Co. v. City of Springfield*, 126 N.E. 739 (1920), aff'd, 257 U.S. 66 (assessing PUA of 1913, Section 10, since repealed and now replaced with Section 3-105))

While it is not essential to a public use that its benefits should be received by the whole public, or within a large part of it, they must not be confined to specified privileged persons, but must be extended to all persons in common upon the same terms, it being immaterial how few avail themselves of the rights so extended. (*Id.* at 12, citing *State Public Utilities Commission ex rel. Macon County Telephone Co. v. Bethany Mut. Telephone Ass'n*, 110 N.E. 334 (1915))

Petitioner asserts that its proposed project is for public use. In Staff's view, the facts are "far from clear on this point." (*Id.* at 12) Rock Island states that it will use an anchor tenant model to sell up to 75% of the transmission capacity on the project with capacity not secured by anchor tenants being sold to customers through an "open season" process or processes that would constitute at least 25% of capacity, and that its "target customer base" for transmission services will be comprised primarily of wind energy producers and purchasers of electricity generated from renewable resources. (Petition at 10-11) Specifically, Petitioner "expects that its customers will consist principally of (i) wind energy producers located [in states west of Illinois (primarily in Iowa)], and (ii) buyers of electricity – particularly buyers seeking to purchase electricity

generated from renewable resources – located at the eastern end of the Rock Island Project." (Staff IB at 12, citing Petition at 10-11)

Staff stated that in this capacity, Rock Island would be acting as a provider of open access transmission services. The FERC is the federal regulator of, among other things, the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce. FERC requires that the transmission provider offer and provide transmission service to all eligible customers on a non-discriminatory basis. (*Id.* at 13, citing *Rock Island Clean Line LLC*, Order Conditionally Authorizing Proposal and Granting Waivers in Part, issued on May 22, 2012, 139 FERC ¶ 61,142, at 16 ("*FERC Order*")) According to Staff, this means Rock Island would not be allowed to give a preference to wind generators, but 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"). Staff stated, "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." (*Id.*)

In the FERC Order, FERC conditionally approved negotiated rates for Rock Island. FERC explained that pursuant to their OATTs, federally-defined public utilities have an obligation to expand their transmission capacity upon request at cost-based rates and that the cost of public utility capacity expansion provides downward pressure on the negotiated rates that Rock Island will charge. (Staff IB at 13, citing *FERC Order* at 17) Regarding capacity expansion, Staff states that Rock Island's position was clear -- Rock Island said "… it would be unable to resize the Project were the solicitation process to reveal market interest in excess of its planned transmission capacity…." (FERC Order at 22)

Because of Rock Island's status as a merchant transmission provider, rather than a public utility under the FPA, FERC did not rule definitively on the question of capacity expansion. Rather, FERC said that if Rock Island's open season results in oversubscription, it would "require that Rock Island in its open season report justify in greater detail its reasons for not expanding the Project and for allocating capacity among open season participants." (*FERC Order* at 33) Staff states, "Thus, even though FERC directed Rock Island to file, upon completion of the Project, a rate schedule for service under the OATT for the RTO to which it transfers operational control (FERC Order, Ordering P (C)), it was not necessarily required to expand its service capacity to accommodate all eligible customers." (Staff IB at 14)

Staff stated that in FERC's Final Policy Statement on the allocation of capacity on new merchant transmission projects, FERC clarified its policies and said that it reaffirmed that "all merchant transmission developers and non-incumbent cost-based, participant-funded transmission projects become public utilities at the time their projects are energized. . . .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." (Staff IB at 14, citing *Allocation of Capacity*

on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant-Funded Transmission, 142 FERC ¶ 61,038, P 22 (2013)) Staff comments, "It is unclear whether this FERC policy statement would trump the specific findings of the FERC Order addressing the Rock Island project at issue. If so, it would arguably alleviate 'public use' concerns." (*Id.*)

Staff stated that in the current ICC proceeding, three-fourths of the capacity of the proposed project is intended to be pre-subscribed for private contracts to a limited number of pre-selected customers, and "only" 25 percent is assured of being available through open auction. While FERC indicates in a policy statement that merchant transmission projects will be considered public utilities required to file an OATT, the Company has not provided any evidence here 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. When the Petitioner was before FERC seeking negotiated rate authority for the same project, it explained that it would not be able to expand the project's capacity, stating "it is not financially or practically feasible to materially increase the size of this Project." (*FERC Order* at 22) Staff states that Rock Island has not provided any evidence here that this assessment has changed. (Staff IB at 15)

Further, while Rock Island states that it is not seeking authority in this proceeding to acquire land and land rights through eminent domain pursuant to Section 8-509, it is "entirely possible" Rock Island could seek such authority at a later time. (Staff IB at 15-16, citing RI Ex. 1.0 at 5)

Finally, Staff stated that it "has concerns with any finding that Rock Island would be an Illinois 'public utility,' entitled to rights inherent in that status, including the right, when authorized following proper application to the Commission, to be granted by the Commission the right to exercise the power of eminent domain." (Staff IB at 16) Staff concludes, "Without having clearly shown that it is offering its facilities for 'public use,' Rock Island should not be granted a status that would permit it to pursue approvals for the taking of private property. The Commission should consider with care the grant of a potential right of infringement on private property rights to an entity which would be doing so primarily for its own admittedly private purposes and not for 'public use.'" (*Id.*)

In its reply brief, in response to Rock Island's claim it would be the first merchant transmission project in Illinois (RI IB at 25), Staff argues that this fact, even if true, does not make Rock Island a public utility. (Staff RB at 7)

Staff states that Rock Island points to some prior cases that it claims are representative of why it should be granted a CPCN. One was Docket 01-0142, where the Commission granted CPCNs to American Transmission Company L.L.C. ("ATC"), a transmission public utility formed to take ownership of and operate the transmission facilities of Wisconsin electric utilities, some of which were located in Illinois, and to ATC's affiliate ATC Management, Inc. In that case, the Commission found that the petitioners "own, control, operate, and manage, within this State, for public use, facilities used in the transmission of electricity." Docket No. 01-0142, Order at 5.

According to Staff, the Commission noted in that case that the Petitioners' transmission lines are transmitting power within Illinois to serve Illinois customers and it is therefore in the public interest that the Commission oversee certain aspects of ATC operations. Rock Island argues that like ATC, and other transmission public utilities, Rock Island will be owning, operating and managing transmission facilities in Illinois to transmit electricity for use by the public at rates, terms and conditions regulated by the FERC. (Staff RB at 7-8, citing RI IB at 26)

While it agrees there are transmission-only companies in Illinois that the Commission has deemed to be public utilities, Staff argues that those companies are distinguishable from the transmission operations that Rock Island plans. Staff asserts that in each of those instances, the transmission service of those projects is made available to all customers on the same terms and conditions, clearly not confined in any respect to privileged or pre-determined contract customers as Rock Island seeks to do. (*Id.* at 8)

Staff argues that what is essential about being a public utility in Illinois is that the entity provides its services, whatever they might be, "for public use." This means that "all persons must have an equal right to use the utility, and it must be in common, upon the same terms, however few the number who avail themselves of it." (Staff RB at 8, citing *Palmyra Tel. Co*.) If and when the Project becomes subject to a FERC open access transmission tariff requiring the provision of non-discriminatory open access, the Project's limited capacity will still prevent Rock Island from providing access to all eligible customers. Staff concludes, "What Rock Island is asking the Commission to do is grant it a CPCN so it looks like a 'public utility' for purposes of condemning private property to build its line, while at the same time it plans to offer only a token percentage of that line's capacity for 'public use.' The transmission service that Rock Island plans to provide on its transmission line does not meet the public use standard under Section 3-105 of the PUA." (Staff RB at 8-9)

ComEd

According to ComEd, the PUA's definition of a "public utility" requires "not only that a utility [own, control, operate or manage] transmission assets, but that it do so 'for public use.'" (ComEd IB at 14, citing 220 ILCS 5/3-105)

ComEd argues, "The fact that providing a service or product normally provided by a public utility does not make an entity a public utility unless it holds itself out to provide that service or product to the public at large was established in the Illinois Supreme Court's opinion in *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509 (1953) ('*Mississippi River*)." (ComEd IB at 14) Mississippi River Fuel Corp. was a fuel company that sold natural gas in Illinois at retail directly to 23 industrial customers as well as to a power company and an electric company for resale to the general public, all through individual contracts for terms of two years or less. (*Id.*, citing *Mississippi River* at 512) The Illinois Supreme Court affirmed the circuit court's conclusion that Mississippi

River Fuel Corp. was not a public utility subject to regulation under the PUA because the record failed to support the conclusion that Mississippi River Fuel Corp. devoted its property to "public use." (*Id.*, citing *Mississippi River* at 515-516; see also ComEd RB at 9; ComEd BOE at 7)

In ComEd's view, to be a utility, RI must establish that it has or will have Illinois customers and that it does or will own, control, operate, and manage, within this State and for public use, facilities used in the transmission of electricity, before issuance of a CPCN. (*Id.*, citing 220 ILCS 5/3-105)

Section III.A of ComEd's initial brief is titled, "RI has not committed to owning and operating transmission assets in Illinois." (ComEd IB at 15; see also ComEd BOE at 11-12)

According to ComEd, RI has made no commitment to ever own, control, operate or manage Illinois transmission assets. Mr. Skelly testified that, even after obtaining a CPCN, if RI came to believe that "the project wasn't worth investing in any further, then we would abandon it." (Tr. 286) ComEd asserts that this risk is "no small thing" given that RI has no construction financing and that the pool of generators it hopes to serve does not exist; that RI's CFO Mr. Berry confirmed that RI will not begin to build any of the Project until and unless it has all required financing (RI Ex. 10.13 at 4); and that his testimony also confirms that RI cannot offer service to customers as RI will not commit to build the Project, even in the event the Commission issues a CPCN and a Section 8-503 order directing the construction of the Project (Tr. 1049-1050). (ComEd IB at 16; BOE at 11-12)

ComEd argues, "RI cannot, in short, prove that it will own or control transmission assets in Illinois, even if its Petition is granted. That is fatal to its application to be deemed a public utility." (*Id.*; ComEd RB at 6-7)

Section III.B of ComEd's initial brief is titled, "RI has not proven that it will offer or provide service to the Illinois public." (ComEd IB at 16; see also ComEd BOE at 7-9)

While RI claims that customers could also include competitive retail suppliers or retail purchasers, RI CFO Mr. Berry testified that "Mr. Zuraski's model should … treat Rock Island's transmission charge as paid by wind generators because they, not ratepayers in general, are likely to be Rock Island's transmission customers." (ComEd IB at 16-17, citing RI Ex. 10.14 REV at 50-51) The economic studies which RI relies on to claim market benefits assume that the RI customer-subscribers who pay for the line will be out of state generators. (*Id.*, citing Tr. 121-122, McDermott; and Tr. 562-563, Loomis) ComEd also states that RI's CEO likewise confirmed that the line's subscriber customers are expected to be wind or renewable energy generators in the "Resource Area," not in Illinois. (*Id.*, citing Tr. 271, Skelly; ComEd RB at 9-10)

ComEd also disputes RI's claims that utilities, retail energy suppliers, or retail purchasers in Illinois may take service on the line. ComEd asserts that an entity does not

become a transmission owner's transmission customer simply because the power that they consume or resell has previously flowed over the transmission owner's transmission line. ComEd adds that buyers of energy transmitted across the Project need not be customers of RI, or take service from RI, any more than load serving entities currently operating in ComEd's zone must be transmission customers of every generator lead or transmission facility over which the power they consume has flowed. (*Id.* at 17; ComEd draft order at 6; see also ComEd RB at 10)

As further evidence that the Project will not serve the Illinois public, ComEd states that RI aims to reserve up to 75% of the Project's capacity for contract anchor tenants in the Resource Area, leaving "merely" 25% to serve the Illinois public. ComEd argues that the Illinois Supreme Court has recognized that serving such a limited number of entities in Illinois does not satisfy the "public use" requirement in the Act. (ComEd draft order at 6-8, citing *Mississippi River*; *see also* ComEd IB at 18-20) And, because RI has not committed to build the Project unless sufficient demand materializes at some point in the future, ComEd asserts that it is unclear whether RI will ever serve even this limited subset of customers.

In the event that the Project is built, like Mississippi River Fuel, RI will have contractually agreed to serve its customers rather than the public at large. Moreover, RI represented to the FERC that it was unwilling to expand the Project's capacity to meet heightened demand and "its explanation of its assertions provided for the first time in its Reply Brief lack credibility." (ComEd draft order at 8) According to ComEd, "Rock Island's commitment to adhere to the OATT is also insufficient to prove that the Project will be dedicated to the public use under the circumstances." (ComEd Exceptions at 27; BOE at 9-11)

Section III.C of ComEd's initial brief is called, "The Project is indefinite and rife with uncertainty." (ComEd IB at 19)

ComEd reasons that RI's potential to own and operate transmission assets in the future does not qualify RI as a public utility now. ComEd cites as instructive the Arkansas Public Service Commission conclusion with respect to a different Clean Line project. (ComEd IB at 19-20 and ComEd draft order at 6, citing *Ark. Pub. Svc. Comm'n* Docket No. 10-041-U, Order No. 9 (Jan. 11, 2011) ("*Arkansas Order*")) That Order held, in part, "… the Commission's decision is based on [the] fact that it cannot grant public utility status to Clean Line based on the information about its current business plan and present lack of plans to serve customers in Arkansas. Without pre-judging any future plans Clean Line may have or may bring before the Commission, the Commission denies Clean Line's requested CCN." (ComEd IB at 20, citing *Arkansas Order* at 11-12) ComEd argues that this same rationale is applicable here, where RI has an "uncertain and highly speculative business plan," and no customers. (*Id.*)

ComEd also cautions that empowering private speculators with eminent domain authority will enable RI to threaten Illinois landowners with condemnation in the event that negotiations come to an impasse. (ComEd draft order at 7; ComEd IB at 13)

In its reply brief, ComEd challenges RI's claims that the Commission has granted CPCNs for similar transmission-only utilities in the past. Observing that untraditional transmission developers can and have operated in Illinois in accordance with the terms of the PUA, ComEd asserts that the precedent cited in RI's Initial Brief illustrates RI's significant evidentiary shortcomings. ComEd asserts that in each case where the Commission has issued a CPCN, the utility was not only committed to owning and operating utility facilities, but also was either ready to commence construction upon certification or contractually bound to acquire existing utility property. (ComEd RB at 7 and ComEd draft order at 7, citing Orders in Docket No. 01-0142, Docket No. 06-0179, Docket No. 06-0706, and Docket No. 12-0598)

As to Docket 01-0142, ComEd contends that unlike RI, American Transmission Company, LLC ("ATC") was committed to operating utility assets upon certification and was acquiring existing utility assets under Wisconsin law and binding contract. Additionally, ComEd states that ATC was formed from 25 municipalities, retail electric cooperatives, and investor-owned utilities that each were to contribute their transmission assets and/or cash to ATC. (ComEd RB at 8; ComEd draft Order at 7) In Docket 06-0179, ComEd submits that Illinois Power Company ("AmerenIP") and the company then known as Ameren Illinois Transmission Company ("AITC") jointly sought a CPCN under Section 8-406(a). Though AITC was a newly-formed entity, ComEd states that AmerenIP was already an Illinois utility and that AITC had the financial and technical support of an established corporate family that possessed the financial and operational qualifications necessary to qualify as a public utility. ComEd further contends that the CPCNs subsequently issued to Ameren Transco lend Rock Island no support because they were granted after Ameren Transco had already been recognized by the Commission as a public utility. (ComEd RB at 8-9; ComEd draft order at 7)

ComEd also cautions that empowering private speculators with eminent domain authority will enable Rock Island to threaten Illinois landowners with condemnation in the event that negotiations come to an impasse. (ComEd draft order at 7; see also ComEd IB at 13)

IAA

Section III of IAA's initial and reply brief is titled, "As a non-utility, Rock Island is not eligible for a certificate to transact business in Illinois pursuant to § 8-406(a) of the PUA." (IAA IB at 6; RB at 2; see also IAA BOE at 5-7)

According to IAA, "§ 8-406(a) does not allow the Commission to issue a certificate to a petitioner deeming it a "public utility," but rather allows the Commission to issue a certificate to a "public utility" allowing it to transact business in Illinois." (IAA IB at 6)

IAA further argues, "Since only a 'public utility' can be granted a certificate under § 8-406, the same arguments of the Motions to Dismiss have application in this Initial Brief as a preliminary legal issue on whether or not to issue a certificate to transact

business and a Certificate of Need and Public Convenience ("CPCN") to Rock Island." IAA adds, "As such, the Farm Bureau fully restates and adopts its arguments and that of the ILA of each party's Motion to Dismiss and Replies, dated March 7, 2013, as if fully restated herein." (IAA IB at 6)

IAA concludes, "Plainly put, the Commission must first find that Rock Island is a public utility before it can grant any of the relief requested in Rock Island's Verified Petition, including allowing it to transact business in Illinois. As detailed herein, the Commission cannot arrive at this conclusion. Rock Island is not a 'public utility' as defined in § 3-105(a) of the PUA and is therefore not eligible for a certificate to transact business in Illinois as a public utility." (IAA IB at 8)

ILA

ILA's arguments are set forth in its briefs and its BOE. (ILA BOE at 14-17)

In ILA's view, "Because Rock Island is not a public utility, it is not eligible for, and the Commission lacks statutory authority to grant it, a Certificate of Public Convenience and Necessity ('CPCN') under Section 8-406 of the Act." (ILA IB at 14)

ILA further argues, "In addition, the public convenience and necessity do not require Rock Island to conduct the business it proposes to conduct." The Commission may issue a CPCN only if it finds that the proposed service is necessary for public convenience and necessity. (*Id.*, citing, e.g., *New Landing Utility v. Illinois Commerce Comm'n*, 58 Ill.App. 868, 374 N.E.2d 6 (2d Dist. 1977)) ILA concludes, "Even if here the proposed business would meet the public convenience and necessity standard if it were to be conducted, the Project is so speculative that it cannot be said to meet the public convenience and necessity standard and does not merit a CPCN." (*Id.* at 14-15)

Environmental Intervenors

Environmental Intervenors did not address the Section 8-406(a) issue in their initial brief. In their reply brief, they state that the FERC Order "prohibits RICL from privileging one citizen over another." (EI RB at 2)

They also argue that while it might be impracticable for Rock Island to expand the capacity of the Project should demand outstrip capacity, the Commission should not understand this limitation as a restriction on public use. Physical limitations do not reduce Rock Island's ability to extend access to all persons upon the same terms, which the Illinois courts have held is the basis upon which the Commission should determine whether or not a project is for the public use. (EI RB at 3, citing *State Public Utilities Commission ex rel. Macon County Telephone Co. v. Bethany Mut. Telephone Ass'n*, 110 N.E. 334, 335-36 (1915)) In Environmental Intervenors' view, the Commission should reject Staff's argument that the Project does not constitute a public use because Rock Island is unable to guarantee its ability to expand the capacity of the Project should the Project become oversubscribed. (*Id.*)

C. Commission Conclusion

No public utility shall begin the construction of any new plant, equipment, property or facility in Illinois unless and until it has obtained from the Commission a certificate that public convenience and necessity require such construction. 220 ILCS 5/8-406. As was stated in Section IV of this Order, we concur that the PUA allows non-utility applicants to both become public utilities and to subsequently operate, for public use, plant and equipment that transmit electricity. Under Section 3-105 of the Public Utilities Act, 220 ILCS 5/3-105, "Public Utility" means and includes, among other things:

> … every corporation, company, limited liability company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers and appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or controls any franchise, license, or permit or right to engage in: a. the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communication purposes…

Id.

The PUA's definition of a Public Utility requires "not only that a utility [own, control, operate or manage] transmission assets, but that it do so 'for public use.'" (ComEd IB at 14, citing 220 ILCS 5/3-105) To constitute a "public use," under Section 3-105, "all persons must have an equal right to use the utility, and it must be in common, upon the same terms, however few the number who avail themselves of it. (Staff IB at 11, citing *Palmyra Tel. Co. v. Modesto Tel. Co.*, (336 Ill. 158 (1929); *State Public Utilities Commission v. Bethany Mut. Tel. Ass'n*, 270 Ill. 183 (1915))

In its initial and reply brief, Staff states that it "has concerns with any finding that Rock Island would be an Illinois 'public utility'..." due to its opinion that "the transmission service that Rock Island plans to provide on its transmission line does not meet the public use standard under Section 3-105 of the PUA." In particular Staff voices concern regarding the condemnation of private property through eminent domain for what it considers to be private purposes. (Staff IB at 15) Staff asserts that three-fourths of the capacity of the proposed project is intended to be pre-subscribed for private contracts to a limited number of pre-selected customers; that "only" 25 percent is assured of being available through open auction; and 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.

ComEd contends that "RI has not proven that it will offer or provide service to the Illinois public." Among other things, ComEd argues that an entity does not become a transmission owner's transmission customer simply because the power that they consume or resell has previously flowed over the transmission owner's transmission line.

ComEd also has concerns regarding the pre-subscription of 75 percent of the line to contract anchor tenants in the Resource Area and asserts that such an arrangement leaves "merely" 25% to serve the Illinois public. ComEd argues that the Illinois Supreme Court in its *Mississippi River* decision has recognized that serving such a limited number of entities in Illinois does not satisfy the "public use" requirement in the Act.

Other arguments by Staff and ComEd, and Rock Island's response to those arguments, are summarized above and will not be repeated in detail here.

ILA and IAA also argue that Rock Island does not qualify as a utility within the meaning of Sections 8-406(a) and 3-105 of the PUA. Their arguments are largely the same as those made in their Motions to Dismiss as addressed above, and will not be further discussed here.

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)

Rock Island represents that it will comply with this FERC requirement; will offer all eligible customers the opportunity to purchase transmission service on the Project; will not deny any eligible customer the opportunity to purchase transmission service; and will not unduly discriminate against any transmission customer in favor of another eligible customer. (RI RB at 48) Rock Island also notes 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 directives below, the Commission finds that Rock Island's proposal satisfies 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 argued 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 cited 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 and thus this determination is premature. If Rock Island is required to file a FERC tariff which complies with that pronouncement, Rock Island has stated in this proceeding that it would not object to that obligation and that an increase in capacity could be implemented through various means, such as construction of a separate project, installation of additional facilities within the existing or an expanded Right of Way ("ROW"), or an engineering solution that increases the capacity of the Project using the existing facilities. (RI RB at 52) This type of expansion, which would necessarily deviate from the project under review in the present case, would require further review, and Rock Island will need to obtain approval from the Illinois Commerce Commission before undertaking any such expansion.

VI. SECTION 8-406(b) -- CRITERION (1)

Section 8-406(b) provides in part as follows, "Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity."

Section 8-406(b) then provides alternative tests for demonstrating the proposed construction will promote the public convenience and necessity. It states, in part:

> The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction 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….

A. Rock Island Position

1. Promotion of Development of Effectively Competitive Market

Rock Island is developing the Project to connect Illinois and the PJM grid to the outstanding wind resources of northwest Iowa and nearby areas in South Dakota, Nebraska and Minnesota. According to Rock Island, the transmission line will enable over 4,000 MW of high capacity factor wind farms to be constructed in the Resource Area and will deliver their output of low cost renewable energy to northeast Illinois. Without the Project, Rock Island contends, these new wind generation plants will not be built due to the limitations of the existing transmission grid to bring their output to load and population centers. The Project will provide access to renewable energy resources needed to meet Illinois' and other states' RPS requirements in a cost-effective manner. Rock Island states that the Project will increase the supply of zero marginal cost renewable energy to Illinois and PJM, which will increase generator competition and exert downward pressure on wholesale energy prices and REC prices, and therefore ultimately on retail electricity prices and RPS compliance costs. (RI IB at 34, citing RI Exs. 1.0 at 13, 25-29; 10.0 at 3-4; 10.14 Rev. at 37-38; 4.0 Revised at 31, 37-39)

According to Rock Island, the U.S. Department of Energy's National Renewable Energy Laboratory ("NREL") estimates that Iowa, Nebraska and South Dakota have the potential for over 1.8 million MW of wind generation capacity in areas with sufficient wind speeds to support gross capacity factors greater than 40%, but as of June 30, 2012 there was less than 5,700 MW of installed wind generation capacity in these states. Rock Island estimates that within O'Brien County, Iowa where the Project's western converter station will be located, and the eight surrounding counties, there is at least 45,000 MW of high quality wind generation potential, i.e., in areas with wind speeds that could produce net capacity factors of at least 40%. Rock Island asserts that higher capacity factor wind generation facilities result in lower-cost wind energy because the capital costs of the wind generation facilities can be recovered over more MWhs of output. The higher average wind speeds in the Resource Area allow the construction of higher capacity factor, lower-cost wind generation facilities than is possible in Illinois and other nearby states. (*Id.* at 34-35, citing RI Exs. 10.0 at 4-6, 7-9; 10.2; 10.14 Rev. at 41; 10.26 at 29)

Rock Island is in discussions with 18 different wind generation developers that are in various stages of development activities in O'Brien County and the surrounding region. According to Rock Island, public records show that these developers control almost 100,000 acres of land in the area on which wind generation projects could be built. (RI IB at 35-36, citing RI Ex. 10.0 at 11)

Rock Island contends that, based on the data on wind generation development potential and developer activity in the Resource Area, the amount of available wind resources is not a constraining factor on the number of wind energy projects that can be built there; rather, the key constraints are transmission infrastructure and access to markets. Without transmission paths to load centers and buyers of renewable energy, additional wind projects in the Resource Area will not be developed. Currently, there is a

lack of long-distance transmission capacity between the Resource Area and market areas such as northern Illinois. Rock Island asserts that, as illustrated by a comparison of a map showing the windiest areas in the U.S. (RI Ex. 10.1) to a map of the existing high voltage transmission grid in the U.S. (RI Ex. 10.3), transmission capacity needed to bring electricity produced by wind generation facilities in areas with the best wind resources, including the Resource Area, to load and population centers in Illinois and other eastern states, is limited or non-existent. No transmission lines above 345 kV, and no DC lines of any voltage, currently connect the Resource Area to northern Illinois. (RI IB at 35-36, citing RI Ex. 10.0 at 6-10)

Further, Rock Island asserts, while it is theoretically possible to move power from the Resource Area to northern Illinois using existing 345 kV lines, this would (i) entail substantially higher electric losses as compared to HVDC transmission facilities, (ii) expose the shippers to congestion costs on the AC system that result from transmission constraints, and (iii) require the shipper to pay wheeling charges to both MISO and PJM. (RI IB at 37)

Rock Island witnesses Michael Skelly and David Berry, who are wind generation developers, both testified that developers of wind generation projects will not invest capital in the construction of additional wind generation facilities in areas such as the Resource Area, that have the nation's best wind resources, without reasonable assurances of adequate transmission capacity and infrastructure to deliver the output to load and population centers such as the northern Illinois markets. (RI IB at 37-38, citing RI Exs. 1.0 at 24-25; 10.0 at 11)

Renewables

According to Rock Island, the demand for electricity from renewable resources in Illinois and PJM states will be high in the coming years due to state RPS requirements; a growing interest, above and beyond specific RPS mandates, in meeting demand for electricity using renewable resources; the need to replace the energy generated by fossil-fueled plants that will be retiring due to age, environmental requirements and economic issues; and the fact that high-capacity factor wind energy has become cost competitive with other power sources. Illinois' statutory RPS requirement for ComEd and Ameren Illinois to supply their "eligible retail customers" increases from 2% in 2008 to 25% by June 1, 2025. These RPS requirements also apply to ARES with respect to the retail load they serve, although ARES are currently required to meet 50%, and allowed to meet up to 100%, of their RPS obligations by making alternative compliance payments to the Illinois Power Agency ("IPA"), which is to use the payments to procure RECs. Further, at least 75% of the renewable energy that the utilities use, and at least 60% of the renewable energy that ARES use to meet their respective RPS obligations, must come from wind generation. (*Id.* at 38-39, citing RI Ex. 10.0 at 14-16; 20 ILCS 3855/1-75 (c)(3); 220 ILCS 5/16-115D)

Rock Island submits that numerous municipalities have adopted municipal aggregation programs whereby an ARES supplies electricity to customers in the

municipality other than those customers who opt out of the program to remain with the utility or enter into separate contracts with other ARES. A number of these municipalities have required the ARES supplying their aggregation programs to obtain a significant portion of its electricity supply from additional renewable resources beyond the RPS requirements, or to offer the retail customers in the program an option to specify that a stated percentage of the electricity purchased must come from renewable resources above the RPS requirements. (RI Ex. 10.0 at 16-17; RI IB at 39)

According to Rock Island, beyond Illinois, 30 states and the District of Columbia have established renewable energy standards, while another seven states have voluntary renewable energy goals. Within the PJM footprint, eight states (in addition to Illinois) plus the District of Columbia have enacted an RPS. (RI Ex. 10.0 at 17; RI IB at 39) Rock Island estimates that the demand for electricity from renewable resources due to RPS requirements in Illinois and in states in the PJM footprint will be the following amounts (RI Exs. 10.0 at 18; 10.5 at 2; RI IB at 39):

Year	Illinois	States in PJM footprint
2015	13.3 million MWh	82.7 million MWh
2020	24.3 million MWh	131.0 million MWh
2025	36.2 million MWh	165.0 million MWh

Rock Island states that PJM has separately estimated the RPS obligations of load-serving entities in the PJM service territory footprint in 2025 to be 131.5 million MWh. In contrast, Rock Island states, total renewable energy generation in 2011 was about 7.0 million MWh in Illinois and about 27.8 million MWh in the PJM states. (RI Ex. 10.0 at 19; RI IB at 39-40) Thus, Rock Island contends, there is a significant need for additional renewable generation resources to be added between now and 2015 to meet RPS requirements in Illinois and the other PJM states. Rock Island asserts that development of additional wind generation resources, particularly high-capacity factor wind generation in areas with high wind speeds such as the Resource Area, is necessary both to meet the RPS requirements in an absolute sense, and to maintain the prices of electricity from renewable resources and of RECs at reasonable levels in the face of the increasing demand. (RI Ex. 10.0 at 19-20; RI IB at 40)

In several states, RPS obligations can be met by purchasing RECs generated in the subject state or in other states. As a result, REC prices will move up and down across an entire region, not just within a single state, in response to relative changes in supply and demand; there is a substantial correlation in REC prices between states. Thus, Rock Island asserts, Illinois has a significant interest in the availability of adequate renewable resources to meet both Illinois' RPS requirements and those of other states. (RI Ex. 10.0 at 17-21; IB at 40)

Rock Island states that the demand for electricity from renewable resources will be driven by ongoing retirements in the existing U.S. generation fleet due to age and environmental requirements. The U.S. DOE Energy Information Administration projected 50,000 MW of coal plant requirements by 2035 under a "business as usual" scenario and

70,000 MW of retirements by 2035 if there is greenhouse gas regulation. RICL asserts that several retirements of coal-fired plants in Illinois and other Midwest states have recently been announced. (RI Ex. 2.11 Rev. at 15-16; IB at 41) The environmental factors impacting coal-fueled generation will also make construction of new or replacement coal-fueled generation extremely unlikely. As coal plants are retired, they will need to be replaced by other, cleaner sources of generation, including low cost wind energy, in order to keep prices from increasing and to maintain a secure electric supply. Further, Rock Island states, the difficulty in constructing new coal plants will require suppliers to turn to other sources of generation such as wind energy to replace retired generation and meet load growth. (RI Ex. 10.0 at 22-24; IB at 40-41)

According to Rock Island, new wind generation facilities, particularly wind generation facilities in the Resource Area, are a cost effective resource to meet the growth in demand for electricity from renewable resources. Power purchase agreements for wind generation in the windiest parts of the country are now routinely signed at prices in or below the $30 per MWh range, which compares favorably to the DOE's estimate of the cost of electricity from a new combined cycle gas plant of $66 per MWh, from a new conventional coal plant of $95 per MWh, and to NREL's estimate of the cost of new utility-scale photovoltaic solar projects at $90-$150 per MW. Rock Island submits that the cost advantage for wind generation is due to a decline in wind generation installation costs since 2008, and improvements in wind generation technology, including taller towers, longer turbine blades, advanced materials, and more sophisticated controls, which have increased wind turbine capacity factors (and therefore energy output) by up to 30% at a given wind speed. (RI Ex. 10.0 at 24-25; RI IB at 41) Rock Island claims the higher wind speeds and resulting higher wind turbine capacity factors in the Resource Area, as compared to Illinois and other Great Lakes states, enable new wind generation facilities in the Resource Area to produce electricity at a lower cost per MWh. (RI Ex. 10.0 at 7-8; IB at 41-42)

Effect on Electricity Prices

Rock Island witness Gary Moland conducted and presented analyses to measure the impacts of the operation of the Rock Island Project and the generation that will use the Project to deliver electricity to northern Illinois. Using the PROMOD production cost analysis model, which RICL describes as a widely-accepted modeling tool in the electric utility industry, Mr. Moland estimated (i) wholesale electricity prices (also known as locational marginal prices or "LMPs") and demand cost to serve load in Illinois; (ii) variable production costs to serve load in the eastern U.S.; and (iii) the amounts of various types of emissions, in the years 2016 and 2020, both with and without the Rock Island Project in operation, under four different future economic and regulatory scenarios. (RI IB at 42)

Rock Island states that LMPs, which are calculated by PJM and MISO, represent the incremental cost of energy at a specific electrical bus or collection of busses on the transmission grid at a given point in time, and are used to determine the cost to buy and sell energy on the market. LMPs include (i) the cost of the next increment of energy needed to meet system-wide demand; (ii) the cost of transmission congestion impacts on

a specific bus location; and (iii) the cost of electrical losses associated with a specific bus location. "Demand cost" is the hourly electrical demand at each bus multiplied by the hourly LMP at that bus summed over all buses for all hours, and represents the total cost to purchase energy to supply total annual demand in Illinois under RTO settlement rules. Variable production cost is the total variable cost of generation to meet annual electricity demand including fuel, emissions, variable operation and maintenance, and unit start-up costs. (RI Ex. 3.0 at 5, 9; IB at 42)

The four future economic scenarios used by Mr. Moland for his analyses were referred to as "Business as Usual," "Slow Growth," "Robust Economy," and "Green Economy." By comparing the scenario without the Project to a scenario with the Project and keeping all other model assumptions the same, Mr. Moland calculated the Project's impact on LMPs, demand costs, variable production costs and emissions levels resulting from construction and operation of the Project. (RI Ex. 3.0 at 3-5, 9; RI IB at 43)

According to Rock Island, the analyses show that: (1) The Project reduces demand costs in Illinois, (the total cost to purchase energy to supply total annual electric demand in Illinois) by $249 million (Slow Growth scenario) to $493 million (Green Economy scenario) in 2016; the reduction is $320 million in the Business as Usual scenario. (RI Ex. 3.3 at 1; RI IB at 44); (2) The Project reduces demand costs in Illinois by $93 million (Green Economy scenario) to $289 million (Robust Economy scenario) in 2020; the reduction is $242 million in the Business as Usual scenario. (RI Ex. 3.3 at 1; RI IB at 44); (3) The Project reduces the average LMPs in both the PJM Illinois region and the MISO Illinois region in both 2016 and 2020 under all four scenarios. (RI Ex. 3.3 at 2; RI IB at 44); (4) The Project reduces variable production costs in the eastern U.S. by $389 million (Slow Growth scenario) to $1,098 million (Green Economy scenario) in 2016; the reduction is $490 million under the Business as Usual scenario. (RI Ex. 3.3 at 3; RI IB at 44); and (5) The Project reduces variable production costs in the eastern U.S. by $423 million (Slow Growth scenario) to $1,060 million (Green Economy scenario) in 2020; the reduction is $616 million under the Business as Usual scenario. (RI Ex. 3.3 at 3; RI IB at 44)

Rock Island states that the demand cost savings resulting from operation of the Project include significant savings to customers due to reduced transmission congestion costs. Congestion costs represent the difference in marginal electricity prices between different nodes on the transmission system (RI Ex. 3.5 at 2; RI IB at 44); they are the portion of LMPs attributable to overall transmission constraints. Rock Island contends that the demand cost savings in Illinois for 2016 include savings from reduced congestion ranging from $158 million (Slow Growth scenario) to $328 million (Robust Economy scenario). (RI Ex. 3.5 at 3; RI IB at 44) For 2020, the Project reduces congestion costs by $100 million in the Slow Growth scenario, by $111 million in the Business as Usual scenario, and by $126 million in the Robust Economy scenario. (RI Ex. 3.5 at 3; RI IB at 44)

Rock Island claims the overall results of Mr. Moland's analyses, that the introduction of new renewable generation resources into the Illinois and PJM wholesale

electricity markets made possible by the Project will reduce the costs of electricity in the wholesale market used to serve retail load in Illinois, are consistent with findings of the Illinois Power Agency ("IPA"). The IPA reported in its 2011 report on the costs and benefits of renewable resource procurement in Illinois that renewable generation lowered the total load payment for generation in Illinois for 2011 by $176 million. (RI Ex. 4.0 Rev. at 6; RI IB at 4)

Rock Island witness Karl McDermott used Mr. Moland's results and other information to evaluate whether construction and operation of the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers. Dr. McDermott testified that if a transmission project is promoting competition in the PJM market, there should be downward pressure on prices, which will be manifested as lower average wholesale electricity prices, in Illinois. (RI Ex. 4.0 Rev. at 7; RI IB at 45) He concluded that the Project will allow lower cost generation to enter the Illinois market, which will create competitive downward pressure on prices in the wholesale electricity market. He testified that the additional transmission capacity provided by the Project will promote an effectively competitive electricity market by increasing the size of the supply side of the market competing to serve load in Illinois and by opening the Illinois market to lower cost generation resources. Dr. McDermott further stated that the projected downward pressure on electricity prices is a strong indication of a market operating efficiently, and is expected to benefit customers directly through lower prices for electricity. He also testified that the high value renewable resources which the Project will enable to access the Illinois market should have the effect of providing competitive pressures on prices in markets for RECs as well as for renewable energy. (RI Ex. 4.0 Rev. at 2-4; RI IB at 45-46)

Dr. McDermott testified that for ComEd and Ameren retail customers who buy power through the real-time or close to real-time wholesale markets, any reduction in wholesale electricity prices will provide a direct benefit. According to the witness, for those customers who buy electricity from ComEd or Ameren through the IPA-administered procurement process, the benefits to retail customers will manifest through the daily balancing process the utilities undertake, and will subsequently reduce the purchased energy adjustment in the long term as contracts of more recent vintage are added to the supply portfolio. Similarly, for other customers who buy electricity under contracts (e.g., with ARES), the benefits will manifest as new contracts are added to the portfolio. (RI Ex. 4.0 Rev. at 8; RI IB at 46)

Using Mr. Moland's results, Dr. McDermott calculated the net present value ("NPV") of the reduction in demand costs in Illinois resulting from construction and operation of the Project and the associated wind generation over the 2016-2020 period under each of the four scenarios. He said the NPV reduction in the costs to serve load in Illinois over this period range from $667 million to $1,221 million (in 2013 dollars), depending on the scenario analyzed. (RI Ex. 4.0 Rev. at 20-24; RI IB at 46) He assumed all the reductions in costs resulting from the Project would be passed through to retail customers and reflected in the cost to load. Dr. McDermott stated that if the NPV of costs is lower in the scenario with a proposed project than in the scenario without the project,

the project is beneficial. (RI Ex. 4.0 Rev. at 21; RI IB at 46-47) He testified that the reduction in total cost to serve load in Illinois with the Rock Island Project ranges from 2.4% (Green Economy scenario) to 5.2% (Slow Growth scenario), and that there are NPV cost reductions in both the PJM and MISO regions of Illinois under all four scenarios. Additionally, Dr. McDermott calculated the NPV reductions in cost to load for alternative periods ending in 2018 and 2021. He stated that the smallest NPV benefits under any of the scenarios for any period analyzed exceeded $300 million; therefore, the choice of the analysis period did not change the overall conclusions of his analysis. (RI Ex. 4.0 Rev. at 30; RI IB at 47)

Dr. McDermott also analyzed the potential benefits of the Project on the market for RECs in Illinois. He said the differential wind speeds between Illinois and the Resource Area suggest that wind generation served by the Project will have higher capacity factors, and therefore lower per MWh costs, than similar wind resources sited in Illinois. (RI Ex. 4.0 Rev. at 31; RI IB at 47) To the extent RECs produced by the wind generation connected to the Project enter the Illinois energy portfolio, either through the IPA procurement process or non-IPA purchases, there will be competitive pressures on REC prices that will benefit Illinois consumers. (RI Ex. 4.0 Rev. at 6; RI IB at 47) Further, the REC market is not limited to Illinois but is more regional in nature, due to the ability to use RECs produced by generators in one state to meet compliance obligations in another state. (RI Ex. 4.0 Rev. at 14-16; RI IB at 47) The REC market in the Eastern Interconnection is larger than in Illinois, and by providing access to tradable (i.e. standalone) RECs and bundled (i.e. with the associated energy) RECs, the Project should have a positive effect on the entire regional REC market. (RI Ex. 4.0 Rev. at 6; RI IB at 47)

As a further analysis, Dr. McDermott analyzed the impact of the Project on the amount of generation capacity competing to serve the Illinois wholesale electricity market. He stated that, based on the year and the future scenario considered, the quantity of capacity competing to serve load in Illinois will increase as a result of the Project by up to 2.9% of total economic capacity. (RI Ex. 4.0 Rev. at 34-35; RI IB at 48) "Total economic capacity" was defined as the generation supply that can be delivered into a destination market at a delivered cost less than 105% of the price in the destination market, and can therefore compete to supply load in the destination market, and whose ability to do so contributes to competition in the destination market. This construct and definition are used in the Delivered Price Test in the FERC's Merger Policy Statement, which is a recognized standard for measuring the relevant size of the electricity markets for competitive analysis. (RI Ex. 4.0 Rev. at 17-18; RI IB at 48)

As part of his economic capacity analysis, Dr. McDermott analyzed how the size of the REC markets (i.e., the amounts of capacity to produce RECs ("REC capacity") and volume of RECs produced ("REC energy")) would be impacted by the Project. Using the two study years 2016 and 2020, he concluded that: (1) in 2016, the Project would provide for an increase of 18% to 28% of REC capacity and an increase of 18% to 30% of REC energy in Illinois and adjoining states; (2) in 2016, the Project would provide for an increase of 5% to 9% of REC capacity and an increase of 5% to 8% of REC energy in the

Eastern Interconnection; (3) in 2020, the Project would provide for an increase of 10% to 27% of REC capacity and an increase of 10% to 28% of REC energy in Illinois and adjoining states; and (4) in 2020, the Project would provide for an increase of 3% to 7% of REC capacity and an increase of 3% to 6% of REC energy in the Eastern Interconnection. (RI Ex. 4.0 Rev. at 36-39; RI IB at 49)

Wind Generators as Customers

FERC, in its order granting Rock Island negotiated rate authority for the Rock Island Project, directed that Rock Island (1) cannot limit transmission service on the Project to electricity delivered from any specific source, and (2) cannot give preference to any particular type(s) of resources over other resources that seek to contract for capacity; therefore, Rock Island must offer all eligible customers, on a non-discriminatory basis, the opportunity to purchase transmission service on the Project. (RI Ex. 10.13 at 6; RI IB at 49) Nevertheless, Rock Island contends that that all of the generators connecting to the Project in the Resource Area will be wind generation facilities given the plentiful wind resource in the Resource Area; the cost advantage of wind generation in the Resource Area versus northern and central Illinois; the lack of such a cost advantage for any other generation besides wind in the Resource Area; the high level of activity of wind generation developers, and the low level of activity of developers of other types of plants, in the Resource Area; and prior analyses by RTOs which have made reasoned and defensible assumptions about the location of new wind generation in analyzing the benefits of proposed new transmission projects. (RI Ex. 10.14 Rev. at 39-40; RI IB at 50)

According to Rock Island, at least 18 wind generation developers are already active in the Resource Area. (RI Ex. 10.14 Rev. at 41; RI Ex. 10.19 Rev.; RI IB at 50) In contrast, RICL has found no evidence of any thermal generation under active development, with the exception of one existing coal plant which may be converted to natural gas. (RI Ex. 10.14 Rev. at 42; RI IB at 50) During 2013, MidAmerican Energy announced the retirement of five coal plants in Iowa, and Interstate Power & Light announced the retirement of several coal units in Iowa. (RI Ex. 10.14 Rev. at 44) Further, no new nuclear plant construction is planned for the Resource Area. Nor is Rock Island aware of any plans by owners of existing thermal generation in the Resource Area to connect to the Project for purposes of exporting their power to northern Illinois and/or PJM. (*Id.* at 42, 43; RI IB at 50-51) Rock Island asserts that other parties provided no evidence that any other kind of power plant is under development in the Resource Area or would be likely to connect to or subscribe for transmission service on the Rock Island Project. (RI Ex. 10.14 Rev. at 42; RI IB at 51)

Rock Island also contends that new wind generation facilities located in the Resource Area have a geographic advantage compared to locating in northern Illinois; whereas, new thermal (natural gas) generation facilities have no such advantage. Wind speeds are higher in the Resource Area than in Illinois and other locations to the east, resulting in higher capacity factors and lower costs to generate wind energy in the Resource Area. The cost to construct wind farms is lower in the Resource Area, and larger wind farms are possible than in locations farther east, due to lower population

density and the higher prevalence of windy sites in the Resource Area, resulting in economies of scale in construction and lower unit costs in the Resource Area. Additionally, Rock Island states that the times and amounts of wind power production in the Resource Area are statistically uncorrelated with the times and amounts of wind power production in northern Illinois, which reduces the overall variability of wind power and increases the economic advantage of locating wind generation in the Resource Area. (RI Ex. 10.14 Rev. at 42-43; IB at 51)

Rock Island states that in contrast, average natural gas prices have been higher in Iowa than in Illinois, making it more expensive to burn natural gas to generate electricity in northwest Iowa than to do so in northern Illinois. Therefore, Rock Island contends, there is no economic reason for a natural gas plant developer to build new gas-fueled generation in northwest Iowa, subscribe for transmission capacity on the Project, and deliver the output of the new gas-fueled generation to northern Illinois, rather than locate the new gas plant in northern Illinois, much closer to the target load. Rock Island also contends that construction of a large amount of new gas-fueled generation in northwest Iowa would require a major investment in natural gas pipeline infrastructure in the area. (RI Ex. 10.14 Rev. at 43; RI Ex. 10.20; RI IB at 51-52)

Rock Island asserts that it is common practice to make assumptions about the location of new generation in studying the benefits of proposed transmission lines. Rock Island states that MISO, in performing its cost-benefit studies for the MISO MVP lines, made assumptions about the locations of new wind generation based on where the lowest-cost generation could be sited, and did not include in its assumptions only wind generators with signed contracts or interconnection agreements. MISO used similar third-party data sources to those used by Rock Island to identify locations where wind generation is likely to be developed. (RI Ex. 10.14 Rev. at 45-46; RI IB at 52) According to Rock Island, other transmission planning organizations, including the Southwest Power Pool, California Independent System Operator, and Electric Reliability Council of Texas, have performed similar analyses to measure the benefits of proposed transmission lines using, as has Rock Island, “reasoned, defensible assumptions” about the location of new wind generation. (RI Exs. 10.14 Rev. at 46; 10.23; RI IB at 52)

To address the contentions of other parties that a significant portion of the generation connecting to the Project could be generation sources other than wind, Rock Island performed an alternative economic benefits analysis assuming that 50% of the generation connected to the Project is combined cycle gas generation. According to Rock Island, this alternative analysis showed that the Project would provide economic benefits for Illinois consumers even if the connected generation mix were 50% natural gas and 50% wind generation. (RI Ex. 10.14 Rev. at 45; RI IB at 52-53) Under this assumption, the Project purportedly reduces LMPs in both the PJM and MISO regions of Illinois in both 2016 and 2020; reduces demand costs to serve load in Illinois by $259 million to $279 million in 2016 and by $211 million to $223 million in 2020; and reduces variable production costs in the Eastern United States by $274 million to $279 million in 2016 and by $281 million to $331 million in 2020. (RI Exs. 3.5 at 1-2; 3.6 at 1-3; RI IB at 52)

Response to Staff Analysis

Rock Island states that Staff witness Richard Zuraski presented economic analyses of the Project that found it will be a lower cost alternative for consumers than other options. (RI IB at 53, citing Staff Ex. 3.0 at 16-43) Rock Island witness David Berry performed further economic analyses of the Project using Mr. Zuraski's financial model, but with various changes or additions to data inputs, assumptions and parameters. (RI Exs. 10.14 Rev. at 49-54; 10.24; 10.26 at 37-41; 10.29; RI IB at 53) Rock Island states that no other parties presented any alternative forms of economic analysis of the Project or any additional alternative versions of either the Moland-McDermott analysis or Staff's economic analysis. (RI IB at 53)

According to Rock Island, the principal difference between the analyses performed by Mr. Moland and Dr. McDermott and the analyses performed using the Staff methodology is that the Moland-McDermott analysis measured the reduction in costs to serve load resulting from construction and operation of the Project and the associated wind farms, while the Staff methodology explicitly took into account both the costs to construct and operate the Project and the associated wind farms and the energy cost reductions they produce, and compared these costs to the costs of certain alternatives. Rock Island asserts that Mr. Moland and Dr. McDermott analyzed how the construction and operation of the Project reduces wholesale electricity prices and therefore reduces electricity prices paid by consumers, while the Staff methodology is a traditional revenue requirements analysis comparing the net present value of future revenue requirements ("PVRR") of the Project and alternatives. (RI IB at 54)

In Rock Island's view, the Moland-McDermott methodology is the more appropriate form of analysis given that the Project is a merchant project, and Rock Island is not asking Illinois retail ratepayers to pay for the cost of the Project. Mr. Moland and Dr. McDermott found that the market clearing prices that would be paid to generators by load serving entities on behalf of their customers are less with the Project than without it; therefore, the Project creates net consumer benefits. Rock Island contends that this analytical approach is reflective of the way consumers or the load-serving entities that supply them actually buy electricity in PJM and MISO. In a deregulated, competitive electricity market, buyers of wholesale electricity do not directly reimburse generators or other market participants for their inputs, but rather pay them the market clearing price set by the grid operator. Therefore, RICL contends, it is neither necessary nor appropriate to treat consumers as paying generators both for their output (electric energy) and for their inputs into production of the output; to include both sets of costs would be to double-count. Rock Island states that for generators or other market participants who sell into the PJM and MISO markets, transmission service is an input cost, along with fuel costs, capital costs, and operations and maintenance. The Project's transmission customers will need to recover the costs they incur for transmission service on the Project from the proceeds they receive from selling wholesale energy, capacity and RECs in the PJM and MISO markets. (RI Ex. 10.14 Rev. at 47-48; RI IB at 54-55)

Rock Island states that in contrast, the Staff methodology which explicitly includes the capital and operating costs of the project being evaluated, would be more appropriate

for use in a situation in which a utility is proposing to build a project and directly recover the costs from consumers, such as for a traditional rate-based transmission line being built by an incumbent utility. In such a case, the costs of the project are not recovered solely from market participants, for whom the cost of service from the project is an input cost, but rather from the entire base of electric ratepayers. (RI Ex. 10.14 Rev. at 48; RI IB at 55)

Rock Island contends that a competitive market analysis -- which is called for by the "promote the development of an effectively competitive electricity market" criterion of §8-406(b)) -- should look at the difference between market outcomes under various assumptions with the proposed project or without it, which is the approach Dr. McDermott used. (RI IB at 55-56)

Rock Island contends that both the Moland and McDermott analyses, and the analyses using the Staff methodology, show that the Project will yield economic benefits to consumers in terms of reduced electricity costs. (RI IB at 53) Rock Island states that the analysis presented by Staff witness Mr. Zuraski did two things. First, it evaluated whether there is a net economic benefit of building the Project compared to building nothing and purchasing energy from the market. The comparison was performed for a number of scenarios using different values for important variables. Rock Island claims this set of analyses concluded that the Project likely creates a net benefit compared to the status quo; that is, in the majority of the scenarios analyzed, the Project is a lower cost alternative compared to market energy purchases. Mr. Zuraski noted that there is considerable uncertainty associated with this conclusion since in some assumption scenarios, market purchases are the lower-cost alternative. Rock Island submits that the expectation of net economic benefits is stronger when considering the LMP savings throughout PJM and MISO, rather than just the LMP savings in Illinois. (RI IB at 56, citing Staff Ex. 3.0 at 29-33 and RI Ex. 10.14 Rev. at 49) Rock Island states that Mr. Zuraski testified, "From my perspective, it would be perfectly reasonable for the Commission to take into account LMP savings throughout PJM and MISO," rather than just the LMP savings produced by the Project in Illinois. (*Id.*, citing Staff Ex. 3.0 at 22-23)

Rock Island also states that Mr. Zuraski used his model to compare (a) the cost of generating wind energy in the Resource Area and transmitting it to northern Illinois via the Project to (b) the cost of generating wind energy through the construction of additional wind farms in Illinois that would produce the same amount of energy, and concluded that in a majority of his scenarios, option (a) is more cost-effective than option (b). (RI IB at 56-57, citing Staff Ex. 3.0 at 39-42 and RI Ex. 10.14 Rev. at 49)

Rock Island witness Mr. Berry conducted a number of additional analyses using the Staff model but with different values for certain variables than those used by Mr. Zuraski. (RI IB at 57-58) Specifically, Mr. Berry varied a number of assumptions, the first being years of LMP savings where Mr. Zuraski used only five years of LMP savings in his analyses. Although this was the same time period used by RICL witness Moland and McDermott, their methodology was fundamentally different from Mr. Zuraski's and included an assumption as to when market prices would return to a long-term equilibrium following the commencement of the Project's operation. Mr. Zuraski's analysis, in

contrast, is a PVRR comparison of alternatives and includes the full, (depreciable) lifetime costs of the Project. Therefore, Rock Island argues, it should include the LMP savings over the full depreciable life of the Project. (RI Ex. 10.14 Rev. at 50) The second assumption was treatment of transmission charges. Mr. Zuraski treated Rock Island's transmission charges as paid by retail customers. Instead, RICL argues, they should be modeled as paid for by the transmission customers of the Project that are using it to transport wind energy from the Resource Area to northern Illinois. In the revenue requirements analysis, the principal consequence of this treatment is that the transmission charges are a tax-deductible expense for the transmission customers of the Project. (*Id.* at 50-51)

The third assumption was transmission system upgrades for Illinois wind generation. In his "Illinois Wind" scenario, Mr. Zuraski did not include the costs of transmission facilities needed to connect the new Illinois wind generation facilities to the existing transmission grid, although he included such costs for the new Iowa wind farms in the "Rock Island Project + Iowa Wind" scenario. (*Id.* at 51-52; RI Ex. 10.26 at 28) The fourth was capacity value of wind generation; Mr. Zuraski used a 2013-2014 MISO Capacity Resource Factor for the Iowa wind farms in his "Rock Island Project + Iowa Wind" scenario. Since the Iowa wind farms connected to the Project will deliver their output into PJM, RICL claims he should have used a capacity resource value calculated using PJM's approach. (RI IB at 58; RI Ex. 10.14 Rev. at 52)

The fifth was wind farm costs. Mr. Berry updated Mr. Zuraski's input assumptions to use more current estimates of the costs for new wind generating projects in the regions that include Iowa and Illinois, respectively, based on Lawrence Berkeley National Laboratory's 2012 Wind Technologies Market Report which in turn is based on information from projects built in 2011 and 2012. The sixth was other taxation changes – Mr. Berry made four other minor tax refinements to Mr. Zuraski's model, including conforming the treatment of Illinois and Iowa property taxes and exemptions to the respective state's laws. (RI IB at 57-58)

According to Rock Island, when the changes in assumptions described above are implemented into the Staff model, the model shows the Project is "overwhelmingly beneficial" compared to the alternative of no new construction, in which consumers purchase energy from the existing market. Rock Island states that this result is consistent in every case modeled, with an average consumer benefit under Mr. Zuraski's "Model A" of $16.3 billion and an average consumer benefit under Mr. Zuraski's "Model B" of $17.9 billion, in both cases using a 5% real discount rate. (RI IB at 58-59, citing RI Exs. 10.14 Rev. at 53 and 10.24)

Rock Island claims that the "revised analyses" also showed that, compared to building new wind generation in Illinois, the Rock Island Project is the more economic choice, i.e., it has a lower revenue requirement. Rock Island states that, under Mr. Zuraski's "Model A," the Project has the lower revenue requirement in the "base case" as well as in 88% to 93% of the sensitivity cases, depending on the discount rate used. Under Mr. Zuraski's "Model B," the Project results in a lower revenue requirement compared to the "Illinois Wind" scenario in the "base case" as well as in 87% to 96% of

the sensitivity cases, depending on the discount rate used. (*Id.*, citing RI Exs. 10.14 Rev. at 54 and 10.24)

In surrebuttal testimony, Mr. Berry reported the results of additional sensitivity analyses using the Staff model and (1) only five years of LMP savings (the same period as originally used by Mr. Zuraski), and (2) the current Project cost estimate of $1.833 billion. He stated that the Project remains beneficial compared to the alternative of no new transmission or generation construction, in which consumers purchase energy from the market. (RI IB at 59, citing RI Ex. 10.26 at 37-39)

According to Rock Island, using a 5% real consumer discount rate used by Mr. Zuraski, the average consumer benefit is $16.5 billion under "Model A" and $18.1 billion under "Model B." (*Id.*, citing RI Ex. 10.26 at 39; RI Ex. 10.29) With only five years of LMP savings assumed, and using a 5% real consumer discount rate, the Project remains economically beneficial; the average consumer benefit in this sensitivity is $6.9 billion under "Model A" and $8.6 billion under "Model B." (*Id.* at 59-60, citing RI Ex. 10.26 at 39-40; Ex. 10.29) Additionally, when compared to the alternative of building a comparable amount of new wind generation in Illinois, the Project continues to have the lower revenue requirement with the updated assumptions including the current Project capital cost estimate. Rock Island states that under the Staff "Model A," the "Rock Island Project + Iowa Wind" scenario has the lower revenue requirement in the "base case" and in 93% to 97% of the sensitivity cases, depending on the discount rate used. Under the Staff "Model B," the "Rock Island Project + Iowa Wind" alternative results in a lower revenue requirement than the "Illinois Wind" scenario in the "base case" and in 93% to 99% of the sensitivity cases, depending on the discount rate used. (*Id.* at 60; RI Ex. 10.26 at 40)

BOE and RBOE

In its BOE, Rock Island suggests that the Commission include additional discussion of the evidence with respect to the conclusion that the Project will promote the development of an effectively competitive electricity market. (RI BOE at 20-22; Exceptions at 8-11)

In its RBOE, in response to arguments in the BOEs filed by ILA, IAA and ComEd, Rock Island argues that "specific economic study inputs and projections criticized by ILA, IAA and ComEd are reasonable and well-supported in the record." (RI RBOE at IV.A.2) In that context, Rock Island addresses "generators to be connected to the project and their characteristics," "potential operating restrictions and network upgrade costs," and "other criticisms of study inputs." (Id. at IV.A.2.a,b,c)

Rock Island also argues that the four concerns of ILA Witness Dr. Gray, cited by IAA, were fully addressed in the record and do not warrant changing the conclusion in the Proposed Order. (RI RBOE at IV.A.3)

Rock Island next argues that the conclusions in the Proposed Order do not "over-rely" on the Staff financing condition. Rock Island contends that "sophisticated lenders and investors, such as those who have focused on transmission projects (see Rock Island

Ex. 10.0 at 33-34), are not in the habit of lending or investing their capital to projects unless they have concluded that the project has a strong likelihood of financial and operational success." (RI RBOE at IV.A.4)

2. Necessary to Provide Adequate, Reliable and Efficient Service

Rock Island claims the record supports a finding that the Project is necessary to provide adequate, reliable, and efficient service to customers. (RI IB at 61; draft order at 88; BOE at 12-20)

Rock Island witness Leonard Januzik of Quanta Technology, L.L.C. ("Quanta") presented analyses of the impacts on the reliability and adequacy of electric service in northern Illinois and the State of Illinois resulting from installation of the Project and the wind generating facilities to be located in the Resource Area whose output will be delivered to Illinois by the Project. Quanta performed two types of studies: (1) Loss of Load Expectation ("LOLE") study -- a probabilistic analysis that is used to determine the likelihood of not being able to serve the total electrical demand of a given system during the year (RI Ex. 6.0 at 5); and (2) transfer capability study -- a deterministic analysis to evaluate the amount of additional power that can be transported into an area as a result of transmission system configuration changes, such as the installation of the Project. (*Id.* at 4-5; RI IB at 61) Rock Island states that both of these analyses, and the methodologies used by Mr. Januzik to conduct them, are generally accepted in the industry as measures of reliability. (RI BOE at 15-16)

According to Rock Island, LOLE studies have been conducted for several decades in the determination of proper capacity reserve levels and are important components of the transmission planning process for the RTOs. Because Illinois is the area of interest in this case, the LOLE and transfer capability studies focused on the impacts to the northern Illinois ("NI") portion of the PJM system and on Illinois as a whole. The NI region of PJM and the MISO region of Illinois are appropriate study regions for purposes of these reliability studies because of the strong internal transmission connections within these regions. (RI Ex. 6.7 Rev. at 2-5; IB at 61-62; BOE at 16-17)

The LOLE study analyzed whether the Project, by making more generating capacity available in NI, will increase generating reserve margins, and thereby increase reliability, in NI and the entire State of Illinois. (RI Ex. 6.7 Rev. at 2; IB at 62) The LOLE study measured the adequacy of the region's generating capability to reliably serve its demand, measured in terms of how often demand is at risk of exceeding available generating capacity. Mr. Januzik testified that a value of 0.1 day per year (the loss of load on one day in 10 years) has long been viewed by the industry as providing a satisfactory balance between the social costs of outages and the economic costs of unutilized capacity. (RI Ex. 6.0 at 6)

Mr. Januzik conducted LOLE studies using three different scenarios as to the degree of load forecast uncertainty. According to Rock Island, the results of the LOLE study show an increase to the system reserve margins for both the NI region and the

State of Illinois as a result of installation of the Project; the system reserve margin required to attain the target LOLE of 0.1 day per year decreases. Correspondingly, there is an order of magnitude decrease in LOLE with the Project as compared to without the Project. Conversely, loads in excess of those currently projected can be supplied by the available generation. Rock Island states that the LOLE study shows that addition of the Project allows service to additional load of approximately 1,100 MW to 1,270 MW in Illinois and approximately 1,300 MW to 1,470 MW in NI, depending on the Load Forecast Uncertainty scenario, while maintaining the target LOLE. (RI Ex. 6.0 at 17; Exs. 6.3-6.4; IB at 63; BOE at 16-17)

A transfer capability study measures the ability to transfer power from one part of the transmission system to another. The transfer capability study performed by Quanta determined the impact of the Project on the ability to transfer power from the MISO RTO and the PJM RTO into NI and into the entire state of Illinois. The transfer capability study determined the First Contingency Incremental Transfer Capability ("FCITC") between a designated point of receipt, or source, to a designated point of delivery, or sink. FCITC is a measure of how much power can be transferred from one portion of the network to another before reaching a point where a transmission facility outage results in an overload of another transmission facility; it measures the increase in transfer capability from the base level to the transfer limit, i.e., the point at which the network is compromised due to a network element becoming overloaded for the contingent outage of another element. (RI Ex. 6.0 at 12-13; BOE at 17-18)

In terms of the Project's reliability impact, the transfer capability study provides an indication of how much transmission capacity may be available so that the load in the subject region can be supported by external resources -- the greater the increase in FCITC and total transfer capability, the more transmission capability there is to import power into the receiving region should there be a capacity shortfall due to factors, such as capacity outages, that might require power imports to meet demand. In addition, sufficient import capability is required to enable reserve sharing by providing access to external resources and reduce capacity reserve margin requirements. (RI Ex. 6.0 at 14-15; IB at 63-64) In addition to the incremental change in FCITC due to the addition of the Project, the transfer capability study measures the additional amount of import capability made available due to installation of the Project, represented by the increase in transmission capability to serve Illinois load net of the amount of that transmission capacity used by the connected wind generators in the Resource Area to serve summer peak demand. This additional import capability is referred to as the "HVDC Incremental Imports." Rock Island explains that the sum of the FCITC increase and the HVDC Incremental Imports due to installation of the Project equals the total increase in transfer capability due to the Project. (RI Ex. 6.0 at 14; IB at 64; BOE at 18)

The transfer capability study purportedly showed that installation of the Project (i) will increase FCITC by about 1,015 MW for imports into NI and by about 1,180 MW for imports into the entire state of Illinois, and (ii) will increase total transfer capability into NI by 1,525 MW and into the entire state of Illinois by 1,690 MW which would exceed the capacity of the largest generating units in the State. (RI Ex. 6.0 at 17-19; IB at 64) Rock

Island states that the results of the transfer capability analysis indicate that, for the peak scenario as modeled, there is a significant increase in incremental import capability into both NI and the state of Illinois as a result of installation of the Project. (RI Ex. 6.0 at 18-19; IB at 64-65; BOE at 18)

According to Rock Island, the results of the LOLE and transfer capability studies performed by Quanta show that there is a significant increase in the reliability and adequacy of electric service in Illinois and in the northern Illinois region of PJM as a result of installation of the Project and the wind generating facilities that will be connected to it. (RI Ex. 6.0 at 19) Rock Island states that the addition of a new transmission path that did not previously exist for additional energy resources to access customer demand (load) in a region, as the Project will provide, will increase the reserve margin where that demand is located. Rock Island states that even if the area to which the new transmission path is being connected can currently meet its minimum reserve margin requirements, "this does not mean that the addition of the new transmission path is unnecessary, unwarranted or not beneficial in terms of reliability." (RI IB at 65; BOE at 19)

Rock Island also contends that the Project is being developed to provide adequate and efficient service to customers by enabling significant new renewable energy resources to be developed in the Resource Area and have their output delivered to Illinois and the PJM network, and to provide a means for load serving entities within PJM to obtain and provide electricity from renewable resources to their customers. The Project will accomplish this objective using HVDC technology, which is the more efficient technology for transporting large amounts of energy from renewable resources over long distances. (RI Ex. 2.11 Rev. at 5-6; Tr. 707; RI IB at 65) Rock Island claims that dispersing the locations of wind farms reduces the variability of their energy output because the combined energy output of geographically diverse wind farms -- such as those that will interconnect to the Project -- is less variable and has fewer wind integration costs than the output of geographically concentrated wind farms, thereby improving reliability and the efficiency of service. (RI Ex. 10.0 at 4, 25-29; Ex. 10.26 at 25; IB at 65-66)

According to Rock Island, Illinois and other Midwestern states are in an era in which significant existing generating capacity has recently been retired or announced for retirement and additional existing generating capacity is at risk of retirement due to environmental or economic considerations. (RI Ex. 10.0 at 22-24; Ex. 10.14 Rev. at 44; IB at 66) The Project will provide a hedge against additional retirements of existing generating capacity for environmental or economic reasons, including retirements that are unexpected or occur sooner than currently anticipated. (RI IB at 66; BOE at 19-20)

With regard to the phrase in §8-406(b)(1) of the PUA, "necessary to provide adequate, reliable, and efficient service to its customers ….," Rock Island states that Illinois courts have held that "necessity" and "necessary" as used in the certificate provisions of the PUA do not mean "indispensably requisite," but rather that the service proposed to be provided is "needful and useful to the public." Rock Island cites decisions

including *Eagle Bus Line, Inc. v. ICC*, 3 Ill. 2d 66, 78 (1954); and *Gernand v. ICC*, 286 Ill. App. 3d 934, 945, (4th Dist. 1977).

Rock Island also notes that the Illinois Supreme Court stated, "When the statute requires a certificate of public convenience and necessity as a prerequisite to the construction or extension of any public utility, the word 'necessity' is not used in its lexicographical sense of 'indispensably required.' If it were, no certificate of public convenience and necessity could ever be granted…. The word connotes different degrees of necessity. It sometimes means indispensable; at others, needful, requisite or conducive. It is relative rather than absolute." *Wabash, Chester & Western R.R. Co. v. ICC*, 309 Ill. 412, 418, 141 N.E. 212, 214-15 (1923). (RI IB at 66-67) Additionally, Rock Island argues that the Illinois courts have long held that what constitutes public convenience and necessity is within the Commission's discretion to determine in each case, thereby permitting consideration of a broad range of factors as applicable to the particular case. Rock Island cites cases, including *Egyptian Transp. Sys. v. Louisville & N. R. Co*., 321 Ill. 580, 584, (1926); and *Commonwealth Edison Co. v. ICC*, 295 Ill. App. 3d 311, 317 (2d Dist. 1998). (RI IB at 67)

Response to ComEd

Rock Island disputed ComEd's argument that the Project is not necessary to provide adequate, reliable and efficient service to customers. (RI RB at 90, citing ComEd IB at 30-32) Rock Island asserts that the Project is not intended to prevent the bulk power system from falling below some predetermined standard of reliability, but will provide significant reliability benefits for Illinois. (RI IB at 61-68) RICL contends that new wind generation will not be developed in the Resource Area unless new transmission infrastructure is constructed to provide an outlet for wind generation in the Resource Area to market areas such as northern Illinois and PJM. (*Id.* at 34-38; RB at 90)

Rock Island also disputed ComEd's assertion that the reliability studies Rock Island presented in this case had "serious flaws." (RI RB at 90, citing ComEd IB at 31) Rock Island states that ComEd is apparently referring to several criticisms by Mr. Naumann of Rock Island witness Mr. Januzik's reliability studies. Rock Island contends that Mr. Naumann's criticisms were largely "quibbles" concerning the geographic areas encompassed by the studies, and that RICL witness Mr. Januzik demonstrated that these criticisms were unfounded.

According to Rock Island, Mr. Januzik showed that: (1) It was reasonable to base the transfer capability and LOLE studies on the Northern Illinois portion of PJM ("NI") and on the State of Illinois as a whole, since for reliability purposes Illinois (not PJM or MISO in their entirety) is the region of interest in this case and such studies can be conducted for a system or area of any size and location; (2) It is commonplace and long-standing practice in the industry to conduct LOLE analyses for a sub-region of a balancing area such as PJM; further, the analytical methodology of the LOLE study is not dependent on the boundaries of the area studied; (3) The NI area of PJM and the MISO portion of Illinois together comprise a valid study area for LOLE analysis, due to the transmission

ties between these areas; (4) A complete outage of both poles of the HVDC transmission line is not an event that is considered in a typical LOLE study; and (5) FCITC is an appropriate metric to use for the transfer capability study as it is a common concept in the U.S. to analyze reliability limitations to transfers of power from a given source to a given sink or multiple sinks; whereas, the alternative metrics suggested by Mr. Naumann are not appropriate for what the transfer capability study is attempting to measure. (RI IB at 91-92, citing RI Ex. 6.7 Rev. at 2-11)

The witness further testified that (6) Because the transfer capability study focuses on the change in incremental transfer capability into the NI region resulting from the addition of the generation resources delivered by the Project and the effect they would have on line loading (i.e., the total amount of power that could flow if required), it was not necessary for the study to consider firm versus non-firm transactions; (7) The assumption used in the transfer capability study that 50% of the power injection of the Project into PJM would displace resources outside the NI region was a conservative assumption; an allocation based on load-weighted, pro-rata sub-regional demands would have resulted in a higher percentage of the power injected by the Project into PJM going to displace resources outside of NI and shown a larger increase in transfer capability due to the Project; (8) It was not necessary for the transfer capability study to consider the impacts of any potential system upgrades that might be required as the result of the PJM interconnection process; any such upgrades would only further increase the incremental transfer capability into the NI region; and (9) The LOLE study and the transfer capability study are two independent analyses of the reliability impacts of the Rock Island Project and show two separate reliability benefits of the Project to the NI region and to Illinois. (RI RB at 91-92, citing RI Ex. 6.7 Rev. at 11-15)

Response to Staff

Rock Island responded to Staff's statement that Rock Island failed to provide an independent study, such as a load flow study, from PJM or MISO that would demonstrate the need for the Project. (RI RB at 96, citing Staff IB at 20) Rock Island states that it is unaware of any requirement to present such a study from an RTO in a CPCN case before this Commission (RI Ex. 2.15 at 3), and that Staff cited no basis for such a requirement. Rock Island states that later in its Initial Brief, Staff "concedes" that the fact the Project has not been found by PJM to be necessary for reliability purposes is "not controlling under Illinois law." (RI RB at 96, citing Staff IB at 46) Rock Island reiterates that PJM does not evaluate the need for a merchant transmission line such as the Rock Island Project, but rather only evaluates what is necessary for a reliable interconnection of the Project to the PJM grid. (RI RB at 96)

3. Least Cost

Section IV.A.1.c of Rock Island's initial brief is titled, "The Project Satisfies the 'Least Cost' Requirement of §8-406(b)(1)." (RI IB at 68)

In its first "perspective," RICL largely repeats or restates arguments made earlier in its brief as described above.

Second, Rock Island states that the Project will use HVDC technology to bring power from the Resource Area to northern Illinois. Rock Island submits that there is no transmission line from the Resource Area to northern Illinois using AC technology being proposed by any utility or merchant developer (RI Ex. 2.11 Rev. at 2), and no party identified any proposed AC lines, or other proposed HVDC lines, that could be considered to be alternatives to the Project. Rock Island asserts that it is a well-known fact among experienced power systems engineers, and has not been disputed in this case, that the most efficient means to transfer bulk amounts of electric energy over distances greater than approximately 300 miles (particularly energy produced by variable generation resources) is HVDC technology, rather than AC technology. (RI IB at 69-70, citing Exs. 2.11 Rev. at 2-3; 2.0 at 20; and Tr. 707)

Rock Island contends that the cost, reliability and operational benefits of HVDC for this application include: (1) HVDC lines can transfer significantly more power with lower line losses over longer distances than comparable AC lines; (2) HVDC technology gives the operators direct control of energy flows, which makes HVDC particularly well-suited to manage the injection of variable wind generation; (3) HVDC lines, unlike AC lines, will not become overloaded by unrelated outages, because the amount of power delivered is strictly limited by the DC converters at each end of the HVDC line, thereby reducing the likelihood that outages will propagate from one region to another; (4) HVDC lines utilize narrower ROW and fewer conductors than comparable AC lines, thereby making more efficient use of transmission corridors and minimizing visual and land use impacts; (5) HVDC lines can dampen power oscillations in an AC grid through fast modulation of the AC-to-DC converter stations and thus improve system stability; and (6) HVDC lines complement AC networks without contribution to short circuit current power or additional reactive power requirements. (*Id.* at 70, citing RI Exs. 2.0 at 21-22; 2.11 Rev. at 2-3)

According to Rock Island, over long distances, high-voltage AC ("HVAC") lines require intermediate switching or substations approximately every 200 miles -- to segment the line to handle issues associated with voltage support, transient over-voltages, and transient recovery voltages -- and they exhibit angular and voltage stability limitations, have a higher requirement of reactive power dependent on loading, and have higher charging current requirements at light load. (RI IB at 70-71, citing Ex. 2.0 at 20) With respect to electrical losses, typical aluminum steel reinforced conductors provide greater resistance to AC than to DC; moreover, the large reactive power requirements of long AC lines means that less of the line is used to move real power and the significant reactive power requirements introduce associated reactive losses. (*Id.*, citing RI Exs. 2.0 at 20 and 2.11 Rev. at 4)

Rock Island presented a comparison of the costs of an HVDC line, including the converter stations, to several AC lines for delivery of 3,500 MW over a distance of 500 miles. The AC alternatives evaluated were several configurations of 345 kV-and-above AC lines. (RI Ex. 2.11 Rev. at 3-4; RI IB at 71) The construction costs and costs of electrical losses for the alternatives analyzed are shown in the following table from RI Ex. 2.11 Rev. at 4:

Solution to Transmit 3,500 MW, 500 miles (Transmission Line + Necessary Equipment)	Cost ($ billion)	Loss Costs ($ million)
Five, single circuit 345 kV transmission lines	5.96	876.4
Two, double circuit 345 kV transmission lines plus one, single circuit 345 kV transmission line	5.45	876.4
Two, single circuit 500 kV transmission lines	3.79	784.7
One, double circuit 500 kV transmission line	3.01	784.7
One, single circuit 765 kV transmission line	2.37	584.2
One, ±600 kV HVDC bi-pole system	2.15	384.0

Rock Island contends that this analysis demonstrates that the HVDC solution has a substantial capital cost advantage over the AC alternatives and also has substantially lower losses costs than the AC alternatives. Rock Island concludes that its HVDC solution is the lowest cost alternative for connecting high capacity factor wind generation in the Resource Area to northern Illinois. (RI Ex. 10.26 at 36; RI IB at 71-72)

Third, Rock Island again asserts that as compared to the status quo, the Project is also least cost. (RI IB at 72) Rock Island also states that as a merchant transmission project, it will recover its costs solely from customers who contract for transmission capacity and service on the Project, and is not proposing to recover its costs through cost allocation to load (i.e., to retail customers) within PJM or MISO. (RI Exs. 10.13 at 11; 10.14 Rev. at 28-29, 48; RI IB at 72) Rock Island relies on Dr. McDermott's testimony that the competitive market will determine that the Project is the least cost approach; if it is not the least-cost approach, it will not be built, because if shippers can reach their desired markets using an alternative lower-cost resource, they will not purchase transmission service on the Project. (RI Ex. 4.2 at 10; Tr. 151; RI IB at 72-73)

Also with respect to comparisons to the status quo, Rock Island asserts that while it is theoretically possible to move power from the Resource Area to northern Illinois using existing 345 kV lines, this would (i) entail substantially higher electric losses as compared to HVDC transmission facilities, (ii) expose the shippers to congestion costs on the AC system that result from transmission constraints, and (iii) require the shippers to pay wheeling charges to both MISO and PJM. (RI Ex. 10.0 at 10; RI IB at 73)

Fourth, Rock Island states that with respect to the Project route, which is addressed more fully later in this order, the Preferred Route is the least cost option taking into account both construction cost and other route selection considerations. Rock Island states that the Commission has typically addressed the least cost aspect of §8-406(b) by examining which of the potential routes of a proposed transmission line is the least cost, considering all relevant factors, and that based on this approach, the Commission does not always choose the transmission line route with the lowest construction cost as the least-cost route. (RI Ex. 7.35 at 27; RI IB at 73) Rock Island states that the Preferred Route for the DC Section of the Project has the second-lowest estimated construction cost of the routes studied. In Rock Island's view, even though the estimated construction cost for the Preferred Route for the DC Section is 0.7% ($2 million) higher than the

construction cost for the Proposed Alternative Route, the Preferred Route is superior based on application of the Routing Criteria used by Rock Island; the overall advantages of the Preferred Route outweigh the very modest cost advantage of the Proposed Alternative Route. (RI IB at 73-74, citing RI Exs. Ex. 7.0 Rev. at 36; 9.0 Rev. at 9 and 7.30 at 38)

Specifically, Rock Island asserts, the Preferred Route is shorter, has fewer homes within 200 feet, 500 feet and 1000 feet of the centerline of the route, has fewer other buildings within 100 and 200 feet of the centerline, and affects a smaller number of land parcels and landowners, than does the Proposed Alternative Route. The Preferred Route has no known schools, hospitals or religious facilities within 1,000 feet of the centerline, does not cross any Agricultural Preservation Areas, crosses the fewest number of center pivot irrigation systems, and does not require the placement of transmission structures in wetlands. The Preferred Route also avoids a possible conflict with an unregistered ultra-light airstrip that would occur with the Proposed Alternative Route. (RI IB at 74, citing RI Exs. 7.0 Rev. at 27-28, 34-35; and 8.2 at 55-63)

With respect to the AC section, RICL states that the Preferred Route of that section has the lowest construction cost of the AC Section route alternatives studied and is the best route of the alternatives studied based on application of the other Routing Criteria. (*Id.* at 74-75, citing RI Ex. 9.0 Rev. at 9 and Ex. 7.0 Rev. at 28, 36-37)

In response to ComEd's assertion that Rock Island presented no evidence that the Project is least cost, Rock Island cites Dr. Galli's analysis that compared the costs of an HVDC line from northwest Iowa to northeast Illinois to a series of potential AC alternatives and demonstrated that the HVDC line as proposed by Rock Island is overwhelmingly the least cost alternative. (RI RB at 90, citing ComEd IB at 31, and RI Ex. 2.11 Rev. at 3-4)

Rock Island responded to Staff's citation of Mr. Rashid's testimony in which he asserted that Rock Island did not provide information on whether it considered or examined alternatives to the Project to determine if it meets the least cost criterion of §8-406. (Staff IB at 21-23)

Rock Island states that Mr. Rashid's concerns over whether the Project satisfies the least cost criterion seem to be founded in a misunderstanding of what constitutes "open access transmission service." Rock Island explains that it will use the Project to offer and provide open access transmission service from the Project's western converter station in O'Brien County, Iowa, to the Collins Substation in Grundy County, Illinois. Rock Island will be required to offer this service to all eligible customers on a non-discriminatory basis and without giving undue preference to any eligible customer. This is Rock Island's open access transmission service obligation. (RI Ex. 10.26 at 35-36) Rock Island states that Mr. Rashid seemed to think that by being an open access transmission service provider, Rock Island is required to provide access to customers at intermediate locations all along the route of the Project throughout Illinois; he therefore questioned Rock Island's HVDC versus AC cost comparison for not including the costs for such intermediate interconnections. Rock Island asserts that Mr. Rashid's premise is incorrect, in that Rock Island does not need to provide service at intermediate points along its route in order to

be an open access transmission provider. Rock Island states that it is only required to offer nondiscriminatory access to the service it is offering to provide, namely, point-to-point transmission service from O'Brien County, Iowa to the Collins Substation in Illinois. (RI RB at 97-98, citing Staff IB at 21-23; RI Exs. 2.15 at 4; and 10.26 at 36)

Rock Island states that customers could seek to interconnect to the Project at one or more points along the route through an interconnection request under Rock Island's OATT, which would require the customer to pay the costs of the interconnection. (RI RB at 98)

Rock Island also states that later in the same section of its Initial Brief, Staff states that Mr. Rashid "testified that it was not clear whether the proposed project, which [Rock Island] estimates will cost $2 billion overall, is the least-cost project that would further the cause that [Rock Island] identifies for implementing the proposed project," and that "Mr. Rashid suggested that one such alternative would be an AC transmission line of equal load capacity as [Rock Island's] proposed DC line." (Staff IB at 28) Rock Island characterizes Staff's assertion as "particularly baffling" since Rock Island presented a cost comparison of a 3,500 MW capacity, ±600 kV 500-mile HVDC transmission line to five different AC alternatives and showed that the HVDC line was overwhelmingly lower cost than all of the AC alternatives. (RI RB at 98-99)

In its BOE, Rock Island argues that the Order should include additional discussion of the evidence and arguments showing that the project satisfies the "least-cost" requirement of Section 8-406(b)(1). (RI BOE at 24-25; Exceptions at 11-12)

4. Proposed Condition Regarding Cost Allocation

Rock Island states that because the Project is a "merchant" transmission project, it will recover its costs of construction and operation solely through the revenues it receives from the specific transmission customers that purchase capacity and take transmission service on the Project. According to Rock Island, its investors, not the retail electric ratepayers of Illinois or other states, will bear any risks that the Project cannot be successfully constructed and completed or that the revenues received by the Project will prove to be insufficient to provide its investors with an adequate rate of return on their investment. (RI IB at 75, citing RI Exs. 10.13 at 11; 10.14 Rev. at 28-29, 30-31, 35; 10.26 at 8, 10, 14; and Tr. 647-48, 951-52, 1007-08) Rock Island states that it has no "plans" to seek to recover the costs of the Project from retail customers by cost allocation to load through RTO cost recovery processes, and in fact believes there is presently no cost allocation mechanism by which the costs of an inter-regional transmission line such as the Project can be recovered. (*Id.* at 75-76, citing RI Exs. 1.0 at 15-16; 10.14 Rev. at 29; and10.26 at 19-20)

In Rock Island's view, the fact that the Project is a merchant transmission project whose costs will be paid for by its specific transmission customers through their payments for transmission capacity and service (rather than by all retail ratepayers or load-serving entities in an RTO region) distinguishes the Project from other projects that are dependent on cost recovery from captive ratepayers through regional cost allocation mechanisms.

According to Rock Island, the "fact" that the Project costs will not be recovered through allocation to load-using RTO cost allocation processes supports the conclusion that the Project will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers, is least cost, and promotes the public convenience and necessity. Rock Island claims merchant transmission projects like the Project are a logical, market-driven response to the Commission's previously-expressed concerns about the use of regional cost allocation processes to recover the costs of transmission projects. (RI IB at 76)

Rock Island notes that some parties have expressed concerns that at some future date, Rock Island could request and obtain cost allocation treatment from PJM or MISO, at a point in time after this Commission has granted a CPCN for the Project on the assumption that it is a merchant project and will not use cost allocation. (ComEd Ex. 1.0 2d Rev. at 37; ILA Ex. 7.0 at 10; Staff Exs. 3.0 at 5 and 6.0 at 3) To address these concerns, Rock Island proposed a condition to its CPCN whereby it would not be allowed to recover any portion of its costs through regional cost allocation to load unless it first makes a new filing with this Commission for approval to recover its costs through cost allocation to load and receives approval from the Commission. As modified by Rock Island witness Mr. Berry in his surrebuttal testimony in response to a comment in ComEd witness Mr. Naumann's rebuttal testimony, Rock Island's proposed condition (RI IB at 76-77, citing RI Ex. 10.26 at 21-22) is as follows:

> 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 through PJM and MISO transmission service charges that are paid by retail electric suppliers in respect of their electric load served in Illinois.

Rock Island states that under the condition, in order to justify the use of cost allocation, it would have to persuade the Commission in a future proceeding that the Project's benefits outweigh its costs to ratepayers. Staff and other interested parties would be able to participate in the proceeding. Further, the Commission would have complete discretion to determine the basis on which it would grant or deny such a request, in the unlikely event one were ever made. (RI IB at 78, citing RI Ex. 10.14 Rev. at 29-30)

Rock Island claims there are ample assurances that it will comply with the condition. First, Rock Island's authority to construct and operate the Project will be subject to its continued compliance with the condition. According to RICL, the Commission can enforce compliance with the conditions it imposes in a CPCN order, including by initiating a proceeding to show cause why the CPCN should not be rescinded due to noncompliance with the condition (220 ILCS 5/10-108; 220 ILCS 5/10-113(a)), as

well as by seeking civil penalties for violation of the Commission's order (220 ILCS 5/5-202). Second, lenders and investors will likely insist on a covenant in Rock Island's financing documents forbidding Rock Island from violating the conditions of its CPCN. Third, Rock Island's negotiated rate authority granted by the FERC forbids Rock Island from obtaining cost recovery through socialized rates. (RI IB at 78, citing RI Ex. 10.26 at 19, 20)

Rock Island responded to concerns expressed by ComEd witness Mr. Naumann that, despite the condition, the Project could become part of the PJM and MISO regional transmission plans for regional cost allocation purposes without any action on the part of Rock Island. (RI IB at 78-79, citing ComEd Ex. 4.0 Rev. at 27-28) Rock Island characterizes this possibility as implausible. Rock Island claims Mr. Naumann was unable to identify any transmission project that was cost-allocated without the owner taking affirmative action to accomplish this result, i.e., based on the request of a third party unrelated to the owner. (*Id.*, citing RI Ex. 10.26 at 19 and Tr. 957) According to Rock Island, the suggestion that PJM could "reclassify the Project" (ComEd Ex. 4.0 Rev. at 27) without any action by Rock Island is simply at odds with the way the PJM regional transmission expansion plan actually works. Further, even if PJM or MISO could somehow "reclassify the Project," Rock Island still could not receive recovery of its costs from the regional cost allocation process without taking additional affirmative actions, including signing the applicable transmission owners' agreement, obtaining a modification to the FERC's grant of negotiated rate authority, submitting required accounting information to the RTO, and actually accepting the funds. Rock Island states that it would be prohibited by the CPCN condition from taking such actions, absent approval by the Commission in a subsequently-initiated proceeding. (*Id.*, citing RI Ex. 10.26 at 19-20)

In its BOE, Rock Island argues that in the paragraph on page 116 of the Proposed Order which begins with the words "As a condition of this Order," the last sentence should be revised to read as follows, "Absent such approval, Rock Island shall not be entitled or permitted to recover any such costs from Illinois retail ratepayers through PJM or MISO regional cost allocation." (RI BOE at 24)

5. Delaying Issuance of CPCN until Interconnection Processes are Completed

Rock Island opposes ComEd's position that this proceeding should be dismissed without prejudice until such time as the interconnection processes for the Project at PJM and MISO are completed and the network upgrades and their costs, and any operating limitations, required in order for the Project to be allowed to interconnect to the existing transmission system, have been determined by PJM and MISO. (RI IB at 79-80, citing ComEd Exs. 1.0 2d Rev. at 9, 10-11, 20-21, 28, 32-33 and 4.0 Rev. at 5, 7, 17, 33-35; see also RI Exceptions at V)

According to Rock Island, the RTO interconnection study processes will result in a determination that the Project can be interconnected with the existing transmission grid in a manner that does not threaten the reliability of the grid, and will determine the network upgrades and operational requirements, if any, to ensure that result. Federal law and

regulation require that Rock Island complete the interconnection study processes and sign interconnection agreements with PJM and MISO before the Project will be allowed to operate. (RI IB at 81-82, citing RI Exs. 2.11 Rev. at 8; 10.14 Rev. at 30, 35, 37; 10.26 at 27) The PJM and MISO interconnection processes for the Project will be carried out in accordance with these RTOs' FERC-jurisdictional tariffs and related rules and agreements, without the need for involvement by the Commission arising out of this certificate proceeding. (*Id*, citing RI Ex. 2.11 Rev. at 31) Further, ComEd and any other affected transmission owners have had and will continue to have a full opportunity to participate in the RTOs' interconnection processes and to provide relevant information and concerns to the RTOs, including comments on studies and proposed solutions to reliability concerns. Rock Island states that ComEd has extensively exercised that opportunity to date. (*Id.*)Rock Island states that PJM and MISO are charged with ensuring reliable interconnections and operations, and will require, as conditions to the Project interconnecting with their systems, implementation of the system upgrades and other actions they determine are needed to maintain the reliability of their systems. (*Id.* at 82, citing RI Ex. 2.15 at 32-33) The interconnection study process is intended to identify -- for the interconnection customer (here, Rock Island) and the incumbent transmission owner (here, ComEd in PJM and MidAmerican in MISO) -- the equipment that will be required, costs for that equipment, and any required operational procedures, to allow for the efficient and reliable operation of the grid consistent with the planning requirements of the RTO and applicable reliability requirements of NERC and the utility to which the interconnection is made. (*Id.*, citing RI Ex. 2.15 at 14-15) The PJM and MISO interconnection study processes will identify any reliability issues presented by the interconnection of the Project, and will prescribe solutions that prevent any deterioration of system reliability. Rock Island states that the final interconnection agreements it enters into will identify the appropriate mitigation actions to accommodate the reliable operation of the transmission system with the Project in service, and to provide for protection of ComEd's and other entities' facilities during any abnormal system events, including mitigating any potential impacts to system stability. (*Id.* at 82-83, citing RI Exs. 2.11 Rev. at 24, 31; 2.15 at 15)

Rock Island states that it holds two positions for the Project in the PJM interconnection queue, referred to as the S57/S58 positions (collectively, the "S position"), which represents a 3,500 MW HVDC interconnection with 700 MW of Firm Transmission Injection Rights ("FTIR"), and the U3-026 position ("U position"), which requests an additional 492 MW of FTIR. RICL asserts that based on PJM's August 2013 SIS for the S position, there will be a need for installation of two new 765 kV circuit breakers and associated SCADA and communications equipment, at an estimated cost of $14 million, and a new transformer at Plano at an estimated cost of $10 million, to accommodate the S position interconnection. (RI IB at 83, citing RI Ex. 2.11 Rev. at 10-12) Rock Island states that the August 2013 SIS for the S position also identified other potential reliability issues that could require operational solutions, rather than system upgrades. (*Id.* at 83-84)

Rock Island asserts that because the Project will originate within the MISO region and transmit the output of generating facilities located in the MISO region to an interconnection point with the PJM grid, it is also necessary that MISO perform a "No-

Harm" study. A scope of work for this study has been established and it is currently in progress. The MISO No-Harm study will identify any "loop flow" impacts of the Project and any necessary mitigation actions to address these impacts. Rock Island states that ComEd also has the opportunity to participate in the MISO No-Harm study, and has been doing so. (RI IB at 84-86, citing RI Exs. 2.0 at 11-12; 2.11 Rev. at 24-26; 10.14 Rev. at 26; 2.16 at 35-37)

Rock Island states that the PJM August 2013 SIS identified a specific reliability concern arising in the event of an outage of one of the two ComEd 765 kV transmission lines that connect at the Collins Substation, the Collins-Wilton Center line and the Plano–Collins line, while the Rock Island Project is injecting power to the PJM grid at the Project's full capacity of 3,500 MW. Rock Island states that the August 2013 SIS report proposed two alternative acceptable mitigations for this issue, one of which entails reducing the power injection level of the Project to 700 MW during any period when one of the two ComEd 765 kV lines is out of service. (RI IB at 87, citing RI Exs. 2.11 Rev. at 23-24; Ex. 2.15 at 21)

Rock Island contends, however, that, PJM's mitigation option of limiting the Project's power injection level to 700 MW in this situation is based solely on the fact that the S position requests 700 MW of FTIR, not on actual system limitations. Rock Island states that PJM has not determined what specific level of power injection (700 MW or higher) the Project would be limited to in the event of an outage of one of the ComEd 765 kV lines. Rock Island contends that the level to which the Project's power injections will be limited in the event of and during the period of an outage of one of the ComEd 765 kV lines will likely be much higher than 700 MW, and there actually may be no reduction in power injection level required from the Project's 3,500 MW full capacity. Rock Island states that it appears PJM has performed an analysis of the operation of the Project at a power injection level of 1,192 MW -- the combined FTIR requested for Rock Island's S and U queue positions -- during a ComEd 765 kV line outage, and found, on a preliminary basis, that the system remains stable under these conditions. (RI IB at 87-88, citing RI Ex. 2.15 at 22-23, 33-34 and Tr. 938-941)

According to Rock Island, the mitigation action proposed in PJM's August 2013 SIS report for an outage of one of the ComEd 765 kV lines -- that the power injection level of the Project be reduced to 700 MW within 30 minutes -- is achievable using modern, readily-available equipment and operating practices, particularly in light of the greater control capabilities of HVDC technology. Power electronics coupled with the high-speed communication and controls capabilities of modern day control systems allow for automatic responses to system disturbances. Rock Island claims this is common industry knowledge as it relates to HVDC and Flexible Alternating Current Transmission Systems ("FACTS"). Rock Island states that protocols such as the one proposed by PJM in the event of an outage of a ComEd 765 kV line are already in effect on other HVDC projects worldwide. (RI IB at 88, citing RI Ex. 2.15 at 23-25, 27-32)

Rock Island witness Dr. Galli provided an explanation of the operational steps that would be taken to effectuate this mitigation and to redispatch the system to reduce the power injection level of the Project to 700 MW within 30 minutes. (RI IB at 88, citing RI

Exs. 2.15 at 28-32 and 2.20) Rock Island also states that PJM has expressed confidence, based on its experience, that redispatch of the system to reduce the power injection level of the Project from its maximum of 3,500 MW to 700 MW can be accomplished within 30 minutes, and has so advised Exelon, in writing. (RI Ex. 2.17 at 3; RI IB at 88-89)

In addition to the potential reliability issues for which specific system upgrades will be required, and the potential reliability issue resulting from an outage of one of the ComEd 765 kV lines, the PJM August 2013 SIS report identified a number of other potential constraints for which mitigation actions may be required. Rock Island contends there is no indication that any additional, significant system upgrades will be needed to resolve any of these additional constraints. Rock Island asserts that some of the constraints may be resolved through the operation of PJM's Security-Constrained Economic Dispatch ("SCED") process, without the necessity for any separate operating procedures. Rock Island submits that mitigation actions, if any, that may be required for any of these constraints would be limited to the use of specific operating procedures. (RI IB at 89)

Rock Island witness Dr. Galli provided a description of the potential constraints identified in the August 2013 SIS Report and how they would be resolved. (RI Exs. 2.15 at 12-26 and 2.18) He asserted that PJM has identified workable mitigation solutions for each of the reliability issues that will resolve or prevent these reliability issues from arising, and that completely address any concerns about possible adverse reliability impacts to the grid due to the interconnection and operation of the Project. Dr. Galli explained that the additional constraints identified in the August 2013 SIS will not require additional operating limitations or restrictions on the Project or otherwise materially affect its operation. (RI IB at 89-90, citing RI Ex. 2.15 at 7)

Rock Island believes it should be able to mitigate most, if not all, of these potential reliability issues without the need to curtail power injections by the Project below its 3,500 MW maximum capacity, by the installation of fast-acting reactive power equipment coupled with the controllability of HVDC technology, and the operation of PJM's SCED process. Rock Island states that it will install FACTS devices known as static synchronous compensators, or STATCOMs, which are power electronic-based devices that provide reactive power support, and thus voltage support, on a nearly instantaneous basis, allowing for a response within milliseconds to system voltage disturbances by either producing or absorbing reactive power to stabilize voltage. Rock Island states that installation of the STATCOMs will ensure that the transmission system can accommodate the Project's full injection level of 3,500 MW during both normal and contingency conditions including during the additional contingencies that were identified in the August 2013 SIS. (*Id.*, citing RI Ex. 2.15 at 8, 23-26, 34-37)

Rock Island states that PJM's analysis in the August 2013 SIS did not include application of additional fast-acting reactive power devices such as the STATCOMs that Rock Island will install. Rock Island asserts that Siemens, the technology vendor for Rock Island's converter stations, restudied the voltage issues identified by PJM by incorporating the use of STATCOMs, and found that STATCOMs support the system AC voltage and prevent potential AC-voltage collapse, thereby minimizing and in most cases

eliminating the need to reduce the Project's power injection levels as a mitigation measure in response to constraints. (RI IB at 90-91, citing RI Ex. 2.15 at 34-37 and 2.19 at 4-6) Rock Island states that PJM and MISO will be able to review and confirm the use of STATCOMs and the resulting resolution of potential voltage issues as part of completing the interconnection process.

In its BOE, Rock Island proposes a revision to the following language that appears on pages 111-112 of the Proposed Order, "As a condition of this Order, Rock Island shall not attempt to effect the interconnection until it has fully complied with the applicable requirements of PJM and the other conditions in this Order, and has signed all interconnection agreements." Rock Island argues that the words "and the other conditions in this Order" should be deleted because many of the other conditions are unrelated to the interconnection. (RI BOE at 22-23)

In its BOE, ComEd proposed "alternative exceptions language" that would revise this condition to read as follows, "As a condition of this Order, Rock Island shall not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction and interconnection of the subject line in Illinois, until it has fully complied with the applicable requirements of PJM and the other conditions in this Order, and has signed all interconnection agreements." (ComEd BOE at 20; Exceptions at 113)

In its RBOE, Rock Island opposes the condition proposed by ComEd. Rock Island contends that the condition is unclear and could arguably and improperly prevent such activities as conducting surveys, negotiating with landowners and engaging in design work, which would unduly delay the Project. (RI RBOE at 56-58)Rock Island witness Mr. Moland conducted sensitivity runs of his economic benefits analysis under the assumption that the Project is limited to 700 MW during periods when one of the two ComEd 765 kV lines is out of service. He assumed a ComEd 765 kV line would be out of service due to an outage during 4.1% of the hours of the year, based on the historical outage experience of these lines. During these hours, energy delivery on the Project was capped at 700 MW in his analysis. Mr. Moland performed the sensitivity runs using the "Business as Usual" and "Slow Growth" scenarios. His analyses purportedly showed that, under the assumption that the Project's energy delivery is limited to 700 MW when one of the ComEd 765 kV lines is out of service, the Project's annual energy delivery would be reduced by 1.7% and the demand cost savings for Illinois would be reduced by approximately 1% to 3% -- depending on the year and economic scenario -- compared to his original analyses that did not include these operating limits. Variable production cost savings in the Eastern Interconnection were reduced by between 0.44% and 2.37%, depending on the year and economic scenario, under these assumptions compared to the base case. According to Rock Island, these analyses show that even if the Project's power injection level is limited to 700 MW during a ComEd 765 kV line outage, over 97% of the Project's economic benefits remain. (RI IB at 91-92, citing RI Exs. 10.26 at 17-18; 3.7 at 1-3; 3.8 at 1, 4)

Rock Island also ran an alternative set of cases using the Staff revenue requirements model with the additional assumption that the Project's power injection level is limited to 700 MW when one of the ComEd 765 kV lines is out of service. According to Rock Island, these analyses showed that even with the impacts of this potential operating restriction, the Project is clearly beneficial compared to the alternative of no new transmission or generation construction in which consumers continue to purchase energy from the existing market. Assuming LMP savings from the Project continue over its lifetime, 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." Assuming LMP savings from the Project are limited to five years, 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." Similarly, Rock Island claims that with the potential operating restriction 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 in 92% to 97% of the sensitivity cases under Staff's "Model A" and in 93% to 99% of the sensitivity cases under Staff's "Model B." (RI IB at 92-93, citing RI Exs. 10.26 at 40-41 and 10.30)

Rock Island next contends that delaying issuance of the order in this case granting the requested regulatory approvals would delay the ultimate completion of the Project and thus delay the realization of the economic, reliability and environmental benefits it will produce. According to Rock Island, approval of a specific route for the Project in Illinois, easement ROW widths, and the structures to be used for the transmission line will enable Rock Island to proceed to more detailed engineering and construction cost estimating activities for the line. RICL states that pursuant to §8-510 of the PUA, upon receiving a CPCN for the Project, it will have the right, upon appropriate notice to landowners, to enter landowners' properties for the purpose of conducting surveys. This will enable Rock Island to conduct necessary detailed environmental, biological and archeological surveys, such as surveys for wetlands and species habitats, as well as land surveys, that are necessary to perform detailed engineering and determine specific structure placement locations. Rock Island also states that receipt of approval for a specific route of the Project in Illinois will enable Rock Island and landowners along that route to engage in informed discussions about easement acquisition and property-specific concerns regarding construction of the Project and placement of structures. (RI IB at 93)

Additionally, Rock Island asserts that receipt of the major regulatory approvals for the Project is necessary for Rock Island to move forward to obtain both contracts with customers for transmission service on the Project and binding financial commitments from lenders and investors for the capital to construct the Project. (RI IB at 93-94)

6. Response to Other Parties; Other Factors

Response to IAA

Rock Island responded to the IAA's argument that Rock Island has not shown the Project is required or necessary to make the Illinois electricity market adequate, reliable, efficient or competitive, and that Rock Island presented no evidence that reliability will be

adversely affected without the Project. Rock Island states that from the perspective of both generators and consumers, the Project is needed in order to provide efficient transmission access from the wind-rich Resource Area to the northern Illinois electricity market to enable the development of cost-effective wind generation in the Resource Area. Rock Island states that the Project is being developed to provide adequate and efficient service to customers by enabling significant new renewable energy resources to be developed in the Resource Area and to have their output delivered to Illinois and the PJM network, and to provide a means for load-serving entities within Illinois and PJM to obtain and provide electricity from renewable resources for their customers. Further, Rock Island states that it has demonstrated that the Project will provide significant reliability benefits. (RI RB at 55, citing IAA IB at 9-10, 12; see also RI Exceptions at 13-14)

With respect to the competitive electricity market, Rock Island states that the statutory criterion is whether a proposed project 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." Rock Island states that, contrary to IAA's characterization, the statute does not require that a project will turn the electricity market from "non-competitive" into "competitive." Rock Island also responded to IAA's assertion that Staff witness Mr. Zuraski "opined that a competitive electricity market already exists in Illinois, not necessitating the Project." (IAA IB at 10, citing ICC Staff Ex. 3.0 at 5) Rock Island responds that while Mr. Zuraski did opine that an effectively competitive electricity market exists, he also opined, based on his financial analysis, that he expected that the Project will promote the development of an effectively competitive electricity market that operates efficiently and is the least cost means of satisfying those objectives. (RI RB at 55-56, citing Staff Ex. 3.0 at 6)

Rock Island responded to the IAA's argument that the Project has not been assessed in a regional planning process of PJM or MISO and that Rock Island has not produced a study by one of the RTOs showing that the transmission system will be compromised if the Project is not built. (IAA IB at 10) Rock Island responds that the Project will be delivering electricity into the PJM network, and PJM does not have a process for assessing the need for or economic benefit of a merchant transmission project such as the Project. (RI RB at 56, citing RI Exs. 2.11 Rev. at 38-40 and 10.14 Rev. at 57-58; ComEd Ex. 1.0 2d Rev. at 15; and Tr. 649, 655, 953) Rock Island states it would go through the PJM or MISO regional expansion planning process only if it were seeking to allocate the cost of the Project to load, which it is not doing. (*Id.*)

Rock Island responded to IAA's assertion that the estimated costs of new facilities for interconnecting the Project into the PJM system are unknown, which was based on the direct testimony of ComEd witness Mr. Naumann. (IAA IB at 10) Rock Island states that Mr. Naumann's direct testimony pre-dated the release of PJM's August 2013 re-tool System Impact Study for the Project, which concluded that the necessary system upgrades for interconnection of the Project to PJM will cost, in total, approximately $24 million. (RI RB at 57, citing RI Exs. 2.11 Rev. at 11-12 and 10.14 Rev. at 36) Rock Island also responded to IAA's contention that the impact of the Project on "congestion problems" is unknown. (IAA IB at 10) Rock Island states that the record shows the

Project will reduce, by hundreds of millions of dollars, congestion costs on the PJM system that customers pay for in wholesale electric prices. (*Id.*, citing RI Exs. 3.5 at 2 and 10.14 Rev. at 31-32)

Rock Island responded to IAA's argument that Rock Island has not shown that transmission customers for the Project exist in sufficient quantity to justify the transmission line. (IAA IB at 11-12) Rock Island stated that it has shown that there are at least 18 wind developers active in the Resource Area, who have acquired options on thousands of acres of land in the area that can be used for the installation of wind turbines and with whom Rock Island has been in contact to discuss plans and with many of whom it is in commercial discussions. (RI RB at 57-58, citing RI Exs. 10.14 Rev. at 41; 10.19 Rev.; 10.26 at 31-32)

Rock Island responded to IAA's argument that Dr. McDermott was unable to identify a prior case in which the Commission granted a CPCN to an applicant that did not unconditionally commit to build its proposed transmission line but rather indicated that it would not build the line if customer demand for it did not materialize. (IAA IB at 11) Rock Island responds that, to the best of its knowledge, the Project is the first merchant transmission line for which a CPCN has been requested from this Commission. (RI RB at 59)

In response to IAA's assertion that "Rock Island is waiting to see if there is a need for the transmission line before it seeks financing, then it will hire employees to construct and manage the Project" (IAA IB at 12), Rock Island asserts that the need for high voltage transmission linking the wind-rich Resource Area to northern Illinois and PJM has been demonstrated in this case. (RI RB at 59-60) Rock Island further states that it has already hired the personnel for its construction management organization who perform the activities that need to be performed now or in the near future, such as route development, engineering and design studies, and initiation of easement acquisition, and will hire personnel for the remaining positions as the tasks for which those positions will be responsible need to be performed. (*Id.* at 60)

In response to IAA's argument that Rock Island has presented no evidence that Illinois will be adversely affected if the Project is not built. (IAA IB at 12), Rock Island argues that such a showing is not one of the statutory criteria of §8-406(b). Rock Island contends it has demonstrated that the Project 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; is needed to provide an efficient transmission link between the wind-rich Resource Area and the northern Illinois electricity market; and will provide significant reliability benefits to Illinois. (RI RB at 60-61)

Response to ILA

Rock Island responded to ILA's argument that the benefits the Project will provide are too speculative, that the Project has not been shown to be needed for reliability

purposes, and that there are too many remaining uncertainties concerning the interconnection of the Project to the ComEd grid, to support issuance of a CPCN at this time. (ILA IB at 16) According to Rock Island, it has identified many benefits of the Project, as described above. (RI RB at 61, citing RI Ex.10.14 Rev. at 34) Rock Island also states that while the PJM interconnection process is not fully completed, the necessary network upgrades have been identified and are not a significant cost, and any operating limitations on the Project that PJM may require will not materially impact the operation of the Project or the economic benefits it produces. (*Id.*)

Rock Island refers to "discussion in ILA's Initial Brief that it would be useful for PJM or MISO to review the need for the Rock Island Project." (RI RB at 62, citing ILA IB at 18-22) Rock Island reiterated that PJM and MISO do not review and determine the need for merchant transmission projects such as Rock Island, but would only review the reliability need for or public benefits of transmission projects for which the owners are seeking cost recovery via allocation to load through the RTO tariff. Rock Island also states that PJM has no comprehensive planning process to meet RPS requirements in a least-cost manner. (*Id.*, citing RI Ex. 10.14 Rev. at 58) Rock Island states that ILA's statement that "Rock Island is circumventing the regional planning process normally utilized for new interstate electric transmission projects" is irrelevant and misleading, because Rock Island is a merchant project and is not seeking cost recovery through cost allocation to load, and PJM and MISO do not have a regional planning process for merchant transmission projects. (*Id.* at 62-63)

In response to ILA's assertion that Rock Island cannot meet the first prong of the §8-406(b)(1) criteria because it has no customers under contract or specifically identified prospects (ILA IB at 22), Rock Island asserts that customers cannot be expected to commit to long-term transmission contracts until the Project has obtained the major regulatory approvals, including state certifications, that establish that the transmission owner will be allowed to build it. Rock Island also states that it does have specifically identified prospects, with whom it is engaged in commercial discussions, and there are numerous wind farm developers active in the Resource Area. (RI RB at 63, citing RI Exs. 10.0 at 11; 10.14 Rev. at 41; 10.19 Rev.; 10.26 at 31-32; and Tr. 1031, 1117)

In response to ILA's argument that ComEd witness Naumann pointed out many ways in which the Project could harm system reliability (ILA IB at 23), RI asserts that ILA has misstated Mr. Naumann's testimony. According to RICL, what Mr. Naumann pointed out were reliability issues relating to interconnection of the Project to the PJM grid that have been identified in the PJM SIS for Rock Island's requested interconnection. Rock Island states that any potential reliability issues identified by the PJM studies will be resolved satisfactorily to PJM before Rock Island is allowed to interconnect to the grid and operate the Project. Rock Island reiterates that PJM has identified concrete, workable solutions for each potential reliability issue identified in the August 2013 SIS. (RI RB at 64, citing RI Exs. 2.11 Rev. at 8, 24, 31; and 2.15 at 6-7, 14-15, 32-33)

Rock Island addressed five reasons cited by ILA as to why it contends the Project fails to satisfy the "will promote the development of an effectively competitive electricity

market" criterion of §8-406(b)(1). ILA's "first reason" is that the Project would impose significant negative land use impacts and externalities on the Illinois public for the primary benefit of "the eastern PJM states" to meet their RPS goals. (ILA IB at 25, 26) According to RICL, ILA witness Dr. Gray never identified any "externalities," and did not suggest any alternatives that would reduce purported externalities. To the contrary, RICL argues, the Project will significantly reduce the externalities associated with the production of electricity, including emissions, waste by-products and water use. (RI IB at 119; RI RB at 64-65) The "negative land use impacts" that Dr. Gray referred to were the concerns expressed by ILA witnesses about the impacts of the Project on their individual properties. However, Rock Island contends that it has shown it has appropriate plans in place -- including its obligations under the Agricultural Impact Mitigation Agreement -- to mitigate, remediate and, where necessary, compensate for, the issues identified by the ILA landowner witnesses. (RI RB at 65)

Rock Island also contends that the land use impacts of the Rock Island transmission line in Illinois, which will connect 4,000 MW of wind generation facilities located in northwest Iowa and nearby areas, will be much less than the land use impacts of constructing 4,000 MW of new wind farms in Illinois. (RI Ex. 10.14 Rev. at 64) Finally, Rock Island states that while the Project will assist other PJM states in addition to Illinois in meeting their RPS requirements, Mr. Moland's and Dr. McDermott's studies specifically measured the Project's substantial benefits for Illinois, and that Staff witness Zuraski's analyses were also specific to Illinois. (RI RB at 65-66, citing RI Exs. 3.3 at 1-3; 3.5 at 2-3; 4.0 Rev. at 20-24; and Staff Ex. 3.0 at 16-33)

ILA's "second reason" is that in the absence of actual subscribers, Rock Island's assumed traits and characteristics about generators that could potentially connect to the Project cannot be substantiated. (ILA IB at 25, 26) Rock Island claims its expectation that all the generators connected to the Project will be wind generators is reasonable. (RI RB at 66) With respect to ILA's argument that "we do not know the operating or other characteristics of any wind farms that may materialize" (ILA IB at 26), Rock Island states that the operating characteristics of the wind farms used in Mr. Moland's studies and in Mr. Zuraski's studies were taken from the Eastern Wind Integration and Transmission Study ("EWITS study") that was conducted by a leading meteorological firm, AWS Truewind, under the sponsorship of the National Renewable Energy Laboratory ("NREL"), to create production data for potential wind farms located throughout the Eastern Interconnection. According to Rock Island, these production data were created using detailed computer models of weather patterns and have been used by numerous utilities and RTOs, including PJM, the Southwest Power Pool and the New England Independent System Operator, in their wind generation integration studies. Rock Island states that the principal and most important "operating characteristic" of the wind farms to be constructed in the Resource Area is the wind energy profile (i.e., the amount of electricity production), which is based on the wind speeds in the area. In addition to the information from the EWITS data set, wind speed information is available from publicly available wind maps produced by the NREL and AWS Truewind based on computerized weather models developed by the National Weather Service. (RI RB at 66, citing RI Ex. 10.0 at 5-6, 11-12)

Rock Island also states that in performing its cost-benefit studies for the MISO MVP lines, MISO made assumptions about the locations of new wind generation based on where the lowest cost generation could be sited, and did not include in its assumptions only wind generators with signed contracts or interconnection agreements; rather, MISO used similar third-party data sources to those used by Rock Island to identify locations where wind generation is likely to be developed. (RI RB at 67, citing RI Ex. 10.14 Rev. at 45-46)

ILA's "third reason" is that Rock Island has reserved the right to seek to switch the Project from merchant status to one in which its costs are allocated to Illinois electricity consumers. (ILA IB at 25, 26-28) Rock Island reiterates that it has no plans to seek to recover the costs of the Project from retail customers by cost allocation to load through RTO cost recovery processes, and has proposed a CPCN condition on cost allocation. (RI RB at 67-68, citing RI Exs. 10.14 Rev. at 29 and 10.26 at 21-22)

In response to ILA's contention that certain questions remain unanswered with respect to Rock Island's proposed cost allocation condition, RICL argues that ILA failed to offer any constructive suggestions or comments on the condition. In response to ILA's assertion that it is unknown what section of the PUA would govern a subsequent proceeding initiated by Rock Island seeking cost allocation treatment, what showing Rock Island would be required to make, and the time period within which the Commission would have to make its decision (ILA IB at 28), RI claims: (1) The condition is a condition to a CPCN issued pursuant to §8-406, therefore the subsequent proceeding would be pursuant to §8-406 and the overall standard would be the public convenience and necessity, under which the Commission has broad discretion; (2) As Mr. Berry testified, the Commission would have to determine that the benefits of the Project to consumers exceed its costs to consumers in order to determine whether Rock Island should be allowed to seek cost allocation through the RTO processes; and (3) Rock Island has not proposed any limit on the amount of time within which the Commission would have to conduct the proceeding and reach its decision. (RI RB at 68-69)

Rock Island next responds to ILA's "fourth reason," that being a concern that Rock Island is not providing a decommissioning fund or other financial security to help cover decommissioning costs and land reclamation costs in the event the Project fails and is no longer used. (ILA IB at 25, 28-29) Rock Island states that its standard easement agreement includes a commitment to remove any structures in place when the Project ceases operations and to restore the land that was subject to the easement. (RB at 69, citing RI Ex. 10.14 Rev. at 65) Further, Rock Island states that it has agreed to the Staff financing condition, 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. Rock Island argues that this condition prevents the risk of Rock Island beginning construction of the transmission facilities on landowner properties but running out of money to complete construction. Further, lenders will independently review the construction plans and budget and determine that Rock Island has raised, in total, sufficient funds to complete

construction of the Project, before they will commit to advancing any of the funds. (RI RB at 70, citing RI Exs. 10.14 Rev. at 4-7 and 10.26 at 10)

Rock Island also states that its parent company has analyzed, for the transmission project of another subsidiary using structures and conductor of the same material and weight as will be used on the Rock Island Project, the scrap and salvage value of transmission structures, conductors and equipment compared to the cost of removing transmission structures and restoring the land at the structure sites, and found that the salvage value of the structures, conductor and other components equaled or exceeded the cost of removal, so that proceeds from selling materials and equipment, even if just for scrap, can be expected to cover the cost of removal and restoration. (RI RB at 70, citing RI Exs. 2.11 Rev. at 48; and 10.14 Rev. at 65)

According to Rock Island, ILA's "fifth and final reason" is that the modeling of temporary reductions in LMPs fails to establish that the Project will promote electricity market competition in Illinois. (ILA IB at 25, 29-30) Rock Island responds that this criticism is "generic" and could be made in response to any showing that a transmission line reduces wholesale power prices. (RI RB at 71) Rock Island also states that Mr. Moland's and Dr. McDermott's decision to base their analyses of the impacts of the Project on LMPs and wholesale electricity costs to serve load in Illinois for only the first five years the Project is in operation was a conservative assumption, which reflects the difficulty of forecasting the specific actions of other generation market participants far into the future. (*Id.*, citing RI Ex. 4.0 Rev. at 29-30) Further, while ILA characterizes these savings as "temporary reductions in LMPs," RICL asserts that they are substantial savings for customers, amounting to $667 million to $1.221 billion in net present value electricity cost savings (depending on the future scenario considered) over the first five years of the Project's operation. (*Id.*, citing RI Ex. 4.0 Rev. at 23) Additionally, Mr. Berry testified, with respect to the Staff financial model which modeled the revenue requirements for the Project and the connected wind generators over a 40-year period, that LMP savings should be reflected over the same period. (*Id.*, citing RI Ex. 10.14 Rev. at 50) Rock Island next states that the Moland-McDermott analysis is the same analysis Dr. McDermott presented in a recent transmission line CPCN case where the Commission concluded that the transmission line would promote the development of an effectively-competitive electricity market. (RI RB at 71, citing Order in Docket 11-0661)

Rock Island further asserts that although ILA contends the Project does not produce "low entry and exit barriers" and "the absence of market power" that are characteristic of effectively competitive electricity markets (ILA IB at 29-30), the Project will in fact improve the Illinois electricity markets in those respects. (RI RB at 71-72, citing RI Exs. 1.0 at 24-25 and 10.0 at 11) Rock Island claims the introduction of 4,000 MW of new capacity accessing the northern Illinois market will check or reduce the market power of incumbent generators. Rock Island asserts out that in addition to his analysis based on LMP and wholesale demand cost reductions, Dr. McDermott also conducted a separate analysis using the FERC's Delivered Price Test. RICL claims the analysis demonstrated the Project will increase the amount of economic capacity that can compete to serve load in the Illinois market. (*Id.* at 72, citing RI Ex. 4.0 Rev. at 3, 17-19, 32-36) Rock Island states that the Project will increase the amount of REC capacity (capacity to

produce RECs) and volume of RECs produced available to the Illinois and regional markets, which should exert downward pressure on REC prices in Illinois. (*Id.*, citing RI Ex. 4.0 Rev. at 14-16, 31, 36-39; and 10.14 Rev. at 47)

Response to ComEd

In response to ComEd's argument that Rock Island has failed to demonstrate that the Project will promote the development of an effectively competitive electricity market (ComEd IB at 21-30), Rock Island states that ComEd's arguments can be reduced to a single point: that the benefits of the Project are based on speculative projections. Rock Island asserts that ComEd does not appear to be disputing the analytical method used by Dr. McDermott and Mr. Moland, which Rock Island believes is essentially the same methodology being used by ComEd to justify its Grand Prairie Gateway transmission project in Docket 13-0657. (*Id.* at 73, citing Tr. 906-908)

Rock Island states that ComEd was free to run alternative versions of Rock Island's economic benefits analyses, using PROMOD, with assumptions that ComEd considered more appropriate than those used by Rock Island and its witnesses, but ComEd chose not to do so. In contrast, Rock Island updated its studies or provided additional model sensitivities in response to concerns raised by ComEd and other parties with respect to Rock Island's benefits analyses. Rock Island states that none of these updates and sensitivity runs found anything but clear benefits from the Project. (RI RB at 73-74)

In response to ComEd's argument that the Project has no contracted customers and no committed lenders and investors for the construction phase (ComEd IB at 24), Rock Island states that it has shown there is "immense" potential for development of high capacity factor, low-cost wind generation resources in the Resource Area. (RI IB at 34-42, 49-53; RB at 74-75) Rock Island claims it has also shown there is great interest in the investment community in investing in merchant transmission projects, and that the project finance approach that Rock Island will use to raise the capital needed to construct the Project has been successfully used to raise billions of dollars of capital for electric transmission and other energy industry and energy infrastructure projects. (RI draft order at 88-89, citing IB at 104-115)

In response to ComEd's observation that the Production Tax Credit ("PTC") for wind generators expired effective December 31, 2013 (ComEd IB at 24), Rock Island asserts that neither its economic analysis nor its projections as to the amount of wind generation that will connect to the western end of the Project assume or are based on continuation of the PTC. Rock Island also states that Congress has renewed the PTC on numerous occasions in the past, with some of the renewals being retroactive. (RI RB at 75-76; see also RI Exceptions at 14)

Rock Island responded to ComEd's argument that Rock Island has not determined how the transmission line will be connected to the ComEd-owned transmission facilities at the eastern end of the Project. (ComEd IB at 24) Rock Island states that although it discussed certain other options in testimony, it is only requesting the configuration for the AC Section of the Project described in its Petition, specifically, three-345 kV AC

transmission lines -- two of them on a single circuit and the third on a separate circuit -- from the eastern converter station to Rock Island-owned transformation facilities to be placed on property to be acquired from a third party located outside Collins Substation, and a 765 kV connection into the Collins Substation. (RI IB at 125; RB at 76-77; Petition ¶58; Ex. 2.0 at 5-6, 33) Rock Island states that the PJM interconnection studies will determine the specific requirements for the electrical interconnection of Rock Island's facilities into the Collins Substation; and that the physical location of Rock Island's transformer facilities outside of the substation is not relevant to this determination. (RI RB at 77, citing RI Ex. 2.15 at 42)

Rock Island responded to what it refers to as ComEd's "argument" that Rock Island has not yet obtained the comparable approval for the Project from the Iowa Utilities Board ("IUB"). (ComEd IB at 24) RICL argues that there nothing in the PUA which provides that an entity must have obtained all necessary approvals from all other applicable regulatory bodies before applying for or being granted a CPCN by this Commission. (RI RB at 77)

Rock Island responded to ComEd's criticism of Rock Island's assumption that the generators connected to the Project's western converter station will be all wind generators, given that the FERC's grant of negotiated rate authority to Rock Island requires it to serve any eligible customer regardless of generation type. (ComEd IB at 25-26) Rock Island contends that the FERC's ruling means only that Rock Island cannot exclude non-wind generators; it does not mean that any non-wind generators are likely to want to purchase transmission service on the Project. Rock Island states it has provided persuasive evidence to show that only wind generators will want to connect to and use the Project, because only wind generators have a cost advantage in locating in the Resource Area and using the Project to deliver their energy output to northern Illinois and PJM. (RI IB at 49-52; see also RI Exceptions at 14-15)

Rock Island responded to ComEd's argument that Rock Island witness Mr. Moland, in conducting a sensitivity analysis that assumed 50% of the generation connecting to the Project would be natural gas generation, did not "consider or evaluate why it is, on balance, least cost to deliver gas-fired power 500 miles to Illinois as opposed to simply building it here." (ComEd IB at 25) Rock Island states that Mr. Moland was not tasked to determine why it would be least cost to build gas-fired generation in the Resource Area to have its output transported to northern Illinois; he was simply asked to determine the LMP and wholesale demand cost savings and emissions reductions if, as suggested by ComEd and other parties, a substantial amount of new gas generation were to be constructed in the Resource Area in order to use the Project. Rock Island states it would not be cost-effective to construct new natural gas generation in the Resource Area and transport its output to Illinois, rather than building the new gas generation in Illinois. (RI IB at 51-52; RB at 78; Ex. 10.14 Rev. at 43)

In response to ComEd's contention that the wind-based hourly energy profile used to develop Rock Island's economic analyses is not supported by the record (ComEd IB at 26), Rock Island asserts that the profile used in the analyses was based on recognized government and industry data sources and that its development was explained by Rock Island witness Mr. Berry in the record. (RI RB at 79)

In response to ComEd's contention that it is unreasonable to assume that (i) 4,000 MW of new wind generation will come on line at the same time in response to the Project, and (ii) the addition of new capacity will not change plans for other projects coming on line in the 2016-2020 period (ComEd IB at 29-30), Rock Island claims the assumption that 4,000 MW of new wind capacity will come on line by the time the Project is ready for operation is reasonable because the development and construction time for a wind farm is much shorter than that of a transmission line. (RI Ex. 10.0 at 12; RI RB at 79)

In response to ComEd's criticisms of RICL's assumption that the addition of this new capacity will not change plans for other projects coming on line in the 2016-2020 period, Rock Island cites Dr. McDermott's testimony that it is reasonable to assume that after this initial, near-term period, plans for other generation projects may change in response to the appearance of the Project and the associated new wind generation. It is for this reason that Dr. McDermott conservatively based his economic analysis solely on the LMP savings and wholesale electricity cost reductions that the Project and the associated new generation will produce in the first five years of operation. (RI RB at 80-81; RI Ex. 4.0 Rev. at 20-21, 29-30)

Rock Island responded to ComEd's argument that Dr. McDermott's economic analyses erroneously assumed that the costs of building and maintaining the Project are paid for by subscribing transmission customers and do not have to be netted against the Project's benefits. (ComEd IB at 27) Rock Island states that contrary to ComEd's assertions, the Moland-McDermott analysis does treat the wholesale energy payments paid to generators connected to the Project as a reduction in benefits to consumers. Moland and McDermott compared Illinois demand cost (which is the sum of all payments to generators, i.e., the sum for the year of the LMP in each hour multiplied by the energy supplied to meet load in each hour) in scenarios with and without the Project and the connected generators. According to Rock Island, the net consumer benefit that Moland and McDermott estimated is equal to (i) the base demand cost (without the Project) minus (ii) the demand cost with the Project, which includes all payments to generators connected to the Project. According to RICL, Mr. Moland's PROMOD analyses showed that the Project and the new generation using it to deliver energy into Illinois will lower the market clearing price. (RI IB at 43-44; Ex. 3.3 at 2; RB at 81)

Rock Island states that all generators, including the generators connected to the Project, will be paid that same market clearing price. Accordingly, the new, low-cost wind generators connected to the Project can both lower the price of energy by adding lower-cost supply and recover their costs (including their transmission service costs) by selling their output into the PJM market at the market clearing price. Rock Island asserts that these two results are in no way exclusive. (RI RB at 81-82)

Rock Island "points out" that (i) wind generators have no "energy" costs and can bid their output into the PJM market at zero or near-zero marginal cost, and (ii) by bidding in at zero or near-zero marginal cost, the wind generators will "almost always" be selected by the grid operator as resources to be dispatched. PJM's Security Constrained Economic Dispatch ("SCED") operates to determine which generators are dispatched to minimize the cost of electricity to consumers while maintaining security of the grid. (RI

RB at 82, citing Exs. 2.15 at 17-18; 10.26 at 15) Because other (thermal) generators bid into the market at a positive marginal cost, the market clearing price set by the grid operator almost always will be above zero. For example, Mr. Moland's PROMOD analyses purport to show, under the "Business as Usual" scenario, that the average LMP in PJM Illinois in the first year of the Project's operation is $33.90 per MWh with the Project and $36.46 per MWh without the Project. In the fifth year of the Project's operation, the LMP in PJM Illinois is $43.68 per MWh with the Project and $45.67 per MWh without the Project. (*Id.*, citing RI Ex. 3.3 at 2)

With zero "energy" costs, the revenues that the wind generators receive for their electricity, at the market clearing price, goes to recover their capital and maintenance costs and their transmission charges -- even though their participation in the market lowers the market-clearing price. According to Rock Island, in addition to the revenues they receive from wholesale market sales of energy, wind generators will receive additional revenues from selling RECs and may also receive revenues from selling capacity. (*Id.*) Rock Island also asserts that the analyses performed using the revenue requirements model developed by Commission Staff demonstrate that revenues received by the wind generators from selling energy and capacity are likely to be sufficient to recover the costs of the Project and the connected wind farms. Rock Island states that these analyses show that the Project and the connected generation produce net present value revenue requirement reductions in almost all cases, which means that no additional revenues beyond these market based revenues are needed to recover the costs of the wind farms and the Project. (*Id.* at 82-82, citing RI Ex. 10.26 at 39-40 and 10.29) Further, the analyses performed using the Staff "financial model" showed that, considering the range of scenarios analyzed, the Project's benefits exceed its costs by billions of dollars on a net present value basis. (RI at 83)

Rock Island disputed ComEd's argument that Rock Island has not taken into account the operating guides that PJM may impose on the Project to address reliability concerns identified by PJM and which, according to ComEd, will restrict the amount of energy that can be transported on the line. (ComEd IB at 26-27, 29) Rock Island claims it has demonstrated that the potential operating guide identified in PJM's August 2013 SIS Report is feasible and achievable. Rock Island provided a "detailed, step-by-step explanation" of the potential operating procedure requiring redispatch of the generation connected to the Project within 30 minutes, showing that this operating procedure, if it in fact is required by PJM, is feasible and readily achievable within 30 minutes. (RI IB at 91-93; RB at 83-84, Ex. 2.15 at 26-32; Ex. 2.20)

Rock Island claims it also demonstrated that the other potential reliability issues identified in PJM's August 2013 SIS can be satisfactorily addressed by the installation of additional fast-acting voltage support equipment, which Rock Island plans to install and has included in the Project cost estimate; these other potential reliability issues will not require operating limitations on the Project. Dr. Galli went through each potential reliability issue identified in the PJM August 2013 SIS report and explained how each potential issue would be mitigated, whether through network upgrades, the installation of dynamic reactive power equipment on the Project, the operation of PJM's SCED, the implementation of a specific operating procedure, or a combination of these approaches.

(RI IB at 86-91; RB at 84; RI Exs. 2.15 at 14-26; and 2.18) Rock Island Ex. 2.18 is a table prepared by Dr. Galli which purportedly lists each potential reliability issues identified in the PJM August 2013 SIS, the technical resolution of the issue, the economic impact of the technical resolution on the Project, and where in the evidence each issue and its resolution is discussed. (RI RB at 84)Rock Island disputed ComEd's argument that Mr. Naumann is a more qualified witness than Dr. Galli on the question of whether the operating limitation indicated by the PJM August 2013 SIS -- in the event of an outage of a ComEd 765 kV line connecting to the Collins Substation -- is feasible. (ComEd IB at 29) Rock Island states that Dr. Galli holds a Ph.D. in Electrical Engineering, is a Senior Member of the Institute of Electrical and Electronics Engineers, and has over 15 years of experience in the electric transmission industry in both technical and managerial roles including power system planning and operations. His experience includes "substantial work" with HVDC transmission lines. (RI Ex. 2.0 at 1-2) Dr. Galli's analyses in this case of the possible need for operating restrictions to meet PJM requirements were supported by the work of Siemens, Rock Island's technology vendor for the Project's converter stations and a "world leader" in HVDC technology with over 17,000 MW of HVDC capacity installed worldwide. (RI RB at 84-85)

Rock Island states that studies conducted by Siemens demonstrate that the need for most, and possibly all, of the potential operating restrictions identified in the PJM August 2013 SIS can be eliminated by the dynamic reactive power equipment that Rock Island will install on the Project. (RI Ex. 2.15 at 11, 19-20; RI RB at 85) Finally, Rock Island states that the record shows that a senior executive of PJM told a senior executive of Exelon, in writing, that based on PJM's prior operating experience, generator redispatch to reduce the injection level from 3,500 MW to 700 MW could be completed within 30 minutes of the triggering event. (RI Ex. 2.17 at 3; IB at 88-89; RB at 86; see also RI Exceptions at 15)

Moreover, RICL asserts, the economic benefits of the Rock Island Project are based on the delivery of low-cost renewable energy from wind generators in the Resource Area to PJM. Its studies assume that the Project will deliver about 15,000,000 MWh of electricity on an annual basis, which represents about a 49% utilization factor for the line. Thus, any implication that the Project must be delivering 3,500 MW into PJM at all times in order to produce its anticipated economic benefits would be erroneous. (RI RB at 86-87)

PROMOD, the modeling software used by Mr. Moland, explicitly incorporates transmission limits based on North American Electric Reliability Corporation power flow cases, and uses an economic dispatch of generation subject to reliability constraints that mimics the operation of the PJM SCED. Therefore, the substantial benefits calculated by Mr. Moland, based on the Project's delivery of low-cost energy, include the limits of the PJM grid to accept the Project's energy deliveries. (RI RB at 87-88, citing RI Ex. 3.0 at 3, 5-6, 9; Ex. 2.18; see also RI Exceptions at 16)

Rock Island responds to ComEd's "unfounded" assertion that Rock Island has failed to include in its economic studies network upgrades originally assigned to Rock Island that will cost hundreds of millions of dollars because of the PJM retool facilities

study, which -- according to ComEd -- will be required if generators want to actually inject levels of energy like that assumed in RI's economic models. (ComEd IB at 28-29) Rock Island states that PJM's August 2013 re-tool SIS showed that only $24 million of network upgrades are needed. According to RICL, this outcome was not the result of PJM re-assigning system upgrade costs to other market participants, as ComEd suggests, but rather was the result of substantially revised and updated study assumptions made by PJM. Rock Island states that the only evidence ComEd cites for its assertion are two lines from Mr. Naumann's rebuttal testimony that make a very general reference to unspecified network upgrades required to operate above 700 MW of FTIR, and one answer in cross-examination. (RI RB at 89, citing RI Ex. 2.11 Rev. at 12, 15-18 see also RI Exceptions at 16)

In Section IV.A.1.4 of its reply brief, RICL takes issue with ComEd's argument that the Project is not necessary to provide adequate, reliable and efficient service to customers. (ComEd IB at 30-32)

As part of its argument, Rock Island disputed ComEd's assertion that there is no evidence that without the Project, customers will be unable to access adequate generation or the types of generation and/or RECs required to satisfy the Illinois RPS. (ComEd IB at 32) Rock Island states that the amounts of electricity from renewable resources needed to meet the RPS requirements of Illinois and other PJM states when they reach their maximum levels -- in 2025 for Illinois -- far exceed the currently installed renewable generation capacity in the region. (RI RB at 92, citing RI Ex. 10.0 at 15-18; and WOW Exs. 1.0 at 8-9, 22, 1.9, and 3.0 at 5) Second, assuming that sufficient additional wind generation could be built in Illinois or Indiana to meet the 2025 RPS requirements, RICL claims the electricity and RECs provided would be higher-cost than the electricity and RECs that would be produced by new wind generation in the Resource Area, which has higher average wind speeds and therefore higher capacity factors and lower costs per MWh generated. (*Id.*, citing RI Ex. 10.0 at 7-8, 20)

Finally, Rock Island states that ComEd's argument is that because the Illinois RPS can be satisfied by the purchase of RECs from Illinois or adjoining states without a requirement that the electricity be delivered into Illinois, the new wind generation plants that could be developed in northwest Iowa could sell their RECs to Illinois buyers without delivering their electricity into Illinois, and therefore do not need the Project. (ComEd IB at 32, citing ComEd Ex. 3.0 at 6) Rock Island responds that ComEd's argument ignores the fact that new wind generation will not be developed in the Resource Area unless new transmission infrastructure such as the Project is constructed to connect the Resource Area with load and population centers like northern Illinois and thereby enable the wind generators to deliver their electricity to and sell it into a market where there is a demand for it. (RI RB at 92-93, citing RI Exs. 1.0 at 24-25 and 10.0 at 6-7, 9-11; and WOW Ex. 1.0 at 10-12)

Response to Staff

In response to Staff, Rock Island notes that the final two sentences in the section of Staff's Initial Brief on §8-406(b)(1) state, "Staff believes that the evidence supports a finding that the Project would promote an effectively competitive electricity market, but that the preponderance of evidence in favor of such a finding is not a strong preponderance and is subject to "considerable uncertainty." Staff notes that there is no evidence suggesting that the Project would prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects." (RI RB at 93, citing Staff IB at 60)

Rock Island also cites the following language on pages 24-25 of Staff's Initial Brief:

> Staff witness Zuraski testified that, based on his evaluation, he expects that the Project's benefits would outweigh its costs. (Staff Ex. 3.0, 5.) He further expects that the additional costs of [Rock Island]-dependent wind farms in the Resource Area would not significantly exceed the maximum allowable budget for incremental renewable resources expenditures by utilities and ARES in Illinois. *Id.* Both of these factors favor a finding that the benefits of the Project are 'needful and useful to the public,' and that they are likely to be at least commensurate with the costs of the Project. On the other hand, Mr. Zuraski testified that his analysis is subject to considerable uncertainty. (*Id.*)

Rock Island argues that despite its somewhat "equivocal nature," Staff's conclusion, standing alone, is sufficient basis for the Commission to find that the Project satisfies §8-406(b)(1). Rock Island also states that Staff's conclusion is based "solely" on Mr. Zuraski's original analyses that were presented in his direct testimony. Rock Island contends that Staff's statement that the Project's net benefits are subject to "considerable uncertainty" does not reflect the full record in this case. Rock Island states that, using Staff's financial model, Rock Island witness Mr. Berry ran additional sets of analyses with certain corrections and updates.

In total, Mr. Berry made seven updates or assumption changes to Staff's model, and otherwise left it unchanged. Mr. Berry: (1) modeled the Project's transmission charges as paid by wind generator customers; (2) added the latest interconnection cost information for new wind generation in Illinois, based on the latest data for the PJM interconnection queue; (3) updated the wind generation capital costs in the model based on the latest data from Lawrence Berkeley National Laboratory's 2012 Wind Technologies Market Report; (4) revised the model to use PJM's capacity value methodology for wind generation; (5) corrected several tax treatments in the model; (6) updated the Project's capital cost to reflect Rock Island's latest estimate; and (7) changed the number of years of LMP savings reflected in the model from 5 years to 40 years, so that the period of LMP savings matched the period over which the Project's capital costs were assumed to be recovered. (RI RB at 94, citing RI Exs. 10.14 Rev. at 50-53, and 10.26 at 39)

Rock Island states that Mr. Zuraski had the opportunity to comment on changes (1) through (5) in his rebuttal testimony and did not take issue with them. Rock Island states that change (6) was an "uncontroversial" update made after Mr. Zuraski filed his rebuttal testimony. Rock Island says the only change with which Mr. Zuraski did take issue was item (7), and in response, Mr. Berry also ran analyses with only five years of LMP savings incorporated as preferred by Mr. Zuraski. (*Id.* at 94-95, citing RI Ex. 10.26 at 38)

Rock Island claims the results of these updated model runs, including only the changes with which Mr. Zuraski did not take issue, show that the uncertainty cited by Staff is actually inconsiderable, because the average benefits to consumers are many billions of dollars and the Project is the least cost alternative in over 90% of the sensitivity cases analyzed. The average consumer benefit of the Project (net present value revenue requirements savings) was $6.9 billion under Staff's "Model A" and $8.6 billion under Staff's "Model B," using a 5% discount rate, which Mr. Zuraski also used. Further, under Staff "Model A," the "Rock Island Project + Iowa Wind" scenario had a lower revenue requirement (compared to the "Illinois Wind" scenario) in the "base case" and in 93% to 97% of the sensitivity cases, depending on the discount rate used. (RI RB at 95, citing RI Ex. 10.26 at 38-40)

Rock Island also contends that its merchant business model means that RI and its investors, not the public, take the risk of incorrect future projections. (Rock Island RB at 95)

RI addressed a statement in Staff's Initial Brief that Mr. Zuraski questioned Rock Island's inclusion, in its analysis of the Project's benefits, of the increase in employment, revenues of manufacturing and service enterprises, landowner wealth and State and local tax revenues that will result from construction and operation of the Project and the associated wind farms, as detailed in the economic impact study presented by Rock Island witness Dr. Loomis. Staff then quotes Dr. Loomis's response on this point, which "makes it clear" that his economic impact analysis "is a separate but complementary analysis to the other benefits of the Project described by other Rock Island witnesses." Rock Island believes that at this point there is no issue with Staff as to how the economic impacts of the Project, estimated in Dr. Loomis's study, should be taken into account. (RI RB at 99, citing Staff IB at 24)

Rock Island takes issue with Staff's "uninformative characterization" of Dr. McDermott's and Mr. Berry's testimony on the appropriate economic analysis where Staff states that, "In effect, these RICL witnesses argue that the Commission need not concern itself with the cost or the viability of RICL's Project because RICL is a 'merchant transmission company' and not a traditional public utility." (Staff IB at 27)

In response, Rock Island states Dr. McDermott testified that the competitive market will determine whether the Project is needed, justified and least cost by the decisions of generators and wholesale power purchasers to utilize the Project to transport power. (RI Ex. 4.2 at 10) Rock Island "points out" that Dr. McDermott's analysis focuses on the

prices actually paid by consumers, which is not the same as ignoring costs. (RI RB at 100, citing RI Ex. 4.0 Rev. at 2; see also RI Exceptions at 18)

Rock Island addressed Staff's statement that ComEd witness Mr. Naumann "described how the cost of wind farms interconnecting to [Rock Island] could be 10 times what Mr. Berry cited as the cost of connecting Illinois wind farms to the existing PJM grid." (Staff IB at 28) Rock Island states that in making the calculations that supported this assertion, Mr. Naumann selected the two potential wind farm sites -- out of 16 listed on Rock Island Ex. 10.19 -- that were the farthest distance from Rock Island's western converter station site, and so his calculation was "deliberately skewed." (RI RB at 100-101, citing RI Ex. 10.26 at 30) Second, Staff "apparently missed" that Mr. Naumann's calculation was based on erroneous information in Rock Island Exhibit 10.19 about the locations of potential wind farms in the Resource Area which was corrected in Rock Island Exhibit 10.19 Rev. According to Rock Island, when Mr. Naumann took this correction into account and revised his calculation, his figure of connection costs of $800,000 per MW for the two wind farms in the Resource Area that he had analyzed was reduced to $100,000 per MW (Tr. 888-889), which "simple math" shows reduces "10 times the cost of connecting Illinois wind farms to the existing PJM grid" to a much more modest 1.25 times. (RI RB at 99-100)

Third, Rock Island states that Mr. Naumann's numbers were further skewed because he assumed each wind farm would build its own generator tie line, when in fact, groups of nearby wind farms would likely share the costs of a tie line, thereby reducing the tie-line costs per MW of wind generation capacity. Mr. Berry testified that based on his experience, a more reasonable estimate of connection costs for wind farms in the Resource Area would be $80/kW ($80,000/MW), which is similar to the generation tie line costs for wind farms in Illinois and Indiana. (*Id.*, citing RI Ex. 10.26 at 28-31)

In summarizing ComEd's position, Staff stated that ComEd witness Naumann stated that hundreds of millions of dollars of upgrade costs may be required for the Project. (Staff IB at 41) Rock Island responds that Staff cited Mr. Naumann's direct testimony, which reflected the November 2012 PJM SIS for the Project; whereas, PJM issued the August 2013 re-tool SIS which concluded that only $24 million of system upgrades are required. Rock Island states that these costs have been included in the current Project cost estimate of $1.833 billion. (RI RB at 101, citing RI Exs. 2.11 Rev. at 11-12; 10.14 Rev. at 36; 10.26 at 37)

Staff also cited Mr. Naumann's testimony that although the transmission capacity of the Project is 3,500 MW, Rock Island has only requested 1,192 MW of FTIR into PJM. RI responds that the economic benefits of the Project are based on the delivery of low-cost energy, not a constant 3,500 MW of capacity, and therefore do not require that RI have 3,500 MW of FTIR into PJM. (*Id.* at 101-102)

Rock Island disputed Staff's assertion that "existing and future MISO-approved projects, like transmission projects anywhere else in the United States, can be considered substitutes for the [Rock Island] Project." (Staff IB at 46) First, Rock Island states that the existing MISO-approved transmission projects -- the MISO MVPs -- are not substitutes

for the Project; these projects have different objectives and will accomplish different things. Rock Island states that the MISO MVPs are intended, among other things, to enable the construction of new renewable generation to meet RPS goals in the MISO footprint. According to Rock Island, the rationale for the MISO MVPs does not include providing renewable energy to northern Illinois or the PJM system; nor do the MISO MVPs increase transfer capacity from the wind-rich areas of MISO in to PJM in an amount sufficient to displace the need for the Project. Rock Island states that the MISO MVPs create additional transfer capability into PJM equal to only about 12% of the capacity of the Rock Island Project, and therefore, would be able to serve only a small fraction of PJM demand. (RI RB at 102-103, citing RI Exs. 10.14 Rev. at 59-61, and 10.26 at 35)

Second, Rock Island states that a transmission project "anywhere else in the United States" cannot be a substitute for the Project, and Staff does not explain how this could be the case. Rock Island states if Staff is intending to convey that under the Illinois RPS, Illinois utilities can buy RECs from Illinois or adjoining states -- and ARES can buy RECs from anywhere within MISO or PJM -- then a transmission line "anywhere in the United States" may be a partial substitute for the Project to the extent that such transmission line stimulates the development of new wind generation in states from which either Illinois utilities or Illinois ARES can buy RECs to meet their Illinois RPS requirements. However, Rock Island argues, RECs produced by wind generators located in areas with higher average wind speeds can be expected to be lower cost than RECs produced by wind generators in areas with lower average wind speeds because the basic economics of producing electricity are superior at higher wind speed sites. (RI RB at 103, citing RI Ex. 10.0 at 8)

Rock Island next argues that only a transmission line delivering energy into Illinois, such as the Project, will allow new generating capacity to access the Illinois electricity markets and increase competition in those markets and provide, potentially, lower cost supplies of electricity to Illinois, as the Project will do. (RI RB at 104) Rock Island further argues that the Project will enable and stimulate the construction of significant new, high-capacity factor, cost-effective wind generation resources in the Resource Area; a transmission line "anywhere in the United States" will not. (*Id.*)

Rock Island asserts that in evaluating Staff's statement that a transmission line "anywhere in the United States" would be a substitute for the Project, the Commission should consider the goals and objectives of the General Assembly in establishing the RPS provisions in the IPA Act. Rock Island states that the legislative findings and declarations for the IPA Act call for "procuring a diverse electricity supply portfolio" that "includes cost-effective renewable resources in that portfolio" in order to "ensure the lowest total cost over time for adequate, reliable, efficient, and environmentally sustainable electric service" and "decreas[e] environmental impacts." (RI RB at 104-105), citing 20 ILCS 3855/1-5(5) and (6)) Rock Island submits that it was not the General Assembly's intent in enacting the RPS requirements to simply require Illinois electric utilities and ARES to buy RECs, from "anywhere in the United States," equal to a stated percentage of their MWh sales; rather, the intent was to force the inclusion of significant amounts of electricity from renewable resources in the electricity supply portfolio serving

Illinois consumers and to stimulate the actual use of electricity from renewable resources to serve electricity requirements in Illinois. (*Id.*)

Rock Island responds to Staff's statement that "Dr. McDermott's analysis actually does not show how the Project directly promotes the development of a competitive market." (Staff IB at 49) Rock Island claims Dr. McDermott's analysis showed that the Project will enable thousands of MWs of new generation resources to access the electricity markets in Illinois and compete to serve load, and that the amount of "economic capacity" available to serve load in Illinois, based on the FERC's Delivered Price Test, will increase. Rock Island states that because the new generation resources will be lower cost, as evidenced by the reduction in LMPs and wholesale demand costs they will produce, there will be downward pressure on market prices. In addition, the amount of REC capacity for Illinois and the region will increase. (RI RB at 105, citing RI Ex. 4.0 Rev. at 2-4, 31-33, 34-39) Rock Island argues that an increase in capacity competing to serve demand, and downward pressure on market-clearing prices, are indicators of the further development of an effectively competitive electricity market. Rock Island states that these data are also indicators of a competitive market that operates efficiently (because the introduction of new, lower-cost competitors lowers prices) and is equitable to customers -- because the reductions in LMPs and wholesale costs to serve load will be ultimately reflected in the prices paid by retail electricity customers. (*Id.*, citing RI Ex. 4.0 Rev. at 5-6, 8-12)

Other Factors Relating to Public Convenience and Necessity

Although not discussed in its BOE, Rock Island's Exceptions contain "proposed text" relating to "other factors bearing on public convenience and necessity." (RI Exceptions at 18-21)

Among other things, Rock Island states that the Project will be "a significant employment driver in Illinois during its construction." (*Id*. at 20, citing RI Exs. 5.0 at 1-2, 4, 6 and 5.2)

Rock Island further states that it will build the Project in Illinois under project labor agreements with labor unions including the IBEW, the International Union of Operating Engineers and the Laborers' International Union of North America. (*Id*. at 20-21, citing RI Ex. 1.7 at 12) Rock Island cites testimony by James Bates on behalf of IBEW that "the creation of quality union jobs is important to the state in this time of economic recovery" and that "construction and installation of the Project facilities in Illinois, including the construction and installation of the converter station in Channahon, Illinois, will be a very substantial construction project in Illinois" and "will be beneficial to the overall economy of Illinois." (*Id*. at 21, citing IBEW Ex. 1.0 at 4-5)

B. Staff Position

1. Necessary to Provide Adequate, Reliable and Efficient Service

The first heading in Section IV.A.1 of Staff's initial brief is titled, "Whether the Project is necessary to provide adequate reliable, efficient service." Staff witness Yassir Rashid concluded that the proposed project is not needed to provide electric service adequacy, efficiency, or reliability. (Staff Ex. 1.0 at 8) He said "RICL's main argument for the proposed project is that it will promote the development of competitive electricity markets…." According to Staff, RICL does not argue or demonstrate that the reliability of the electric transmission system in Illinois will be compromised if the proposed project is not built. (Staff IB at 20, citing Staff Ex. 1.0 at 8) Furthermore, Staff argues, RICL has not provided an independent study, such as load flow study, from transmission system operators in Illinois, namely PJM and MISO, that would demonstrate the need for the project, or any studies, such as load flow studies, from its witness. (*Id.*; Staff Ex. 4.0 Rev. at 2-3)

Staff says Petitioner "admits" in its testimony that no public need has been established for its proposed project. Specifically, Rock Island witness Berry states that "permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost." (RI Ex. 10.13 at 3-4)

As such, Staff "believes that Rock Island has not demonstrated that the Project is the 'necessary to provide adequate reliable, and efficient service' test based on any tendency of the RICL to maintain or improve the reliability of the electric system in Illinois." (Staff IB at 20-21)

Staff states that it also examined whether Rock Island demonstrated that the project is necessary within the meaning of Section 8-406(b)(1) in some other way. (Staff IB at 21)

In direct testimony, Mr. Rashid stated that RICL did not provide information on whether it examined alternatives to the proposed project to ensure that the proposed project met the least-cost criterion defined in Section 8-406 of the Act. (Staff Ex. 1.0 at 9.) To address Mr. Rashid's point, in his rebuttal testimony, Mr. Galli presented a "hypothetical exercise" that compares a transmission line project similar to the RICL proposed project to different projects that utilize AC transmission lines. (RI Ex. 2.11 at 3-4) Mr. Galli's conclusion of that exercise was that it showed "the clear cost benefit of an HVDC project to an AC project." (*Id.* at 7) Staff states in its initial brief that the hypothetical exercise "did not factor in the increased cost of interconnecting to HVDC transmission lines as opposed to AC transmission lines and the implications of that increased cost given that the proposed project is supposed to offer open access

transmission services." The Commission notes that Staff does not provide a citation to the record for this statement. (Staff IB at 21)

Mr. Rashid took issue with the potential difficulty that Illinois generator and loads along the DC portion of the transmission line will face both to access and to making sound and economic use of the proposed project. (Staff IB at 21-22, citing Staff Ex. 1.0 at 7-8) Mr. Galli stated that RICL plans to "provide open access transmission service" to the proposed project. (RI Ex. 2.0 at 5) In addition, RICL witness David Berry stated, "Rock Island will be obligated to provide non-discriminatory, open access transmission service to all "eligible customers…" (RI Ex. 10.13 at 4)

In its initial brief, Staff argues, "Although RICL plans to provide open access to the transmission line, this offer is only feasible outside the HVDC portion of the transmission line." Staff adds, "Theoretically, interconnection with high voltage alternating current ("HVAC") generators or other transmission lines along the HVDC portion of the project is attainable; however, it requires installation of AC-to-DC and/or DC-to-AC converters at each location where interconnection with the HVDC transmission line is sought." Staff further argues that the addition of these converters will increase the interconnection cost significantly, making such an endeavor impractical and economically infeasible, and that "this economic disadvantage will likely hinder Illinois electricity producers' and electricity users' ability to access the HVDC transmission line." (Staff IB at 21-22; Staff Ex. 1.0 at 7-8)

According to Staff, Rock Island's proposed project is best suited to serve energy producers who access the HVDC transmission line at the west end of the transmission line -- in O'Brien County, Iowa -- and deliver their energy production to consumption centers at the east end of the HVDC transmission line (PJM Interconnection). (*Id.* at 22, citing Staff Ex. 1.0 at 7-8) In that sense, "for optimal use of the proposed project, it should be seen as analogous to a one-way highway with no entry or exit ramps that starts in northwestern Iowa and ends in northeastern Illinois." (*Id.*) The manner in which the Rock Island line is technically configured "would impose costs on Illinois electric producers – the installation of AC/DC and/or DC/AC converters at each location at which they wish to interconnect -- that would likely to render use of the facility economically infeasible and thus inequitable to such Illinois producers in practical terms." (*Id.* at 22-23)

RICL witness David Berry indicated that Rock Island's latest Project cost estimate is $1.833 billion. (RI Ex 10.26 at 37) In Staff's view, RICL has not shown whether this is the least-cost means of satisfying a service need. (Staff IB at 23)

Staff states that Mr. Rashid testified that RICL had failed to establish that Project is needed to maintain the reliability of the electric systems in Illinois. (Staff Ex. 1.0 at 3, 8) He also testified that it was not clear whether the proposed project, which Rock Island estimates will cost $2 billion overall, is the least-cost project that would further the cause that RICL identifies for implementing the proposed project. (*Id.* at 9) Mr. Rashid suggested that one such alternative would be an AC transmission line of equal load capacity as Rock Island's proposed DC line. (*Id.*; Staff IB at 28-29)

2. Zuraski Analysis

In its initial brief, Staff next addresses the testimony of Staff witness Zuraski. He testified that, to the extent the growing demand for renewable energy cited by Rock Island is based on Illinois renewable portfolio standards, that demand "is bounded and generally incapable of justifying, by itself, new transmission resources such as the RICL Project." (Staff Ex. 3.0 at 7-11) This is because: (1) the Illinois RPS includes budget constraints; (2) physical delivery of energy to Illinois is not a requirement of the Illinois RPS; and (3) the location of renewable energy resources within a state adjoining Illinois (like Iowa) is not required. (*Id.*) On the other hand, Mr. Zuraski noted that the project may be justified on the basis of an economic analysis comparing the Project's benefits and costs. (*Id.*, Staff IB at 23-24)

Mr. Zuraski stated that the testimony presented by RICL witnesses focuses only on benefits, and fails to compare those benefits to the costs of the Project. (Staff Ex. 3.0 at 11) Furthermore, RICL included several "benefits" that Mr. Zuraski said he would exclude from an economic analysis of the benefits and costs of the project. Specifically, he recommended against taking into account Rock Island's claims that project will increase employment, revenues of manufacturing and service enterprises, landowners' wealth, and tax revenues at the State and local levels. (*Id.* at 13-16; Staff IB at 24)

Notwithstanding the exclusion of the effects estimated by Dr. Loomis, Staff witness Zuraski testified that, based on his evaluation, he expects that the Project's benefits would outweigh its costs. (Staff Ex. 3.0 at 5) He also expects that the additional costs of RICL-dependent wind farms in the Resource Area would not significantly exceed the maximum allowable budget for incremental renewable resource expenditures by utilities and ARES in Illinois. In his view, both of these factors favor a finding that the benefits of the Project are "needful and useful to the public," and that they are likely to be at least commensurate with the costs of the Project. On the other hand, Mr. Zuraski testified that his analysis is subject to considerable uncertainty. (*Id.* at 5-6, Staff IB at 25-26)

In his evaluation, Mr. Zuraski employed a sensitivity analysis to determine how sensitive his overall results were to various individual factors, such as Project capital costs, the cost of renewable energy facilities, future market prices for electric energy, and the capacity factor of wind farms. While other inputs were held constant, some of these variables are still subject to uncertainty. (Staff IB at 25, citing Staff Ex. 3.0 at 16-46)

For example, Mr. Zuraski assumed the continuation of the $22 per MWH federal production tax credit, "which, based on NYMEX settlement prices as of May 31, 2013, is roughly two-thirds of the average price of PJM Northern Illinois Hub futures contracts for the 12 month delivery period from June 2013 through May 2014". Staff states, "However, Congress permitted these tax credits to expire on December 31, 2013. If these tax credits are not renewed, it could significantly affect the financial viability of new wind farms, and thus the viability of the Project." (Staff IB at 25)

Furthermore, for purposes of conducting his analysis, Mr. Zuraski assumed that the Project would be utilized to its full extent, thus enabling Project costs to be spread out over a large volume of capacity and energy sales. Staff adds, "However, this assumption may not be borne out; as ILA witness Gray and ComEd witness Naumann indicated …, there are no guarantees that the Project will be fully subscribed or that PJM will permit power injections nearing the Project's full capacity." (*Id.* at 25-26)

Staff also states that Mr. Zuraski's analysis relied on Project cost estimates provided by RICL. (Staff Ex. 3.1) He addressed neither the concerns of additional upgrade costs raised by ComEd witness Naumann nor the cost implications of the various concerns raised by witnesses for the land owner interests, relating to the impact of the Project on land values, wildlife, quality of life, historically-significant lands, and the legacies left behind by the affected land owners. (Staff IB at 26)

Staff states that in rebuttal testimony, RICL witness Berry agreed with Staff witness Zuraski's observation that Rock Island had presented certain claimed benefits of the Project, but had failed to compare those benefits to the cost of building, operating and financing the Project. (Staff IB at 26, citing RI Ex. 10.14 at 47-48) Mr. Berry defended RICL's approach, stating, "Rock Island is not asking electric consumers (or their retail electric providers) to pay for the cost of the Project and, as I explain above, Rock Island's business model requires that the users of the Project's capacity recover the cost of their capacity contracts from the proceeds from selling wholesale energy (along with capacity and RECs). Thus, the costs actually incurred by consumers related to the Project (buying wholesale electricity, capacity and RECs) are analyzed and discussed by Dr. McDermott." (Staff IB at RI Ex. 10.14 at 48)

RICL witness Dr. McDermott testified, "[T]he costs associated with the Project are paid through market-based rates not through a regulated cost of service approach. A revenue requirements analysis, like Mr. Zuraski's, is appropriate for a cost of service project that a traditional utility builds. It may not be relevant to a merchant transmission line like the Rock Island Project." (Staff IB at 26, citing RI Ex. 4.2 at 9-10)

According to Staff, these RICL witnesses in effect argue that the Commission need not concern itself with the cost or the viability of Rock Island's Project because RICL is a "merchant transmission company" and not a traditional public utility. Staff responds that there are real concerns that ratepayers may ultimately bear the Project costs. (Staff IB at 27) In support of its position, Staff cites testimony from Mr. Zuraski, who stated:

> First, I do indeed understand that the stated intent of RICL is that "the costs associated with the Project are paid through market-based rates not through a regulated cost of service approach." I do not question that this is RICL's intent, hope, and expectation. However, even the best-laid plans can go awry. In such an instance, RICL might very well beseech the FERC, the Commission, and/or Illinois and Iowa state legislatures to help get the Project back on track. Such assistance could end up costing ratepayers more than what it would cost if all projects were based solely on the

> interaction of entrepreneurs vying against one another in a "competitive market."
>
> He next stated:
>
> Second, RICL is more likely to seek such non-market assistance if it finds that it is unable to cover its costs (which in regulatory parlance, we usually call "revenue requirements"). This is why I relied on a revenue requirement model in my analysis. An axiom in competitive market analysis is that, in the long run, firms break even (i.e., they cover their costs, including a normal rate of return). I fear that this point was not made clear in my direct testimony, but I will make it now: I am not suggesting that RICL's services should or will be priced using a set of revenue requirement calculations. Rather, I was using those calculations in a sensitivity analysis to judge the likelihood that the Project would fail to succeed with market-based rates, and hence the likelihood that RICL would seek a different means of cost-recovery.

Mr. Zuraski then testified, "I agree that the Project must appear to RICL's potential customers (to the extent they are profit-seeking enterprises) to be part of profit-maximizing business plans, in order for RICL to obtain commitments from those potential customers. However, what RICL considers 'sufficient contracts to justify building' the Project depends on the risk-taking appetite of RICL's managers and investors and RICL's hopes and expectations for obtaining a bailout if plan A goes awry."

(Staff IB at 27-28, citing Staff Ex. 6.0 at 2-4)

In other words, Staff argues, the viability of the Project and the viability of the renewable resources that RICL expects to use the transmission resource are inextricably linked; and all the costs and all the benefits of these inter-related endeavors should be considered as fully as possible in order to determine whether the Project is sufficiently needful and useful. (Staff IB at 28) Staff cites a "similar point" made by ComEd witness Mr. Naumann, who stated, "While these costs will not be faced by the Rock Island Project, the costs to interconnect to the Project, together with the cost of construction of the wind resources, plus the cost Rock Island will charge the wind resources for use of its line, all impact a decision as to whether connection to the Project is economic, and thus impacts the economics of the Project." (ComEd Ex. 4.0 at 32)

3. Other Parties' Assessments

In its initial brief, Staff next describes other parties' "assessments of the need for the project." (Staff IB at 29-44)

4. Argument and Staff Conclusions regarding whether Project is Necessary

After that, Staff provides "Argument and Staff Conclusions." (Staff IB at 44-48) Staff believes that the degree to which Rock Island's Project is necessary, or whether the Project is "needful and useful," should be ascertained, among other things, by comparing the Project's benefits to its costs. In this case, the proposed construction project is a long-distance DC transmission line that has the potential to contribute to both national and state objectives of greater reliance on renewable energy. In addition, the Project has the potential to reduce the price of electric energy and provide other benefits to consumers. On the other hand, there are questions regarding whether the Project will succeed in attaining these goals. There is some question whether the Project will succeed at all and whether the potential benefits justify these risks.

Staff cites by testimony from Mr. Zuraski that in its direct testimony, RI did not demonstrate that the Project's benefits outweigh the costs. (Staff IB at 44-45, citing Staff Ex. 3.0 at 11) Specifically, he testified that, "The direct testimony presented by RICL witnesses focuses only on certain alleged benefits of the project. Rock Island has not compared the benefits to the project's expected costs." (*Id.* at 45, citing Staff Ex. 3.0 at 11) Staff states, "This is tempered somewhat by the Project's merchant transmission status." (*Id.*) If RICL were a traditional public utility, with a well-defined service territory and existing duty to serve customers within that territory, or a traditional public utility with a plan to provide service to a new community, Staff would be more concerned with Rock Island's potential for failure because of the direct rate consequences. Unlike those traditional cases, however, this proceeding involves a sole-purpose entity. Aside from Illinois landowners who do not want to transfer ownership of their property to the entity, and possible environmental consequences, "Project failure appears less likely to have serious immediate consequences for Illinois consumers or other Illinois utilities, unless RICL seeks rate recovery for any resulting stranded costs." (*Id.*)

Staff comments that RICL fashions itself a "merchant" transmission company. RICL states that it will set its transmission rates through negotiation with its client subscribers, rather than through a regulatory authority's translation of revenue requirements. In theory, Staff states, this merchant model provides some protection to retail ratepayers within Illinois, but witnesses for ILA, ComEd, Staff, and BOMA expressed concerns that retail ratepayers within Illinois are not entirely free of risk. Further, RICL has not ruled out the option of pursuing recovery of costs through retail rates. (Staff 46, citing Tr. at 1073-1076; RI Ex. 10.14 at 29-30)

Notwithstanding the potential benefits from the Project that Rock Island has identified, Staff believes it is noteworthy that the Project has not been determined to be necessary by either MISO or PJM. Since the Project, as planned, would deliver all of it transmitted power to the ComEd Zone within PJM, it is reasonable to focus on the PJM transmission expansion planning process. According to Mr. Naumann, the RICL Project has not been found by the PJM process to be necessary for either reliability, operating

efficiency or market efficiency reasons. Staff suggests, "While not controlling under Illinois law, this has probative value and is a factor the Commission should consider." (*Id.*)

Staff also finds it "noteworthy" that, while MISO specifically looks for projects to accommodate the renewable portfolio standards of MISO states, PJM's transmission planning process has no analogous goal to accommodate the renewable portfolio standards of PJM states. On the other hand, as ILA witness Dr. Gray noted, existing and future MISO-approved projects could contribute to the attainment of Illinois renewable portfolio standard goals in both Ameren (MISO) and ComEd (PJM) service territories. (Staff IB at 46, citing ILA Ex. 4.1 at 5-6) Staff adds, "For that matter, this could be true of transmission projects anywhere in the United States, since the Illinois renewable portfolio standards do not require delivery of energy into Illinois." (*Id.*, citing ILA Ex. 4.1 at 6)

Staff agrees that existing and future MISO-approved projects, "like transmission projects anywhere else in the United States," can be considered substitutes for the RICL Project. However, they can also be considered complements. That is, "there is no compelling evidence in the record of this proceeding showing that the RICL Project and these other projects are mutually exclusive; nor is there evidence that they do not all contribute toward attainment of the nation's and the State's renewable energy goals." (Staff IB at 46-47)

As for costs, Staff comments that Rock Island appears to take the position that its costs should be considered irrelevant to the Commission. In Staff's view, the Commission should reject this argument. RICL urges the Commission to consider costs "too narrowly." According to Staff, the Commission needs to consider the impact of the Project on the public, not just RICL; for example, the Commission needs to exercise its judgment to determine whether the impact on landowners and the environment have been adequately taken into account. (*Id.* at 47)

With respect to landowners, Staff believes RICL presents a "convincing case" that the compensation that it will purportedly offer to affected landowners is within, or at least approaching, a reasonable level; and that these costs have already been accounted for in the total cost figures that RICL presented. (Staff IB at 47, citing RI Ex. 7.30 at 3, et seq.; RI 7.31; RI Ex. 10.13 at 3)

With regard to the environment, Rock Island addresses concerns raised by landowner interests about the Project's potential to damage existing wetlands, forests, historical sites, and other conservation areas. Staff states, "First, the route development process identified potential wetland areas crossed by the Preferred Route and the Proposed Alternative Route, and RICL claims that it will avoid adverse impacts to wetlands to the extent possible and employ measures to minimize impacts where those impacts are unavoidable" (*Id.*) Staff next states, "Second, RICL must comply with the Clean Water Act and relevant regulations; and RICL must obtain permits from U.S. Army Corps of Engineers ("USACE"), IDNR, and the IEPA. RICL also claims it will cooperate with the IHPA and USACE concerning any historical or archeological sites along the

Project's route." (*Id.* at 47-48) Staff adds, "Finally, if the Project is successful in encouraging the construction of new wind farms in the Resource Area, those new wind farms may displace electricity production from less environmentally friendly generating resources." (*Id.* at 48)

In the final paragraph of the section of its brief titled, "Whether the Project is necessary to provide adequate reliable, efficient service," Staff asserts, "Nevertheless, it cannot be confidently stated, based on this record, that Rock Island has shown here that the Project is necessary to provide adequate, reliable, efficient service and is the least-cost means of satisfying the service needs of its customers as required under the first prong of Section 8-406(b)(1)." (Staff IB at 48)

5. Promotion of Development of Effectively Competitive Market

The next heading in Section IV.A.1 of Staff's initial brief is named, "Whether the Project 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." (*Id.*)

In its initial brief, Staff first summarizes the positions of RICL, IBEW, WOW, BOMA, ILA and ComEd on this issue. (Staff IB at 48-51)

With regard to the RICL position, Staff comments in part, "[RICL witness] Dr. McDermott acknowledges that the PJM wholesale market and the interchange between PJM and MISO are already competitive. He further acknowledges that his analysis assumes this existing competitive market. (*Id.* at 49, citing RI Ex. 4.0 at 12) Staff adds, "Thus, Dr. McDermott's analysis actually does not show how the Project directly promotes the development of a competitive market. Rather, it shows how the reduction in prices resulting from the Project are due, in part, to the existing competitive market." (*Id.*)

Staff next addresses the "Staff Analysis." Mr. Zuraski stated, "With respect to whether or not the proposed construction will promote the development of an effectively competitive electricity market, it is my opinion that an effectively competitive electricity market already exists. However, it is also my opinion that the RICL Project would not threaten the competitiveness of the electricity market." (Staff IB at 51, citing Staff Ex. 3.0 at 5)

In assessing the projected benefits and costs, Mr. Zuraski considered three ways through which approximately 15 million MWHs of additional RECs per year could be made available to Illinois firms subject to the State's RPS, and additional revenues that would be needed to cover the costs. These three ways were: (1) the scenario presented by RICL, building and operating the transmission project and building and operating new wind farms located near the western extreme of the project, and assumed a capacity factor of 40% for the wind farms; (2) building and operating the new wind farms located in Illinois without building and operating the proposed Project and used three different capacity factors; and (3) building and operating new wind farms located in the Resource

Area without building and operating the proposed Project, using several alternative capacity factors. (*Id.*, citing Staff Ex. 3.0 at 16-17, 27-28)

According to Staff, the results were "inconclusive and varied widely." (*Id.* at 52) For example, in Mr. Zuraski's Model A, the average results with a real discount rate of 5% was negative $1.8 billion when counting all LMP "savings." (*Id.*, citing Staff Ex. 3 at 32) It was a positive $100 million when counting only Illinois LMP savings. (Id). Staff states that in Mr. Zuraski's model, negative results correspond to a decrease in net costs, meaning that the project would lead to net economic benefits. (*Id.*, citing Staff Ex. 3 at 30) Mr. Zuraski explained that around these averages, the results of the sensitivity analysis vary between negative $7.9 billion and positive $5.8 billion when counting all LMP "savings" and between negative $5.9 billion and positive $7.8 billion when counting only Illinois LMP "savings." (Staff IB at 52) In general, the range between low and high is larger with lower real discount rates and smaller with larger real discount rates. (*Id.*, citing Staff Ex. 3 at 30)

Staff next summarizes Rock Island's response to ILA, ComEd, and Staff. On the issue of what constitutes a competitive market analysis, Dr. McDermott's responded to Mr. Zuraski as follows: "First, a competitive market analysis should look at the difference between market outcomes (or equilibria) under various assumptions such as with the line and without the line which is the approach I used in my Direct Testimony." Dr. McDermott added, "That is a proper market analysis of the value of the line. Comparing outcomes to hypotheticals, as Mr. Zuraski does, is a less theoretically sound approach, since the competitive market, not a theoretical model, will decide which alternatives actually proceed." (RI Ex. 4.2 at 9)

In response to RICL witness Dr. McDermott, Mr. Zuraski stated, "It is not clear what Dr. McDermott means by 'competitive market analysis.' There are many forms of economic analysis concerning competitive markets. Some concentrate on 'market outcomes (or equilibria),' while others concentrate on the behavior of economic actors or the structure of the market."

Mr. Zuraski continued, "Which type of analysis should be performed depends on what questions are being asked and the purpose of the analysis. In the case of Dr. McDermott's analysis, the apparent purpose was to identify the likely difference in electric energy prices between a world with the Project and a world without the Project. He was not attempting to address the likelihood of a world with the Project coming into existence, and he was not attempting to identify the factors that would impinge on such likelihood, as was I." (Staff IB at 53-54, citing Staff Ex. 6.0 at 1-2)

Mr. Zuraski next stated:

> Dr. McDermott's focus seems to be due to his contention that "the competitive market … will decide which alternatives actually proceed." (RI Ex. 4.2 [at] 9) However, this contention is only partially true. Presently, in this country, decisions to construct electric transmission lines and power

> plants are not the products of unfettered unregulated undisturbed competitive markets. For instance, decisions to construct electric transmission lines and power plants are heavily influenced by government intervention. In part, the success or failure of projects is determined by government subsidies and involuntary ratepayer subsidies. Thus, it is not unreasonable to pick apart these factors and determine the extent to which a project is bound to succeed, versus the extent to which it is bound to fail without additional largesse.
> (*Id.* at 54, citing Staff Ex. 6.0 at 1-2)

Dr. McDermott also stated, "Second, the costs associated with the Project are paid through market-based rates not through a regulated cost of service approach. A revenue requirements analysis, like Mr. Zuraski's, is appropriate for a cost of service project that a traditional utility builds. It may not be relevant to a merchant transmission line like the Rock Island Project. Mr. Berry discusses this issue further in his rebuttal testimony." (*Id.* at 54, citing RI Ex. 4.2 at 9-10)

In response, Mr. Zuraski stated:

> First, I do indeed understand that the stated intent of RICL is that 'the costs associated with the Project are paid through market-based rates not through a regulated cost of service approach.' I do not question that this is RICL's intent, hope, and expectation. However, even the best-laid plans can go awry. In such an instance, RICL might very well beseech the FERC, the Commission, and/or Illinois and Iowa state legislatures to help get the Project back on track. Such assistance could end up costing ratepayers more than what it would cost if all projects were based solely on the interaction of entrepreneurs vying against one another in a 'competitive market'. On the other hand, such an outcome would be less likely if RICL were to make the type of assurances discussed in the rebuttal testimony of RICL witness Berry.

He then stated:

> Second, RICL is more likely to seek such non-market assistance if it finds that it is unable to cover its costs (which in regulatory parlance, we usually call "revenue requirements"). This is why I relied on a revenue requirement model in my analysis. An axiom in competitive market analysis is that, in the long run, firms break even (i.e., they cover their costs, including a normal rate of return). I fear that this point was not made clear in my direct testimony, but I will make it now: I am not suggesting that RICL's services should or will be priced using a set of revenue requirement calculations. Rather, I was using those calculations in a sensitivity analysis to judge the likelihood that the Project would fail to succeed with market-based rates, and hence the likelihood that RICL would seek a different means of cost-recovery.

(Staff Ex. 6.0 at 2-4)

Dr. McDermott also stated, on rebuttal, " Third, while this may be an obvious point, it bears stating that a market-based transmission line must be the least-cost approach or the line will not obtain sufficient contracts to justify building it. If, for example, shippers could reach their desired markets using an alternative lower-cost resource they will not sign contracts." (RI Ex. 4.2 at 10)

Mr. Zuraski responded, "I agree that the Project must appear to RICL's potential customers (to the extent they are profit-seeking enterprises) to be part of profit-maximizing business plans, in order for RICL to obtain commitments from those potential customers. However, what RICL considers 'sufficient contracts to justify building' the Project depends on the risk-taking appetite of RICL's managers and investors and RICL's hopes and expectations for obtaining a bailout if plan A goes awry." (Staff IB at 55, citing Staff Ex. 6.0 at 4)

Dr. McDermott also stated, "Fourth, my analysis directly addresses the question raised by Sections 8-406 and 8-503 of the PUA concerning a proposed project's ability to promote competitive markets by looking at the net direct economic benefits (lower energy prices) and the effect on creating a larger regional generation market (by increasing import capacity)." (RI Ex. 4.2 at 10)

Dr. McDermott further stated, "Fifth, while there is uncertainty in projecting any future benefits, especially long-term benefits, my analysis focuses on the shorter-term and, therefore, more certain benefits. Further, because the Project is not recovering its costs through rates, there is no risk to ratepayers that the benefits to ratepayers are lower than the costs they must pay. The investors who back Rock Island bear that risk." (RI Ex. 4.2 at 10)

Mr. Zuraski responded, "RICL's investors may face the brunt of the risk. However, due to the potential, discussed above, for RICL to seek government assistance to resuscitate the Project if it begins to financially falter, it is an overstatement to say 'there is no risk to ratepayers.'" (Staff Ex. 6.0 at 5)

Argument and Staff Conclusion

The final heading in this subsection of Staff's initial brief is called, "Argument and Staff Conclusion." (Staff IB at 56-60)

Staff states that Rock Island maintains its Project will enhance competition for electric energy and capacity and renewable energy credits. Staff comments, "However, this would be true of any and all transmission projects within MISO or PJM. Interpretation of the 8-406(b) requirement that a project 'will promote the development of an effectively competitive electricity market…,' in this proceeding (or any transmission upgrade case), cannot be so literal that any and all transmission projects would meet the requirement, automatically." (Staff IB at 57)

Thus, in considering whether the utility has shown that the Project "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," Staff argues, without citation to the record, that "the Commission may consider whether the utility has shown that: (a) the Project contributes to increasing the degree of competition for electric energy, capacity availability, renewable energy credits, or other electricity market goods and service; (b) the benefits of the increased competition outweigh the costs of the Project; and (c) the Project will not prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects." Staff further states, "In Staff's view, substantial uncertainties exist as to whether the evidence supports such a finding." (Staff IB at 57)

On the one hand, Staff states, RICL witnesses present theoretical arguments supporting its contention that the project enhances competition, along with the results of market model simulations measuring the impact of the added resources on competition. (*Id.* at 57-58) In addition, Mr. Zuraski presented a financial model supporting his expectation that "the RICL Project will promote or contribute to an effectively competitive electricity market that operates efficiently … and is the least cost means of satisfying those objectives," but also noted that "this assessment is subject to considerable uncertainty." (*Id.*, citing Staff Ex. 3.0 at 5-6)

On the other hand, Staff states, ComEd and ILA witnesses focused on the uncertainties. Mr. Naumann's argument is that the impact of the Project on competition is unknown because "the Project is not sufficiently developed and has too many critical unknown factors." Dr. Gray's argument is that the impact of the Project on competition is unknown for several reasons noted by Staff. (Staff IB at 58)

Staff agrees that there is significant uncertainty about whether the Project will successfully promote or contribute to an effectively competitive electricity market that operates efficiently and is the least cost means of satisfying those objectives. (Staff IB at 58-59, citing Staff Ex. 3.0 at 3) As described above, under the "Staff Analysis" subsection, in assessing the projected benefits and costs, Mr. Zuraski considered three ways through which approximately 15 million MWHs of additional RECs per year could be made available to Illinois firms subject to the State's RPS, and additional revenues that would be needed to cover the costs. (Staff Ex. 3.0 at 16-17, 27-28)

According to Staff, the results were inconclusive and varied widely. (Staff IB at 59) Staff cites the same examples described under the "Staff Analysis" subsection above.

In the final paragraph in this subsection of its brief, Staff states, "With respect to whether the proposed construction will promote the development of an effectively competitive electricity market, an effectively competitive electricity market already exists, but the RICL Project would not threaten the competitiveness of the electricity market." (Staff IB at 59-60, citing Staff Ex. 3 at 5) Whether the RICL Project will promote or contribute to an effectively competitive electricity market that operates efficiently and is

the least cost means of satisfying those objectives largely depends on whether the project's benefits outweigh the costs. (*Id.*, citing Staff Ex. 3 at 6)

In conclusion, Staff "believes that the evidence supports a finding that the Project would promote an effectively competitive electricity market, but that the preponderance of evidence in favor of such a finding is not a strong preponderance and is subject to 'considerable uncertainty.'" (*Id*. at 60, citing Staff Ex. 3 at 6) Staff states that there is no evidence suggesting that the Project would prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects. (*Id.* at 60)

In its RBOE, Staff responds to arguments in the ILA and ComEd BOEs regarding Mr. Zuraski's testimony. Staff states that the Illinois Administrative Procedure Act provides that "[u]nless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence." (Staff RBOE at 7, citing 5 ILCS 100/10-15) Staff argues, "To be clear, the Staff position is that a preponderance of the evidence in this proceeding supports the proposition that the project will promote the development of an effectively competitive electricity market." (*Id*.)

C. ComEd Position

1. Promotion of Development of Effectively Competitive Market

ComEd argues, "RI has not demonstrated that the project '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.'" (ComEd IB at 22; see also ComEd BOE at 13-17; ComEd Exceptions at 116-117)

RI's Petition stated, "The Rock Island Project will be able to connect over 4,000 MW of wind turbine capacity in the wind-rich Resource Area and to deliver up to 3,500 MW of this power to Illinois, to meet the demand for electricity from renewable resources and the demand for electricity generally in Illinois." (RI Petiton at 8)

It then stated, "The Project will have the capability to deliver approximately 15 million megawatt-hours ("MWh") of electricity per year from the Resource Area to Illinois. By providing over 4,000 MW of capacity with access to the Illinois wholesale power markets, the Rock Island Project will increase available capacity and energy in the wholesale power markets and, ultimately, in the retail power markets in Illinois." (ComEd IB at 22-23, citing Petition at ¶ 15)

According to ComEd, the evidence did not develop as the petition alleged. RI witness Dr. McDermott "evaluate[d] whether the proposed construction of the Rock Island Project will satisfy the statutory criterion in §8-406 that the Project will 'promote the development of an effectively competitive electricity market that operates efficiently [and] is equitable to all customers…'" (ComEd IB at 23, citing RI Ex. 4.0 REV. at 2)

Dr. McDermott states that his analysis shows that "that the Project will allow lower cost generation to enter the Illinois market, which will create competitive downward pressure on prices in the wholesale market." He further states that the Project "promotes an effectively competitive electricity market by increasing the size of the supply side of the market competing to serve load in Illinois and opening the Illinois market to lower cost generation resources." (RI Ex. 4.0 REV. at 2)

In ComEd's view, the record developed in this case fails to support the findings necessary to grant a CPCN pursuant to Section 8-406(b)(1) because the Project is "far too indefinite and speculative to support such findings, and the analyses conducted by Dr. McDermott and others are based on unsupported and flawed assumptions regarding generation type, deliverability, costs, and benefits." (ComEd IB at 23)

ComEd argues that the Project is, at this stage, "little more than a concept." (*Id.*) To function, the Project must have transmission service subscribers, i.e., generators or load customers, accounting for a majority of the line's capacity. To be financed and built, the Project must have transmission customers willing to guarantee or support, for project finance purposes, "sufficient capital to cover the total Project cost." (RI Ex. 10.13 at 4) The Project, however, "has attracted no customers," and has attracted "no committed lenders and investors" to finance construction of the Project in the first place. (ComEd IB at 24, citing Tr. 122, 273 and 820) ComEd also argues that the financing condition addressed in Section VIII of this Order below should not be used to support a finding that that the Project will promote the development of an effectively competitive electricity market. (ComEd BOE at 13, 16-17)

ComEd next argues that customers are not all that is required. To deliver power in the quantities and types modeled – largely wind – new generation must be developed, constructed, and interconnected. The generation projects are not built, no binding commitments to build generation are in place and the Production Tax Credit recently expired. (ComEd IB at 24, citing Tr. 759, American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 407, 126 Stat. 2313, 2340 (2013)) ComEd asserts that the risks are sufficiently great that Staff insisted upon a condition that major construction activity not start until full financing is procured. (ComEd IB at 24)

Furthermore, to be built in Illinois, the Iowa portion of the Project must be first approved by the Iowa Utilities Board. The Iowa process is in its "infancy." The first filing was not made until July, 2013. According to RI's CEO, the related franchise petition was not even filed as of the time of the hearing. Moreover, RI does not expect an Iowa decision until 2015, and there is "not a statutory clock associated with the Iowa process." (ComEd IB at 24, citing Skelly, Tr. 234-235)

In addition, ComEd argues, RI cannot afford to build the Project. RI has no construction financing, and if RI, its siblings, and Clean Line spent their "last dollar," they would have less than 2% of the funds required. But, ComEd asserts, RICL will not do

that, because the evidence also shows that Rock Island will not commit to fund and build Project. (*Id.* at 24-25, citing Berry, Tr. 1060-1061)

Section IV.A.1.b of ComEd's initial brief is titled, "The Project is Based on Assumptions Regarding Generation Type, Deliverability, Costs, and Benefits that are Unrealistic, Speculative, and/or Otherwise Flawed. (ComEd IB at 25)

Subsection IV.A.1.b.i is called, "Not 100% Wind Generation." RI witness Dr. McDermott "assumes that a hundred percent of the generation that will provide the power that will flow on the line is wind." (Tr. 122) ComEd states that other RI witnesses also confirmed that the input data for their analyses are based on an hourly energy profile "equivalent to 100% wind." (ComEd IB at 25, citing Galli, Tr. 757-758)

In response, ComEd states that RI is prohibited from limiting the line to carrying only wind and FERC denied RI's request to give wind generation a preference. *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142 at 31. RI witness Dr. Galli acknowledged that RI must serve any generator that seeks to inter-connect, no matter how non-renewable. (ComEd IB at 26, citing Tr. 758)

According to ComEd, the record shows that neither the Commission nor any party can know today which type of generators will become subscribers of the line, if any ever do. ComEd argues, "The 100% wind assumption and the wind-based hourly energy profile used to develop RI's economic analyses are not supported by the record. As a result, the conclusions from such analyses cannot be relied upon to demonstrate compliance with the requirements for a CPCN." (*Id.*; see also ComEd BOE at 14)

Subsection IV.A.1.b.ii of ComEd's initial brief is titled, "Delivery Quality and Limitations." ComEd asserts that RI's economic analyses also fail to take into account the delivery limitations that will result from the "to be determined" operating guides that PJM has indicated will be necessary to ensure system reliability. Rather, RI assumes that the line is able to provide full delivery of all energy reflected in the applicable hourly energy profiles used to conduct the economic analyses. ComEd witness Mr. Naumann testified that the analyses of benefits presented by RI's witnesses are incomplete and based on a speculative assumption about the Project's ability to deliver power. (ComEd IB at 26, citing ComEd Ex. 4.0 REV at 18-19)

According to ComEd, RI assumes the Project will permit the delivery and injection into the Illinois market, on a regular basis, of far more than the 1,192 MW of firm transmission capacity that would be available to RI under both of its queue positions. (ComEd IB at 26-27, citing ComEd Ex. 1.0 2nd REV at 28, and ComEd Ex. 4.0 REV, at 18 -- assuming delivery of approximately 15 Million MWh of wind generation per year). ComEd states, "To arrive at this assumption, RI posits that "operating guides" (a series of actions including generator redispatch that must be able to be completed within 30 minutes in case of a triggering event) will be able to relieve limitations on the import of power into Illinois so that far more that 1,192 MW can be delivered on a regular basis over the proposed line." ComEd asserts that those guides are yet to be determined and

RI's assumption that they will have no effect on deliverability is premature, speculative, and not supported by the record. (ComEd IB at 27; see also ComEd BOE at 14-15)

Subsection IV.A.1.b.iii of ComEd's initial brief is called, "Excluded Costs." The economic analysis undertaken by RI witness Dr. McDermott assumes that the cost of building and maintaining the line are completely paid by subscribing generators and therefore do not have to be netted against projected Illinois benefits. (ComEd IB at 27, citing Tr. 122) In other words, RI's studies "presume that Illinois customers pay none of the costs of the Project, but that those costs are borne by out of state generators – presumably wind." ComEd argues, "These economic assumptions underpinning RI's arguments are not valid. The assumption that those generators will fund the $2 billion Project without any ultimate cost to Illinois consumers is simply not credible." (*Id.* at 27; ComEd RB at 19-20)

ComEd cites testimony by Staff witness Mr. Zuraski that "[t]o be a financial success, the costs of the Project and the costs of those wind farms utilizing the Project must be recovered." (Staff Ex. 6.0 at 6) The generators will not "eat" them, but will pass them on "in the same way that sale tax, even though nominally ... [o]n the seller, it eventually finds its way to the customers through the workings of the market." (Zuraski, Tr. 681) ComEd argues that RI's economic analysis ignores this "inevitable reality." (ComEd IB at 27-28)

ComEd also states that Dr. McDermott acknowledges that RI's "economic analysis does not incorporate the cost that wind generators would have to incur to interconnect to [the] western interconnection point of the line …." (Tr. 133)

ComEd next cites testimony from Mr. Zuraski that the direct testimony of RICL witnesses "focuse[d] only on certain alleged benefits of the project…" and that RICL "has not compared the benefits to the project's expected costs." (ComEd IB at 28, citing Staff Ex. 3.0 at 11)

ComEd also contends that RI persists in excluding from its economic studies network upgrades originally assigned to RI that will cost hundreds of millions of dollars because of the retool facilities study. (ComEd IB at 28-29, citing RI Ex. 2.11 REV at 12) According to ComEd, the better evidence is that the hundreds of millions of additional dollars of network upgrades that were originally identified by PJM and attributed to RI will be required if generators want to actually inject, on a consistent basis, levels of energy like that assumed in RI's economic models. (*Id.* at 29, citing ComEd Ex. 4.0 at 3, and Naumann, Tr. 965; see also ComEd RB at 20)

ComEd claims the evidence shows that the injection of more than the anticipated 1,192 MW of energy, firm or not, poses a very real risk to system stability that must be mitigated. (ComEd Ex. 4.0 REV at 8-9) ComEd states that RI believes an "as yet incomplete and untested" PJM/ MISO "operating guide" can safely address this problem on a permanent basis. ComEd argues, "On this key point, the testimony is in sharp dispute: RI's claim is made solely by Dr. Galli, an RI 'developer' who has no experience

operationally in PJM, let alone ComEd's transmission zone, and whose institutional interest is developing the Project." (ComEd IB at 29) ComEd offers the testimony of Mr. Naumann, who has "decades" of experience, including in operations and security coordination in PJM and Illinois, in particular, and whose institutional interest is the protection of the system. ComEd asserts, "Mr. Naumann points out – and RI witnesses admit, as they must – that the consequences of error are potentially catastrophic." (*Id.*, citing ComEd Ex. 4.0 REV at 9-12; see also ComEd BOE at 15)

In Subsection IV.A.1.b.iv of its initial brief, ComEd addresses "Other Questionable Assumptions." ComEd states that RI asks the Commission to assume that -- notwithstanding RI's claim that it will connect over 4,000 MW of new wind turbine capacity in the Resource Area and deliver up to 3,500 MW of this power to Illinois -- there would be "no changes to investment decisions by other investors for projects coming online in the 2016-2020 period as a result of the Project, and likewise units that are close to closing do not accelerate their retirement plans in these years as a result of the Project." (ComEd IB at 29-30, citing RI Ex. 4.0 REV at 21) According to ComEd, it is irrational to assume that 4,000 MW of new wind turbine capacity will come online all at once, and it is even more questionable to assert that no other projects will be impacted by the very large increase in capacity and delivery that RI asserts will occur. ComEd argues, "Such an assumption is neither reasonable nor rational, and the costs or loss of benefits to Illinois resulting from the impact of this project on other projects are not reasonably reflected in RI's economic studies." (ComEd IB at 29, citing ComEd Ex. 4.0 REV at 36; see also ComEd BOE at 17)

2. Necessary to Provide Adequate, Reliable and Efficient Service

Section IV.A.2 of ComEd's initial brief is titled, "The Project is Not Necessary to Provide Adequate, Reliable, and Efficient Service to Customers." (see also ComEd RBOE at 13-15)

According to ComEd, RI has emphasized throughout this Docket that its project is a market venture that will be built if the market supports its construction, not a project that must be built to satisfy any planning or operational standard. (ComEd IB at 30, citing RI Ex. 10.13 at 4) Indeed, RI "makes clear" that unless it contracts with transmission service customers, "the project will not go forward." (*Id.*, citing RI Ex. 1.0 at 32) At the same time, RI does "not clearly eschew" seeking a CPCN under the "necessary to provide adequate, reliable, and efficient service" provision of the Act. Its Petition invokes this portion of Section 8-406. (Petition at ¶ 21) However, ComEd argues, no deficiency in the reliability of the transmission system is alleged in the Petition and the references to reliability are simply generic statements that transmission reinforcement is desirable (ComEd IB at 30, citing Petition at ¶ 34)

In ComEd's view, RI has not shown that the Project is required to provide adequate, reliable, and efficient service to customers. RI acknowledges that it did not submit the Project to be reviewed and prioritized on the basis of any public need by PJM and stakeholders. (ComEd IB at 30, citing RI Ex. 10.14 at 57-58)

ComEd asserts that the Project is not required to overcome any overloaded circuit, instance of instability, low voltage, or other system condition. (ComEd Ex. 1.0 2nd REV at 6, 47) ComEd adds, "Nor does RI claim that it is." Dr. Galli, RI's "technical witness," stated:

> Q. And in your testimony you're not testifying that the electric system in Illinois is not reliable, correct?
> A. That is correct.
> Q. You're not testifying that the proposed addition of the Rock Island Clean Line is required to make the Illinois system more reliable, correct?
> A. That is correct.
> Q. And it remains to be correct that Rock Island has not provided independent studies from PJM or MISO demonstrating need for this project in this proceeding, is that correct?
> A. That is correct.
> (ComEd IB at 31, citing Tr. 749-750; see also ComEd RBOE at 14-15)

ComEd argues that the testimony of RI concerning "loss of load" risk, apart from its "serious flaws," neither claims there is any elevated risk of loss of load without the Project and the additional generation, nor explains why the existing RTEP process would not be the appropriate means to identify the best and least cost means of remedying any such deficiency, if one were to actually exist. (ComEd IB at 31) ComEd states, "Nor does RI present any study or other evidence showing that the Project is the least cost means of providing additional reliability or security." (*Id.*, citing ComEd Ex. 1.0 2d REV at 39; see also ComEd RBOE at 14)

ComEd asserts that the "vast majority" of what RI claims as adequacy, reliability, or efficiency benefits are unrelated claims about how the Project will promote access to wind energy or allegedly reduce its costs; and that there is no evidence that customers, absent the Project, will be unable to access adequate generation or the types of generation and/or RECs required to satisfy the Illinois RPS. (*Id.* at 32, citing ComEd Ex. 3.0 at 6) ComEd contends the Project is simply too indefinite and uncertain to reliably support any claim of increased access to any particular generator or type of supply.

As discussed in the conclusions in Section VI.J below, ComEd witness Mr. Naumann raised a concern that Rock Island has not identified the network upgrades required to properly connect the proposed line to ComEd's existing 765 kV transmission system. The Proposed Order stated, in part, "As a condition of this Order, Rock Island shall not attempt to effect the interconnection [with ComEd] until it has fully complied with the applicable requirements of PJM and the other conditions in this Order, and has signed all interconnection agreements." In its BOE, ComEd proposed "alternative exceptions language" that would revise this condition to read as follows, "As a condition of this Order, Rock Island shall not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction and interconnection of the subject

line in Illinois, until it has fully complied with the applicable requirements of PJM and the other conditions in this Order, and has signed all interconnection agreements." (ComEd BOE at 20; Exceptions at 113)

3. Reply Brief

In ComEd's reply brief, Section IV.A.2 is titled, "The Project is Unnecessary to Promote Competition or Reliability." In Section IV.A.2.a, ComEd argues, "The Project itself is uncertain and speculative." (ComEd RB at 15)

In ComEd's view, "The absence of customers is not, as WOW, Environmental Intervenors, and IBEW suggest, a formality flowing from differences in timing between generation and transmission projects." (*Id.* at 16, citing WOW IB at 15-16; IBEW IB at 9-10; Environmental Intervenors IB at 15-16) ComEd argues, "To the contrary, they cite no evidence assuring future customers; their argument is optimistic speculation." (*Id.*)

ComEd asserts that this "is a critical failure with long-reaching implications" that sheds considerable doubt over the Project's viability. (*Id.*) ComEd argues, "Though RI and its supporters have continually highlighted the theoretical demand for renewable resources, RI's witnesses also have acknowledged they are unsure whether demand will be sufficient to complete the Project." (*Id.*, at 16-17, citing RI Ex. 10.13 at 4 ("[P]ermanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost.")

Section IV.A.2.b of ComEd's reply brief is titled, "RI's Claim that the Project Will 'Promote Development of an Effectively Competitive Electricity Market' Also Fails Due to Its Flawed Underpinning." (ComEd RB at 18)

ComEd states that RI and its supporters posit that the Project will increase the supply of low-cost renewable energy to Illinois customers, suppressing energy and REC prices. (RI IB at 30, 42-49, 69; EI IB at 4-13; WOW IB at 6-13; IBEW IB at 6-7) In response, ComEd argues, "However, RI cannot even establish the Project will carry renewable energy. Rather, RI and its supporters speak only to their belief that future customers will be renewable resources." (ComEd RB at 18) RI does not, and cannot, assert that it has any commitments from any generators now in development. ComEd also states that the Production Tax Credit that subsidized wind development has expired, and that FERC held that RI must serve all customers – whether wind or coal powered – equally. ComEd adds, "Prohibited by federal law from giving preference to renewable resources, RI cannot predict the resource mix or the cost of the resources developed in the Resource Area." (ComEd RB at 19-20)

ComEd states that RI promises that Illinois customers will pay none of the costs of building and maintaining the line because these costs will supposedly be paid for by subscribing wind generators (RI IB at 6). According to ComEd, "That unrealistic

assumption is fatal. To begin with, without customers, generators, or market interest, there can be no assurance of such 'merchant' funding. Indeed, RI expressly leaves open the possibility of turning its back on this premise and directly recovering the Project's costs from retail ratepayers." (ComEd RB at 19, citing Skelly, Tr. 277)

In its reply brief, ComEd also argues that Section 8-406(b)(1) not only requires a proven reliability need, but requires the Project be proven to be the "least-cost" means of addressing it. RI's least-cost evidence is "directed solely" at showing its line is the least-cost way of delivering new wind power. For instance, RI compares the Project to the status quo and the prospect of building additional wind resources in Illinois. (ComEd RB at 22, citing RI IB at 68-69) According to ComEd, this has nothing to do with whether the Project is the least-cost means of reducing LOLE or increasing reliability. Likewise, ComEd argues, RI's comparison between high-voltage direct current ("HVDC") and traditional alternating current technology is directed solely to the best way to build a line to western Iowa, and it sheds no light on the best way to reduce LOLE or to improve any other measure of reliability. (*Id.*, citing RI IB at 69-72)

In ComEd's view, the studies "highlighted" in RI's Initial Brief do not show that the Project will even enhance system reliability. (*Id.*, citing RI IB at 61-67) Rock Island argues that the Project will improve reliability by delivering more supply to load and increasing transmission transfer capability. (RI IB at 61-65) However, ComEd asserts, the record is "entirely unclear" whether sufficient demand exists for the Project in the Resource Area; unless generators are constructed in the Resource Area, the Project will be incapable of delivering electric energy during periods of a shortfall. (ComEd RB at 23) ComEd claims the Project's contribution to system reliability is questionable in this respect. Additionally, because the Project is nothing more than a lengthy, high-voltage generator "lead line," its ability to support the system if a transmission outage occurs is limited to injecting energy at ComEd's Collins substation – the electrical equivalent of installing a generator at Collins. Further, ComEd argues, if it relies on its newly proposed 765kV interconnection, it will have reintroduced a single point of failure into a project that RI's reliability claims assume is redundant. (ComEd RB at 23, citing RI Ex. 2.15 at 42, RI IB at 10, 36)

D. ILA Position

1. Necessary to Provide Adequate, Reliable and Efficient Service

According to ILA, "Rock Island has not met its burden to show that the Project qualifies for a CPCN because neither Rock Island nor PJM has shown that the Project is needed for reliability; and the alleged benefits from the Project being used to transport wind energy from the Resource Area (generally, NW Iowa) to the PJM market region are too speculative to support a CPCN." (ILA IB at 16) ILA argues, "It is premature for the Commission to consider granting a CPCN to Rock Island because too many risks, unknowns and uncertainties exist surrounding an interconnection with the [ComEd] facilities at the Collins substation." (*Id.*)

The ILA contends that Rock Island has not shown that this project is needed to supply Illinois with reliable electric power. (*Id.*, citing ILA Ex. 1.0 REV at 3; see also ILA RBOE at 3))

The focus of ILA witness Dr. Gray's testimony was that Rock Island, and the Project, do not meet the requirements under Section 8-406(b) for a CPCN. With the advent of regional transmission organizations ("RTOs"), including MISO and PJM, and policies and orders of the FERC, the role of transmission-owning public utilities and state regulatory commissions has changed as those roles pertain to electric transmission planning, markets, and operations. Dr. Gray testified that MISO has a process for determining the need for high-voltage transmission projects within MISO's multi-state operations; and its process produces an annual MISO Transmission Expansion Plan ("MTEP"). PJM has a similar process for the area of its multi-state operations, producing its Regional Transmission Expansion Plan ("RTEP"). (ILA Ex. 7.0 at 3-4)

Dr. Gray testified that MISO administers wholesale electricity markets and coordinates transmission planning within a multi-state region that includes most of Illinois. The MTEP process includes a broad array of interested stakeholders that provide input into a comprehensive process that identifies essential transmission projects, which go before the MISO Board of Directors for approval. The objective of this process is to ensure the reliability of the transmission system over the planning horizon; provide market efficiency and other economic benefits; facilitate public policy objectives, such as renewable portfolio standards ("RPS"); and address other issues and objectives that the stakeholder process helps identify. The development of the MTEP includes several steps, with multiple stages of review and refinement as the process proceeds. (ILA IB at 17, citing ILA Ex. 7.0 at 4)

Dr. Gray further testified that MISO's MTEP process identifies and evaluates transmission projects designed to provide value in excess of cost under many future policy and economic conditions. Such projects, which will provide regional public policy, economic, and/or reliability benefits spread across MISO's footprint, become designated as Multi Value Projects ("MVPs"). As an example, Dr. Gray described MISO's 2011 MTEP, in which MISO's Board identified 17 high-voltage transmission projects, which became integrated into MISO's subsequent 2012 MTEP planning model. Dr. Gray stated, "According to the 2012 MTEP, these 17 MVPs promise the delivery of 41,000,000 MWh of renewable energy each year." (*Id.*, citing ILA Exs. 7.0 at 5 and 7.1 at 5-6)

Dr. Gray stated that the area where Rock Island expects wind generation to be developed to connect to the Project, referred to as the Resource Area, is located in the MISO footprint. He said the Project would operate as an "unusually long generator lead line" connecting such generators to the PJM alternating current transmission system operated by PJM, and therefore, would not contribute to the high voltage transmission expansion of the MISO transmission network. (ILA Ex. 7.1 at 6) He testified that as a result, the range of benefits provided by transmission projects selected as MISO MVPs would not apply to or be provided by the Rock Island DC Project, which would move

power exclusively in one direction and would not be a fully integrated part of the regional AC network. (ILA IB at 18, citing ILA Ex. 7.1 at 6-7)

Dr. Gray stated that, even though the Project was not a product of the MISO MTEP process, Rock Island had expected the Project would be reflected in the MISO MTEP for 2012 but that it was not; that a MISO planning appendix had identified it as conceptual. (*Id.*, citing ILA Ex. 7.0 at 5-6)

ILA states that the MISO MTEP process, and resulting MVPs, were recently addressed in the context of another major electric transmission project. According to ILA, in the Order in Docket 12-0598 -- the Ameren Transmission Company of Illinois ("ATXI") Illinois Rivers Project -- the Commission determined the ways many of the factors and considerations pertaining to a MISO-undertaken planning process and resulting project feed into and relate to the utility's presentation of the project when it seeks a CPCN. ILA states that the Commission, and parties, benefitted by the ATXI Project having been vetted through a thorough process, with review by technical experts at MISO and elsewhere who understand the regional grid and could consider the Project in the context of the overall MISO region. (ILA IB at 18-19)

ILA contends that even though the ATXI Project arose out of the MISO MTEP process, the Commission nevertheless "rightfully reviewed it" from a technical and operational perspective, rather than merely rubber-stamp it because it had been vetted in the MISO MTEP as an MVP. (ILA IB at 19) ILA believes a key point here is that the Commission's review occurred only after MISO had performed its role with respect to the ATXI Project, and not before. This is in contrast to the Rock Island Project, for which Rock Island is urging the Commission to place its trust in MISO, and PJM, to do their jobs prospectively, without any subsequent review by this Commission, and other interested Illinois stakeholders who would not have been as involved in the RTO processes. In ILA's view, the Commission must conduct its own review that is sufficient to satisfy itself that Rock Island and its proposed Project meet the statutory requirements under PUA Section 8-406; the Commission may not abdicate its statutory responsibility to MISO, to PJM, or to Rock Island. (*Id.*)

ILA states that in contrast to the Rock Island Project, the ATXI Project ICC Docket 12-0598 was developed through a multi-year MISO planning process beginning with a Regional Generation Outlet Study in 2008, the start of a detailed analysis of the transmission system that led to the implementation of the ATXI Project along with other MVPs. ILA asserts that these MVPs, including ATXI's Project, were developed utilizing reliability and economic analyses applying several future scenarios to determine the robustness of the designed portfolio under different potential energy policies. The ICC found that "a 345 kV transmission line is necessary to address transmission and reliability needs in an efficient and equitable manner and will benefit the development of a competitive electricity market," and that the record, which included the testimony of a witness from MISO -- "provides no grounds for the Commission to generally find that the Illinois Rivers Project is not the best approach to meet the needs" involved. The Commission concluded that "the record supports a finding that the type of project

represented by the Illinois Rivers Project is necessary and appropriate under Section 8-406.1(f)(1)." (ILA IB at 19-20)

Dr. Gray also described the corresponding structure and processes for PJM. He said PJM administers wholesale electricity markets and coordinates transmission planning for the PJM region, which, while including the ComEd service territory, mainly encompasses eastern states. The PJM RTEP process is similar to MISO's MTEP process, considering the effects of system trends such as long-term electricity load growth, generator retirements, patterns of generation development, demand response, and energy efficiency. (ILA Ex. 7.0 at 6) He stated that PJM has not evaluated, and will not evaluate, through its RTEP process, whether the Rock Island Project is needed. (ILA IB at 21, citing ILA Ex. 7.2 at 1)

ILA states that in ICC Docket 13-0657, ComEd is seeking approval for its Grand Prairie Gateway Project, and that ComEd's Petition describes how its project resulted from PJM's RTEP process, with PJM selecting the project in October 2012 following its analysis of several projects that addressed the issues involved with the ComEd transmission system. (ILA IB at 21)

ILA states that the Project was also not included in PJM's RTEP for 2012, despite Rock Island's expectations that it would be included (even though not a project resulting from the PJM RTEP process), and that and it was not apparent to Rock Island why it was excluded. (*Id.* at 22, citing ILA Ex. 7.0 at 6-7) Dr. Gray stated that PJM is unlikely to treat the Project as potentially real, rather than conceptual, unless and until the Project has adequate subscribers. (ILA Ex. 7.0 at 7)

Dr. Gray stated that under the first prong of Section 8-406(b)(1) -- "that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers" -- the statutory standard appears to place the burden on Rock Island to demonstrate customer need for the Project before RICL is eligible for a CPCN; whereas, "because the Project has no customers, RICL appears to be requesting a different sequence, whereby the Commission issues a CPCN first, and then RICL attempts to demonstrate customer demand, or need, for the Project." (ILA IB at 22-23, citing ILA Ex. 7.0 at 8)

Rock Island took issue with Dr. Gray's direct testimony on this point, arguing that because the Project was designed as a merchant project, it necessarily is not meant to have customers at this stage. ILA states that Dr. Gray, in his rebuttal testimony, responded to Rock Island's argument by stating that Rock Island's argument highlights a significant weakness in its business model, by which Rock Island is circumventing the regional planning processes normally utilized for new interstate electric transmission projects. Dr. Gray stated that, regardless of Rock Island's business model, the PUA Section 8-406 requirements still apply and must be satisfied in order for a CPCN to be granted, and that the need to be shown is "customer" need, not needs of the public in general. (ILA IB at 23, citing ILA Ex. 7.2 at 3)

ILA also states that Staff engineering witness Yassir Rashid and ComEd witness Steve Naumann both testified that the Project is not one that is needed for electric service reliability. (ILA IB at 23; see also ILA RBOE at 3)

2. Promotion of Development of Effectively Competitive Market

Dr. Gray next examined whether Rock Island and the Project satisfied the alternative, second prong of Section 8-406(b)(1), which states, "or that the proposed construction 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."

In his view, Rock Island has failed to satisfy this second prong requirement for several reasons. (ILA IB at 25, citing ILA Exs. 7.0 at 10 and 7.2 at 8) First, he said the significant negative land-use impacts and externalities that Rock Island and the Project would impose on the Illinois public for the primary benefit of the eastern PJM states to meet their RPS goals.

Second, 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. He said Rock Island witness Berry used eight hypothetical wind farms, with assumed locations and operating capacity factors, from which he derived hypothetical production data that was provided to Rock Island witness Moland to use in his PROMOD simulation results. Rock Island witness Dr. McDermott then took those PROMOD results to develop his economic analysis. Dr. Gray testified that because the operating or other characteristics of any wind farms that may materialize are unknown, and the FERC refused to grant Rock Island's request to prohibit non-renewable energy generators from connecting to and using the Project, any analysis based on Mr. Berry's hypotheticals lacks validity. (ILA IB at 26, citing ILA Ex. 7.0 at 11-12)

Third, Dr. Gray stated that Rock Island has reserved the right to seek to switch the project from merchant status and have allocated, to Illinois electricity consumers, future transmission costs of unknown amounts. He testified that Rock Island President Michael Skelly, in his direct testimony, left open the possibility of seeking cost recovery for the Project through the regional cost allocation process. Such a change in the way the Project is financed would result in Project costs being allocated to load-serving entities, such as ComEd, and their customers. As Dr. Gray pointed out, a transmission project designed as a cost recovery or cost allocation project would normally go through the RTO planning process (MISO MTEP or PJM RTEP) and be subjected to a broad group of stakeholders and enhanced scrutiny. ILA adds, "A post-development cost-allocation request would lack the discipline, openness and scrutiny it should [have]." (ILA IB at 26-27, citing ILA Ex. 7.0 at12)

The subject of the possible re-classification of the Project to one whereby Rock Island is able to recover Project costs through tariffed rates rather than through negotiated

contracts with willing subscribers was the subject of further testimony during this proceeding, with Rock Island offering to place certain conditions on its ability to seek cost-recovery treatment. Rock Island's "final word" on the matter was presented through the surrebuttal testimony of Rock Island witness Berry wherein he, speaking for Rock Island, further modified the condition under which Rock Island could re-structure the Project as a cost-recovery project rather than one by which revenues would depend upon voluntary Rock Island - subscriber negotiations. (ILA IB at 27, citing RI Ex. 10.26 at lines 486-497)

ILA argues, "Rock Island's assurance that, if it decides to switch the Project to a rate-recovery model, it will come back to the Commission for permission to have is Project costs imposed on Illinois retail ratepayers through regional cost allocation, may have some surface appeal but the assurance is superficial. Many unknown factors surrounding such a process remain – "the devil's in the details". (ILA IB at 27-28) ILA states that Staff witness Mr. Zuraski acknowledged that certain questions remain unanswered by Mr. Berry. ILA states, "Mr. Berry failed to indicate, for example, (i) what section of the PUA might govern such a proceeding; (ii) what showing Rock Island would be required to make; (iii) what standard the Commission would apply in making a decision; or (iv) what time period within which the Commission would need to make its decision." (ILA IB at 28, citing Tr. at 687-688) ILA stated that Mr. Zuraski could not think of a reason Rock Island would seek a change to cost allocation unless it was under financial distress, meaning it was not making an adequate rate of return on investment, or possibly was losing money. (*Id.*, citing Tr. at 689)

Fourth, Dr. Gray contended that Rock Island is unwilling to adequately protect the Illinois public from the risks of failure of the Project. (ILA IB at 25, citing ILA Ex. 7.0 at 10) Dr. Gray stated that a wind energy project typically has a decommissioning plan including an escrow fund or other financial security to help cover decommissioning costs and land reclamation costs in the event the project fails and is no longer used. (*Id.* at 28-29, citing ILA Ex. 7.0 at 13) In its initial brief, ILA states that Rock Island pointed out that it is uncommon for electric transmission line developers to have to post financial security to protect against the possible decommissioning of the project. ILA argues, "The Rock Island Project, however, is not comparable to other transmission projects in that, (a) it is not designed to have regulated rate recovery protection, and (b) it will be housed in a single purpose legal entity. In these two important aspects, then this Project more closely resembles a wind energy project, and financial security is therefore a reasonable requirement to impose on the Project owner." (ILA IB at 28)

Dr. Gray's "fifth reason" as to why Rock Island has not met its burden under the second prong test of PUA Section 8-406(b)(1) was that the modeling of temporary reductions in locational marginal prices, due to importation of low marginal cost wind energy into northern Illinois, is not tantamount to demonstrating that the Project will promote the development of an effectively competitive electricity market in Illinois. (ILA IB at 25, citing ILA Ex. 7.2 at 8) Dr. Gray stated that many changes have taken place in the Illinois electricity market to enhance competition in the six years since the competition prong of Section 8-406(b)(1) was added. Rock Island's modeled temporary price reductions do not, in Dr. Gray's view, equate to the transparency, low entry and exit

barriers, low transaction costs, low externalities, and the absence of market power that are characteristic of effectively competitive electricity markets. (ILA IB at 29-30, citing ILA Ex. 7.2 at 7-8)

In its initial brief ILA next addresses the Building Owners and Managers Association's ("BOMA") support of the Rock Island project insofar as it "is market-based and does not increase costs to BOMA/Chicago members." (ILA IB at 30, citing BOMA Ex. 1.0 at 3) ILA states that BOMA also conditions its support to the extent it increases reliability. ILA argues, "In fact, a decrease in reliability is a factor mitigating against BOMA's support for the project. With this said, BOMA has absolutely no opinion as to the technical aspects of the project." (ILA IB at 30, citations omitted)

In its BOE, ILA states that Staff witness Mr. Zuraski acknowledged that his analysis is subject to considerable uncertainty. (ILA BOE at 11)

ILA also argues that the financing condition addressed in Section VIII of this Order below should not be used to support a finding that the competition prong criterion has been met. (*Id*. at 10-11, 14)

E. IAA

IAA, also known as the Farm Bureau, did not put on witnesses. IAA did cross-examine other Parties' witnesses. IAA also filed initial and reply briefs, in which it addresses "whether [the Project is] necessary to provide adequate, reliable, efficient service or will promote development of an effectively competitive electricity market." IAA's position is that "no need exists for the Project." (IAA IB at 9)

IAA argues, "By Rock Island's own direct admissions, it does not assert that the Illinois electricity market is inadequate, unreliable, inefficient, or uncompetitive" or that "the Project is required, or necessary, to make the Illinois electricity market adequate, reliable, efficient, or competitive." (IAA IB at 9, citing Tr. 162 and 749-750) According to IAA, the effect of the Project on the reliability of the electric system is unknown at this time, and Rock Island has presented no evidence demonstrating that that reliability will be adversely affected without the Project. In addition, economist Richard Zuraski of the ICC Staff has opined that a competitive electricity market already exists in Illinois. (*Id.*, citing Staff Ex. 3.0 at 5)

IAA cites testimony by ComEd that Rock Island "has not claimed or shown that the Project is necessary for reliability, operating efficiency, or market efficiency in the regional planning process…" (IAA IB at 10, citing ComEd Ex. 1.0 at 6) IAA asserts that RICL has not provided a single study, such as a load flow study, to demonstrate that the reliability of the Illinois electric transmission system will be compromised if the Project is not completed. (*Id.*, citing Staff Ex. 1.0 at 3) IAA also contends that, as a merchant project, Rock Island currently has incomplete re-tooled System Impact Studies and Facility Studies in PJM, an incomplete "no harm" study from MISO, and that the estimated costs of the new facilities for interconnection into the PJM system are unknown. (*Id.*, citing

ComEd Ex. 1.0 at 20-21) IAA argues, "Plus, the Commission does not have the typical benefit of evidence of a demonstrated public benefit from the regional planning process for this Project." (*Id.*)

On the subject of the need of the Project, RICL witness Mr. Berry testified that the "permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost." (RI Ex. 10.13 at 4) Further, Mr. Skelly stated the supplying wind farms on the western side of the Project in Iowa do not exist because "it would be foolhardy to build them unless you had a transmission path to get to market." (Tr. 235) IAA argues, "So, when asked whether (1) transmission customers exist that need this proposed transmission line, (2) transmission customers exist needing this proposed line in a sufficient quantity to economically justify the Project, (3) the capital markets will finance the Project, (4) wind farms will spring up in Iowa to supply electric load, and (5) PJM and MISO will arrive at a positive or negative decision on the Project's effect on the reliability of the electric systems, the answers are all: 'I don't know.'" (IAA IB at 11)

IAA states that when pressed on the "I don't know" issues, Rock Island provides no precedent for the Commission to rely upon. IAA states that Rock Island's expert Karl McDermott characterized the Petition for a merchant line as a matter of first impression, and is unaware of any situation where the ICC has (1) issued a CPCN where the applicant indicated it would not construct a transmission line if customer demand did not materialize; and, (2) issued a CPCN where the applicant had not unconditionally committed to build a transmission line if granted a CPCN. (IAA IB at 11-12, citing Tr. 140-141) In IAA's view, Rock Island is asking the Commission to take a "leap of faith" on a first-impression merchant transmission line project with no clear evidence of need. (*Id.*)

Rock Island is choosing to wait to hire the necessary employees until they are needed, stating "we do not hire people who have nothing to do." (Tr. 239, Skelly) IAA states that Rock Island is waiting to see if there is a need for the transmission line before it seeks financing, then it will hire employees to construct and manage the Project. IAA argues the Commission should insist that RI establish a need for the Project prior to issuance of a CPCN. (IAA IB at 12)

IAA argues, "The ICC Staff's position on need is correct: the project is needed if 'the reliability of the electric systems in Illinois will be adversely affected if the proposed project is not built.'" (IAA IB at 12-13, citing Staff Ex. 4.0R at 3, Rashid) IAA contends that Rock Island has presented no evidence that Illinois will be adversely affected if the Project is not built, and has presented no evidence that the Project is required to make Illinois' electric system competitive and reliable. IAA states, "ILA witness Jeffrey Gray, PhD, is also correct in stating that Rock Island 'might be able to demonstrate need if it could show that the Project is adequately subscribed. Until then, the demand, or need, for the Project is speculative.'" (*Id.*, citing ILA Ex. 7.0 at 7)

In its BOE, IAA argues that Rock Island has not shown that the Project is the least-cost means of satisfying the service needs of its customers. (IAA BOE at 9)

IAA also argues that Rock Island has failed to establish that the proposed construction will meet the second alternative test, also referred to as the competition prong, in Section 406(b)(1). (*Id*. at 10-16)

In its RBOE, in response to Rock Island's BOE, IAA argues that "the project is not necessary as required by the first prong of Section 8-406[(b)(1)]." (IAA RBOE at 5-6)

F. Wind on Wires Position

Wind on the Wires presented the testimony of Michael Goggin, who is a Senior Electric Industry Analyst at the American Wind Energy Association ("AWEA").

WOW's briefs are limited to the issue of how Rock Island promotes a competitive electric market within Illinois. (WOW IB at 4) WOW states that a competitive electricity market includes, but is not limited to, wholesale electricity prices as well as prices for renewable electricity, and that Rock Island provides additional low-cost electricity supply, which reduces the price of electricity in Illinois. (*Id.*)

According to WOW, Rock Island also reduces the cost of renewable energy used by Illinois ratepayers. Illinois has a renewable portfolio standard ("RPS") that requires a minimum percentage of the total electricity supply used to serve the load of ComEd and Ameren Illinois ("Ameren") (jointly referred to as "Illinois utilities") and alternative retail electric suppliers ("ARES") to come from renewable energy resources. (*Id.* at 5, citing 20 ILCS 3855/1-75(c) for utility requirements, and 220 ILCS 5/16-115D for ARES requirements) WOW states that Illinois also has a geographic preference provision stating that after June 1, 2011, the standard must be met by renewable energy resources located in Illinois and in states that adjoin Illinois, which includes Iowa, where much of the wind development enabled by Rock Island will be located. If renewable resources are not available in those states or found to be cost effective, then the IPA can accept renewable energy resources from "elsewhere" for compliance. (WOW IB at 5, citing 20 ILCS 3855/1-75(c)(3))

The procurement of renewable energy and renewable energy credits for the utilities is managed by the Illinois Power Agency ("IPA"), whose procurement proposals are reviewed and approved by the Illinois Commerce Commission. The standard is to procure "cost-effective renewable energy resources." There are two components to being cost-effective. First, the bid price of the product must be below a benchmark value established pursuant to section 1-75(c)(1). Second, the total cost of procuring renewable energy resources do not exceed the limit stated in section 1-75(c)(2). (WOW IB at 5)

ARES can self-procure up to 50% of their requirement, and they can also make annual alternative compliance payments ("ACP") into a Renewable Energy Resources Fund managed by the IPA. The relevant statutory language regarding a competitive

market relates to the ACP rate, which effectively sets a cap on what utilities will pay for their renewable energy resources. (WOW IB at 5-6, citing §5/16-115D(d))

WOW contends that Rock Island meets the finding required by Section 8-406(b) by "delivering more wind energy into Northern Illinois, keeping both wholesale electricity prices and the cost of renewable electricity low for Illinois ratepayers." In addition, WOW argues that "providing a larger supply of renewable energy helps to ensure that the required procurement of renewable energy or renewable energy credits ('RECs') is cost effective [which] promotes a 'competitive renewable electricity market' in Illinois." (WOW IB at 6)

Another benefit to Illinois consumers is that the transmission facility will lower consumer electricity costs and provide a hedge to fuel price volatility, both of which facilitate an effectively "competitive electricity market that operates efficiently." (*Id.* at 6-7)

WOW states that the RICL Project is intended to facilitate wind development in Iowa, Nebraska, South Dakota and Minnesota, and deliver that wind energy to load centers in Illinois. According to WOW, wind energy reduces production costs and wholesale market prices by displacing more costly forms of generation in the supply curve. (*Id.*, citing WOW Ex. 1.0 at 13-14) WOW asserts that this reduction in market prices applies to all market transactions, as it lowers the overall wholesale market prices, and that the New York State Energy Research and Development Authority ("NYSERDA") found that each megawatt-hour of renewable energy produced within New York resulted in $100 worth of consumer electric savings. (WOW IB at 7, citing WOW Ex. 1.0 at 14)

WOW submits that further support for the price-reducing value of wind energy is the IPA report on the costs and benefits of renewable resources. One of the conclusions of the IPA report from 2012 was:

> Renewable resources, in particular wind, have played a dramatic role in reducing electric energy prices in Illinois and the entire Eastern Interconnection, as measured by the impact on Locational Marginal Prices (LMPs). Modeling work commissioned by the IPA and corroborated by similar findings in Massachusetts suggests that for 2011, the integration of renewable resources into the power grid has lowered Illinois' average LMPs by $1.30 per mega-watt hour (MWh), from $36.40 to $35.10 per MWh. The aggregate result is a savings of $176.85 million in total load payment for generation in Illinois. While this does not directly translate to dollar for dollar savings in consumer bills for the same time period, due to the fact that utility consumers are served via a portfolio of resources of different vintage, it points out the magnitude of the benefits accruing to all consumers in lowered underlying electric energy cost drivers. Over time, the effect of lower LMPs due to growing renewable capacity will be reflected in procurement outcomes."

(WOW IB at 8; WOW Ex. 1.0 at 12-13 citing IPA Report at 3-4)

WOW next argues that "transmission promotes a competitive market in Illinois." (WOW IB at 8)

In WOW's view, transmission is essential in delivering wind energy from wind-rich areas into Illinois, reducing the potential for generators to exercise market power and protecting customers against unpredictable fuel price volatility. WOW asserts that a weak grid makes it possible for generation owners to exert market power and charge excessive prices, and that more supply options make it less likely that a particular supplier will be able to exert market power. (*Id.*, citing WOW Ex. 1.0 at 16) WOW asserts that a transmission provider does not have an incentive to relieve congestion that restricts the output of a competing merchant generator if doing so will make the transmission provider's own generation less competitive. (*Id.* at 8-9, citing WOW Ex. 1.0 at 17) WOW states, "In this instance the RICL line would lower wholesale costs in Northern Illinois and reduce the profits of generators in the area, such as Exelon and others." (*Id.*, citing RI Ex. 4.0 at 25-28)

According to WOW, numerous studies have found that the benefits of transmission are multiple times larger than the cost. WOW states that a study of a high-voltage transmission line across Kansas, Oklahoma and Texas, by Charles River Associates concluded transmission would provide economic benefits of around $2 billion per year for the region, which was four times the amount of transmission investment. (WOW IB at 9, citing WOW Ex. 1.0 at 17) WOW states that Synapse Energy Economics studied the addition of 20 to 40 gigawatts of wind capacity to new transmission lines in MISO and found that a typical household would save between $63 and $200 per year. (*Id.*, citing WOW Ex. 1 at 18)

In addition, WOW argues, transmission is an important mechanism to protect consumers against unpredictable volatility in the price of fuels used to produce electricity. Transmission can alleviate the negative impact of fuel price fluctuations on consumers, and can cost-efficiently move electricity over large regions, such as within or between Regional Transmission Organizations, thus enabling consumers with the ability to buy power from areas in which it might be cheaper than local prices. According to WOW, this increased flexibility helps modulate swings in fuel price by making demand for fuels more responsive to price. Utilities can decrease the use of electricity from more expensive fuel sources when they can respond to price signals. WOW contends that fluctuations in the price of fossil fuels are likely to continue, particularly if the electric sector becomes more reliant on natural gas. (WOW IB at 10, citing WOW Ex. 1.0 at 15-16)

Section IV.A.1.ii(b) of WOW's initial brief is titled, "RICL Promotes a Competitive Renewable Electricity Market in Illinois." (WOW IB at 11)

WOW states that Illinois has a statutorily-driven demand for renewable energy that requires a certain percentage of electricity supplied to customers come from renewable energy resources and wind generation, and that Rock Island will make it easier for electric

suppliers to meet their statutory requirements by delivering wind energy into Northern Illinois from an area with very high capacity factors and energy potential. According to WOW, NREL's data indicates that those states – Iowa, Minnesota, Nebraska and North Dakota -- have a combined wind potential that is 26% of the entire U.S. onshore wind potential and 45 times greater than the current electricity demand of Illinois. (WOW IB at 11, citing WOW Ex. 1.0 at 3) WOW submits that while RICL has a capacity of 3,500 MWs, the far larger potential for wind capacity near the O'Brien County terminus would promote competition for access to RICL and would help keep the renewable energy and REC costs low. (*Id.*)

The Illinois RPS drives the need for renewable energy in Illinois. Utilities and ARES are required to procure an amount of renewable energy or RECs equal to a certain percentage of their overall delivered energy. Utilities are to procure cost effective renewable energy or RECs from Illinois or adjacent states. If they cannot meet their target percentage from resources within that area, then the utilities may procure it from anywhere within the United States. (WOW IB at 11, citing 20 ILCS 3855/1-75(c)(3)). The ARES do not have the two-tier geographic preference that is applied to the utilities procurement, and are allowed to procure RECs from anywhere within PJM or MISO. (*Id.*, citing 220 ILCS 5/16-115D(a)(4))

WOW states that to meet the Illinois RPS requirements in a cost effective manner through 2026, more renewable energy supply, such as wind generation, needs to be placed into operation. WOW estimates that approximately 3,000 to 4,000 megawatts of incremental wind capacity, beyond what is installed as of the end of 2012, will be needed for the utilities and ARES to satisfy the requirements of the Illinois RPS. (*Id.*, citing WOW Ex. 1.0 at 8-9)

According to WOW, MISO's analysis indicates that Illinois' incremental need for wind generation, in addition to what is available in 2012, would be most efficiently met with a combination of in-state and out-of-state wind generation. (WOW IB at 12; WOW Ex. 1.0 at 6 citing MISO Multi Value Project Portfolio: Results and Analyses ("MISO MVP Report") at 65 (January 5, 2012)) WOW states that RICL will provide Illinois access to high capacity areas in Western Iowa, Southwestern Minnesota and Eastern North Dakota, which are areas with higher wind capacity factors than Illinois. Consequently, WOW submits, the cost per megawatt-hour of wind energy produced in those states is lower than the cost of wind energy produced in Illinois. (WOW IB at 12, citing WOW Ex. 1.0 at 5-6)

WOW states that wind energy generated in Iowa is eligible for satisfying the ARES compliance obligation, and it is within the utilities' first/primary tier for geographic preference. The resources in the other states near the Resource Area (i.e., North Dakota and Minnesota) also satisfy the ARES compliance obligation, and will qualify for the Utilities' compliance obligation if they cannot meet the need with cost effective resources from the first/primary tier. WOW claims this additional supply of wind energy will tend to lower the price of renewable energy or RECs that are bought by utilities or ARES in Illinois. As a result, WOW argues, RICL promotes renewable energy competition by

lowering the prices of renewable energy and RECs which will lower the cost of compliance with the Illinois RPS. (WOW IB at 12-13)

Section IV.A.1.ii(c) of WOW's initial brief is titled, "The Costs and Benefits of the Rock Island Project are Equitably Allocated." (WOW IB at 13)

WOW asserts that high-capacity transmission lines inherently provide benefits across a large area because the large amount of energy they carry provides price-reducing benefits and resolves constraints across a wide area, and that the FERC noted this fact when approving MISO's MVP cost allocation proposal. (WOW IB at 13, citing WOW Ex. 1.0 at 23)

WOW argues that another benefit of wind that is broadly distributed is wind's role in offsetting water consumption by other forms of electricity generation. WOW states that RICL witness Moland's analysis indicates that the wind enabled by Rock Island would reduce water consumption across the eastern U.S. by 3.5 billion gallons in 2016 and 3.1 billion gallons in 2020. (WOW IB at 14, citing RI Ex. 3.4)

WOW makes other assertions without citation to either the record or to citable authority.

Section IV.A.1.ii(d) of WOW's initial brief is called, "Lack of Contracts with Interconnecting Generators Should not Delay the Project." (WOW IB at 15)

According to WOW, Rock Island's proposed finance plan is sufficient to warrant approval for purposes of a certificate of public convenience and necessity. WOW contends that Rock Island has secured sufficient initial capital to fund the development and permitting activities for RICL; RICL will finance the remainder of the construction and operations through an anchor tenant purchasing up to 75% of the capacity on the Rock Island Project and the remaining capacity being sold to customers through long term contracts; and that the costs of the Rock Island Project will be recovered from the anchor tenant and customers through negotiated rates charged for access to Rock Island's transmission capacity. (*Id.*, citing RI Exs. 1.0 at 8 and 10.0 at 31, 38) WOW states that as a condition of approval of the CPCN, RICL will agree to not commence construction until it has obtained sufficient funding commitments to build the project, and that this condition is subject to Commission verification of such funds. (*Id.*, citing RI Ex. 10.13 at 2-3)

In WOW's view, delaying the approval of the line beyond what is required in the conditions agreed to by RICL causes undue delay to wind projects in or near the Resource Area and delays the millions of dollars in savings to Illinois ratepayers as calculated by RICL witnesses. (WOW IB at 15-16, citing RI Exs. 3.3 and 4.0) WOW argues that developing transmission prior to the development of wind plants is common, if not a necessity, since a wind plant needs the transmission outlet in place prior to being built (*Id.*, citing WOW Ex. at 10-11), and that there are plenty of developers ready to build in areas with high capacity factors such as the Resource Area. (*Id.*, citing RI Ex. 10.19 Rev.)

WOW also submits that another check on the potential demand comes from the interconnection queues in the states neighboring the Resource Area. WOW states that Iowa has 3,956 MW in the interconnection queue, zero of which are listed as "under construction;" that Minnesota has 3,294 MW of proposed wind projects; and that South Dakota has 989 MW of proposed wind projects. WOW also states that the Southwest Power Pool ("SPP") maintains the interconnection queue for the state of Nebraska, and its queue indicates 1,659 MW of proposed wind projects with active interconnection applications in Nebraska. (WOW IB at 16, citing WOW Ex. 1.0 at 6)

WOW argues, "Thus, there are plenty of potential customers for RICL that make it highly likely that RICL will be able to secure financial commitments to build the line. However, even if RICL does not get sufficient financial commitments, Illinois ratepayers are protected by the condition that RICL would not be allowed to start construction until they've obtained sufficient financial commitments to build the project -- as reviewed and monitored by staff." (*Id.*)

Reply Brief; RBOE

In its reply brief, WOW responds to an assertion by IAA that Rock Island has not met the first finding in section 8-406(b)(1) because, among other reasons, it has not shown that "transmission customers exist that need this proposed transmission line" and that "the transmission customers exist needing the proposed line in a sufficient quantity to economically justify the Project." (WOW RB at 6, citing IAA IB at 11, 13)

According to WOW, the primary purpose of the line is to improve the existing competitive electricity market in Illinois, which is the second or alternative finding in section 8-406(b)(1), and that the first finding of Section 8-406(b)(1) that IAA is "basing its entire argument upon" is typically used for transmission lines built for reliability, not an economic or public policy driven project such as this. (WOW RB at 7)

WOW argues, "The existence of transmission customers is not a fundamental requirement of the analysis under the 'effectively competitive electricity market' analysis. That analysis turns on the market analysis." WOW adds, "The issue of having subscribers can be met through a condition, such as the one that Rock Island has accepted from Staff" which "requires Rock Island not begin construction in easements in Illinois until Rock Island has secured binding financial commitments for the entire cost of the project and made a filing with Staff." (WOW RB at 7, 9, citing See Rock Island IB at 7; and RI Ex. 10.13 at 2-4 and 10.14 Rev. at 5)

WOW asserts, "Further, it is highly likely that RICL will be able secure sufficient subscribers. Wind on the Wires' witness Goggin explains that transmission commonly precedes wind development and that pro-active coordination of transmission development to high wind resource areas has been an effective way to bring wind projects to market." (WOW RB at 7-8, citing WOW Ex. 1.0 at 10-11)

Furthermore, WOW asserts, its members include the largest wind developers in the Midwest. (WOW Ex. 1.0 at 1) In response to a statement by ComEd witness Naumann regarding whether wind generators will enter into contracts with Rock Island, WOW's witness Goggin stated, "While I cannot predict the future with 100% certainty, all available evidence indicates that wind generators will enter into contracts to use the RICL project." (WOW RB at 8-9, citing WOW Ex. 3.0 at 2)

WOW also responds to an assertion by ILA that Rock Island fails to meet the alternative finding in section 8-406(b)(1) – that the project will promote an effectively competitive electricity market. ILA states that "we do not know the operating or other characteristics of any wind farms that may materialize." (ILA IB at 25)

WOW responds that Rock Island witness Berry prepared a competitive market analysis using modeled production data -- for eight potential wind farmers in northwest Iowa – that was obtained from the Eastern Wind Integration and Transmission Study ("EWITS Study"), which is a publically available report sponsored by the Department of Energy National Renewable Energy Laboratories. WOW states that the EWITS Study has been used by a number of utilities and regional transmission organizations for their analyses. (WOW RB at 9-10, citing RI Ex. 10 at 11-12)

In response to Staff, WOW states that on pages 56-57 of its initial brief, Staff offered the following three-part test to evaluate whether Rock Island had made the "effectively competitive electricity market" showing: (a) the Project contributes to increasing the degree of competition for electric energy, capacity availability, renewable energy credits, or other electricity market goods and service; (b) the benefits of the increased competition outweigh the costs of the Project; and (c) the Project will not prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects.

Furthermore, WOW asserts, there would be potential for any test developed via this Order to be binding on all subsequent petitions brought pursuant to section 8-406 and Section 8-406.1 since it requires the same finding. (*Id.* at 11)

In WOW's view, there are sufficient facts in the record for the Commission to evaluate and conclude whether Rock Island met its burden regarding the alternative finding in section 8-406(b)(1), and "the issue of whether the project will promote an effectively competitive electricity market should be left to the Commission to decide based on the facts presented by the parties." (*Id.*)

In its RBOE, in response to ComEd's BOE, WOW argues that In Illinois administrative proceedings, "preponderance of the evidence is the standard," and that the preponderance of the evidence demonstrates that the Rock Island Project will promote a competitive electricity market in Illinois. (WOW RBOE at 2-4)

G. Environmental Intervenors' Position

Environmental Intervenors did not present testimony. They did file briefs. In their view, Rock Island has demonstrated that its Project will promote the development of an effectively competitive electricity market. (EI IB at 3)

In Section IV.A.1.i, Environmental Intervenors argue, "The Project will increase the supply of renewable energy credits necessary to comply with the Illinois renewable portfolio standard." (*Id.* at 4)

Pursuant to Section 1-75(c) of the PUA, utilities must comply with the Illinois RPS. 20 ILCS 3855/1-75(c). The RPS requires that at least 10% of a utility's total supply come from renewable resources by June 1, 2015, (20 ILCS 3855/1-75(c)(1)), and each year after 2015, utilities must increase the total percentage of supply coming from renewable resources by at least 1.5%. By 2025, utilizes must receive 25% of their total supply from renewables. (EI IB at 4)

Illinois utilities use renewable energy credits to meet their RPS obligation. Environmental Intervenors argue, "Therefore, as REC prices fall, the cost of complying with the RPS will also fall." (EI IB at 4)

They also state, "As observed by Mr. Berry, in 2011, 'total renewable generation [in Illinois] … was about 7.0 million MWh.' (RI Exhibit 10.0 at page 19) As Mr. Berry stated, 'the Project could deliver almost twice as much wind energy as is currently being produced in Illinois.'" (EI IB at 5)

Environmental Intervenors contend that the rise of alternative retail electric suppliers in the state could drive additional demand for supply from renewable resources. (EI IB at 5, citing RI Exhibit 10.0 at 16-17)

Section IV.A.1.ii of Environmental Intervenors' initial brief is titled, "The Project will lower REC prices." (EI IB at 6)

RICL Witness McDermott stated, "The Project is projected to provide access to new and currently untapped potential renewable resources that should have the effect of providing competitive pressure on prices in [REC] markets as well as competitive pressure on prices in markets for renewable energy." (EI IB at 6, citing RI Ex. 4.0 Revised at 3-4)

Environmental Intervenors assert that most states have either renewable energy standards or goals. RICL witness Mr. Berry stated that within the PJM footprint, the District of Columbia, Delaware, Maryland, Michigan, New Jersey West Virginia, North Carolina, Ohio, and Pennsylvania all have enacted renewable portfolio standards, and that RECs associated with generation in one state can used to satisfy RPSs in multiple states, which means "the prices of RECs in states tend to be linked." (*Id.*, citing RI Ex. 10.0 at 17) Mr. Berry stated, "A shortfall in the supply of RECs to satisfy the RPS in one

PJM state will tend to cause supply shortfalls in other states as well," which will raise REC prices for all states. Mr. Berry asserted, "This effect was observed in 2009, when REC's traded in both New Jersey and Illinois reached a high of over $10/MWh due to limited supply but declined in a highly correlated fashion throughout 2010 and 2011. The price declines in 2010 and 2011 were a result of additional wind installations and the associated increase in REC supply." (*Id.*, citing RI Ex. 10.0 at 17)

RICL witness Dr. McDermott conducted a study of the REC market as defined by REC facilities located in Illinois and adjoining states. Section 1-75(c) of the PUA requires non-ARES utilities to give preference to RECs from Illinois and adjoining states. 20 ILCS 3855/1-75(c). Dr. McDermott also investigated the broader REC market defined as the REC facilities located within the entire Eastern Interconnection, which consists of "the entire Alternating Current ('AC') transmission system east of the Rocky Mountains, including parts of Canada and Texas." (EI IB at 7, citing RI Ex. 4.0 Rev. at 6) Dr. McDermott concluded that the supply of RECs in both REC markets would increase as a result of the project, and that the project would increase the supply of RECs in the Illinois and adjoining States Energy REC market by as much 28% in 2020. (*Id.*, citing RI Ex. 4.0 Rev. at 37-39) Copies Dr. McDermott's tables of market effects are contained on pages 8-9 of EI's initial brief.

Dr. McDermott also testified that "the differential wind speeds between Illinois and the area that will be served by the Project strongly suggests that potential wind resources served by the Project will have higher capacity factors than similar wind resources sited in Illinois." (EI IB at 9, citing RI Ex. 4.0 at 31) Mr. Berry stated that a higher capacity factor "substantially reduces the cost of wind energy produced by facilities located in areas with higher average wind speeds. As more energy is produced by a wind turbine, the unit cost of energy decreases, because the upfront capital cost can be recovered over a large number of megawatt-hours." (*Id.*, citing RI Exhibit 10.0 at 7) These lower prices are passed on to Illinois ratepayers in the form of cheaper RECs. (EI IB at 10)

Section IV.A.1.iii of Environmental Intervenors' initial brief is titled, "The Project will increase generator competition and will exert downward pressure on wholesale energy prices, which will in turn result in lower retail electricity prices. (EI IB at 10)

Dr. McDermott summarized, "The additional transmission capacity promotes an effectively competitive electricity market by increasing the size of the supply side of the market competing to serve load in Illinois and opening the Illinois market to lower cost generation resources." (*Id.*, citing RI Ex. 4.0 Rev. 4.0 at 2)

Environmental Intervenors state that RICL Witness Moland used the PROMOD production cost modeling software package to perform simulations of future energy markets for two representative study years, 2016 and 2020, to assess the economic and environmental impact of the Project on system operations in Illinois. Mr. Moland's modeling relied on four different futures scenarios: (1) Business as Usual; (2) Slow Growth; (3) Robust Economy; and (4) Green Economy. (EI IB at 10, citing RI Ex. 3.0 at 3, 6-7)

According to Environmental Intervenors, Mr. Moland's analysis shows that "just as the Project will lower emissions under all four futures scenarios," it will also lower the total demand costs, locational marginal prices, and variable production costs, all of which result in lower retail prices for Illinois ratepayers. Mr. Moland also concluded that the Project will reduce the congestion costs to Illinois ratepayers in seven of eight scenarios. (*Id.* at 10-12, citing RI Exs. 3.0 at 10-11 and 3.5 at 3)

Dr. McDermott calculated the net present value of these reduced wholesale prices. He concluded that the benefits to Illinois consumers under four futures scenarios through 2020 would be in the range of $667 million to $1.2 billion. (EI IB at 12, citing RI Ex. 4.0 Rev. at 22-23)

Dr. McDermott also quantified the benefit to competition using the Delivered Price Test ("DPT"). According to his calculations, the Project is expected to increase the Economic Capacity available to supply the Illinois market by between 0.4% and 2.4%. (EI IB at 13, citing RI Ex. 4.0 Rev. at 36)

Environmental Intervenors conclude, "All of the evidence in this case points to the RICL Project as being an effective tool for increasing competition in the Illinois electricity market." (EI IB at 13)

H. IBEW Position

IBEW asserts that the Project will improve reliability in Illinois by increasing the amount of generating capacity available to Illinois, reducing Loss of Load Expectation, and increasing transfer capability into Illinois. (IBEW IB at 6, citing RI Ex. 6.0 at 17-19) IBEW contends that the Project will also facilitate integration of wind energy from the "wind rich" geographical areas outside of Illinois with wind resources within Illinois, and that the geographical diversity in wind resources will reduce variability of the wind resources and improve reliability. (*Id.*, citing RI Ex. 10.0 at 4 and IBEW Ex. 1.0 at 6) Overall, construction and operation of the Project will strengthen and improve the transmission grid by providing a high capacity direct interconnection from the Resource Area to northern Illinois and PJM. (*Id.*, citing IBEW Ex. 1.0 at 4, and RI Exs. 1.0 at 6, 10.0 at. 9-10 and 2.11 at 6-7)

IBEW next argues that the RICL Project "will also promote the development of an effectively competitive electricity market in Illinois" by increasing the supply of electricity into Illinois, lowering electricity prices for consumers, and assisting utilities and other power suppliers in meeting the Illinois Renewable Portfolio Standards. (IBEW IB at 6-7, citing IBEW 1.0 at 6) IBEW contends that the development of wind generation facilities in the Resource Area depends upon the construction of new, long-distance transmission infrastructure, particularly interstate, inter-regional transmission facilities, such as the Rock Island Project. (*Id.*, citing RI Ex. 1.0 at 18) IBEW submits that by accommodating the construction of wind facilities in the Resource Area, the Project will increase the electricity supply available to Illinois customers, and that the increase in supply from

renewable resources from the Resource Area will also assist utilities and power suppliers in meeting the Renewable Portfolio Standards requirement in Illinois, which specifies that a certain percentage of their electricity must be generated from renewable resources. (*Id.* at 7, citing IBEW Ex 1.0 at 6 and RI Ex. 10.0 at 3, 15-17)

IBEW states that Rock Island witness Karl McDermott provides further analytical detail as to how the Project expands the set of generators that are able to compete to serve load in Illinois and opines that such increased economic import capability allows a greater level of lower cost generation resources to compete in the Illinois market, thereby resulting in greater competitive pressure on prices. (Id., citing RI Ex. 4.0 Rev. at 7-8, 17-18) IBEW adds that Dr. McDermott concludes that the Project lowers the cost to serve energy in Illinois by lowering wholesale electricity prices that will in turn flow to all retail customers in an equitable fashion. (*Id.*, citing RI Ex. 4.0 Rev. at 24-25, 31-32)

In its BOE, IBEW makes arguments regarding employment and economic benefits the project will generate, but does not offer suggested replacement language. (IBEW BOE at 11-12)

In its RBOE, IBEW states, "The IBEW views the Rock Island Project as a textbook example of a project that is necessary to allow new competitors to access and serve a destination market; therefore, the Project will promote the development of an effectively competitive electricity market." (IBEW RBOE at 4) IBEW contends that the ILA, IAA and ComEd exceptions on this issue should be rejected. (*Id*. at 2)

I. BOMA Position

The Building Owners and Managers Association of Chicago ("BOMA") presented the testimony of its Executive Vice President, Michael F. Cornicelli. BOMA did not file a brief.

Mr. Cornicelli testified that BOMA aims to enhance the competitive landscape by attracting new market entrants in Illinois and promoting projects that can lower operational expenses for large commercial buildings and provide access to sustainability options. He stated that increasing access to generation resources enhances the competitive marketplace, which can help temper rising capacity costs, and that a large-scale merchant transmission line enriches the Illinois electric market landscape and should be supported from BOMA's competitive market point of view.

The witness further stated, "With that said, BOMA/Chicago is supporting this project to the extent it enhances competition, lowers costs to our members, increases reliability, and, to the extent that it *does not* increase costs." (BOMA Ex. 1.0 at 3, emphasis in original)

J. Commission Conclusion

Section 8-406(b) provides in part as follows, "Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity." As we have noted in past Section 8-406 and 8-406.1 proceedings, Illinois courts have established that "necessity" in the context of the PUA means that the service proposed to be provided should be "needful and useful to the public." See e.g. King v. ICC, 39 Ill. App. 3d 648, 653 (4th Dist. 1976). Illinois courts have held that what constitutes public convenience and necessity is within the Commission's discretion to determine in each case, and permits the consideration of a broad range of factors as applicable to the particular case. Commonwealth Edison Co. v. ICC, 295 Ill. App. 3d 311, 317 (2nd Dist. 1998). This is a question to be determined by the Commission from a "consideration of all the circumstances." Wabash, at 418.

Section 8-406(b) provides alternative tests for demonstrating whether the proposed construction will promote the public convenience and necessity. It states, in part:

> The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction 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….

As noted above, the FERC accepted Rock Island's proposal "to pre-subscribe up to 75 percent of transmission capacity to anchor customers." The FERC also approved Rock Island's request "to sell the remaining 25 percent of the Project's capacity using an open season auction." The FERC did not approve Rock Island's request "to apply a preference for energy from renewable resources in its open season." 139 FERC ¶ 61,142 at 10-11.

According to Rock Island, it has shown that the proposed transmission line project satisfies both of the alternative showings identified in Section 406(b)(1). IBEW agrees.

In addition to Rock Island, several parties presented witness testimony substantively analyzing this issue, among them ComEd, Staff, ILA and WOW.

ILA, ComEd and IAA argue that Rock Island has failed to satisfy either of the alternative showings in Section 406(b)(1).

Wind on the Wires and Environmental Intervenors, who support the application, argue that Rock Island has met the second test – that it will promote the development of an effectively competitive electricity market.

Preliminarily, the Commission observes, as it has with respect other issues in this case, that an assessment of the issue at hand is a particularly challenging undertaking given the "merchant" nature of the proposed transmission line project and the many unknowns associated with it.

With regard to the first alternative test in Section 406(b)(1), Staff, ComEd, ILA and IAA contend that Rock Island has not demonstrated that the proposed Project is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers.

Except for Rock Island and IBEW, no other Party has taken the position that Rock Island has met that test.

In fact, Wind on the Wires, which supports the application, observes that while Rock Island has addressed the first test in Section 8-406(b)(1), "the primary purpose of the line is really to improve the existing competitive electricity market in Illinois, which is the second or alternative finding in section 8-406(b)(1)." (WOW RB at 6-7) Similarly, the Staff witness stated that "RICL's main argument for the proposed project is that it will promote the development of competitive electricity markets."

As explained in Staff and ComEd testimony and briefs, Rock Island did not provide any independent studies from transmission system operators in Illinois. While Rock Island may not be required to vet this merchant project with such operators for that purpose, RI also did not provide, as an alternative to such an independent study, any load flow studies or similar analysis to substantiate its position.

On this issue, the Commission also notes that ComEd cites testimony from RI's expert witness. The witness was asked, "You're not testifying that the proposed addition of the Rock Island Clean Line is required to make the Illinois system more reliable, correct?" He responded, "That is correct." (Tr. 749-750)

Accordingly, the Commission finds that Rock Island has not demonstrated that the Project is necessary to provide adequate, reliable, and efficient service to customers within the meaning of Section 8-406(b)(1).

On a somewhat related point, ComEd witness Mr. Naumann raised a concern that Rock Island has not identified the network upgrades required to properly connect the proposed line to ComEd's existing 765 kV transmission system at the Collins substation and ensure the reliability of the ComEd system. (ComEd Ex. 1.0 Rev. at 21) While the Commission agrees with ComEd's emphasis on the importance of ensuring the integrity of the interconnection, the Commission believes that the PJM interconnection process, which will involve a number of studies to determine the reliability impact of a project on

the system and the necessary facilities and network upgrades to accommodate the project before interconnection will occur, will be sufficient to avoid adverse impacts on reliability. The Commission notes that an informative description of how that PJM process works for a merchant project process is contained in Mr. Naumann's testimony. (*Id.* at 16-18) To address this concern, the Commission directs Rock Island to fully comply with the applicable interconnection requirements of PJM and the other conditions in this Order relating thereto, and to sign all necessary interconnection agreements prior to energizing the transmission line.

The Commission will next address the second alternative test, also referred to as the "competition prong" in Section 8-406(b)(1).

Rock Island witnesses testified that the Project will promote the development of an effectively competitive electricity market and they presented economic analyses purporting to show that the Project is the least cost means of doing so. They also critiqued Mr. Zuraski's analysis.

Rock Island's testimony and argument on this issue is described at length above and will not be repeated here.

WOW presented testimony and argument in support of its contention that the record shows the competitive prong has been satisfied. Environmental Intervenors and IBEW concur.

ILA and ComEd contend that RI failed to make the showing required under the competitive criterion. In support of their respective positions, ILA and ComEd rely on the testimony of ILA witness Dr. Gray and ComEd witness Mr. Naumann. These witnesses criticized the assumptions in and results of RI's studies, as described above. IAA reaches the same conclusion in its briefs

Staff witness Mr. Zuraski focused on the benefits and costs of the Project. He also offered comments with respect to the Project's impact on competition.

Mr. Zuraski reviewed the purported benefits of the Project as calculated by Rock Island's witnesses. He testified that the Rock Island had not demonstrated that the Project's benefits outweigh its costs, noting that the direct testimony of Rock Island witnesses focused only on certain alleged benefits of the project, and did not consider the costs. (Staff Ex. 3.0 at 11)

Mr. Zuraski performed a study comparing the benefits and costs of the project, and he described the methodology and assumptions used in his analysis. (Staff Ex. 3.0 at 16-29) He examined three scenarios through which approximately 15 million MWHs of additional RECs per year could be made available to Illinois firms subject to the State's RPS, and the additional revenues that would be needed to cover the costs.

Mr. Zuraski took into account, and explained, a source of benefits that he called "LMP savings." He also explained the capacity factor assumptions used in his analysis, and its significance. In an appendix, he identified the assumed values of inputs used in his analysis.

Mr. Zuraski also described the results and conclusions of his analysis. (Staff Ex. 3.0 at 5-6, 29-46)

He summarized his testimony as follows:

> Based on my evaluation, I expect that the project's benefits will outweigh its costs, and that the additional costs of the renewable energy resources that would utilize the RICL Project will not significantly exceed the maximum available budget for renewable energy resources pursuant to the Illinois renewable portfolio standard. However, this analysis is subject to considerable uncertainty. Therefore, 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 direct testimony.

He next stated:

> With respect to whether or not the proposed construction will promote the development of an effectively competitive electricity market, it is my opinion that an effectively competitive electricity market already exists. However, it is also my opinion that the RICL Project would not threaten the competitiveness of the electricity market. Whether the RICL Project will promote or contribute to an effectively competitive electricity market that operates efficiently … and is the least cost means of satisfying those objectives depends on whether the project's benefits will outweigh its costs, as addressed in the previous paragraph. …"
> (Staff Ex. 3.0 at 5-6)

Based on that testimony, "Staff believes that the evidence supports a finding that the Project would promote an effectively competitive electricity market, but that the preponderance of evidence in favor of such a finding is not a strong preponderance and is subject to 'considerable uncertainty.'" (Staff IB at 60)

The Commission disagrees with Rock Island that the unique circumstances of a merchant transmission project, one which will recover its costs solely from contracts with transmission customers who purchase capacity and take service on the Project and not through cost allocation to retail customers, means that this Commission should not analyze the costs as well as the benefits of the proposed project. As Staff notes, the project may still impact Illinois landowners who do not want to transfer ownership of their

property to the entity as well as have possible environmental consequences. (Staff IB at 45) In terms of direct rate consequences, this cost is significantly less than the cost of construction borne by ratepayers under a traditional regulated cost of service approach. Additionally, RI presented evidence that the HVDC technology proposed for the Project is more effective than AC technology at transmitting large amounts of electricity over long distances, and that utilizing HVDC technology to build one long line will in turn be cheaper than constructing numerous alternative AC lines. These factors, among others presented in the record, weigh in favor of a finding that the project is the least cost means of satisfying its stated objectives. The analysis presented by Mr. Zuraski provides a useful 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. That said, the Commission believes this project has a high probability of overcoming those uncertainties and represents the potential for substantial benefits for Illinois ratepayers.

Rock Island has presented analyses utilizing operating characteristics, particularly the wind energy profile based on wind speeds, 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. It appears to the Commission that the project has the potential to unlock wind resources that when modeled are competitive with in-state generation despite the added cost of supporting the return on equity and ongoing operation of the proposed Project. (Staff Ex. 3.0 at 39-40) By connecting this generation to PJM's markets the Commission can help remove a limitation to its development and also satisfy the Illinois General Assembly's geographic preference included in the Illinois RPS (20 ILCS 3855/1-75(c)(3)).

The Commission notes that MISO's current process for approving projects accommodating the renewable portfolio standards of MISO states does not include the ComEd zone or PJM; nor does PJM's transmission planning process have an analogous goal for PJM states. In light of this, the "merchant" nature of the proposed Project, despite its uncertainty, appears to currently be the best avenue for its development.

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 some Parties argue that such potential alone is not sufficient to satisfy Section 8-406(b)(1) in light of the many uncertainties, the Commission believes that important safeguards in that respect are provided by the financing requirement imposed below to satisfy Section 406(b)(3).

Rock Island has agreed that it "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 requirement 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, in order to remain in compliance with the terms of its CPCN, RI must satisfy this financing requirement.

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 Rock Island 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 requirement 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.

The Commission's decision regarding whether to grant Rock Island its requested CPCN is based upon the testimony presented in this case. In its testimony, 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. In addition, just as it stated through the course of the associated FERC proceeding, and in the statement noted above, it will not pass on any costs to captive ratepayers. Thus, in accordance with this commitment, the Commission finds that prior to recovering any Project costs from Illinois retail ratepayers through PJM or MISO regional cost allocation, Rock Island shall seek and obtain the permission of this Commission in a proceeding initiated or sought by Rock Island. Absent such approval, Rock Island shall not be entitled or permitted to recover any such costs from Illinois retail ratepayers through PJM or MISO regional cost allocation.

In conclusion, upon consideration of the record and the determinations contained above, and subject to the requirements set forth above and elsewhere in this Order, the Commission finds that the Project will be needful and useful to the public as it will provide an opportunity for the delivery of more renewable energy into Illinois, and 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).

VII. MANAGING AND SUPERVISING THE CONSTRUCTION PROCESS

One of the requirements 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."

A. Rock Island Position

Rock Island contends that it is capable of efficiently managing and supervising the construction process for the Project because (i) it is engaging experienced contractors to carry out the tasks associated with constructing the Project and placing it into operation; (ii) it will enter into contracts with its contractors that will provide for effective project controls and oversight mechanisms from the project owner's perspective; (iii) Rock Island and its parent company, Clean Line, have developed a comprehensive construction management organization and are filling the positions in the organization with qualified personnel at an appropriate pace consistent with Project development achievements and the need for specific personnel; and (iv) members of Clean Line's management team, as well as one of its principal investors, National Grid, have experience in developing construction management organizations and overseeing the construction and completion of large projects in the electric utility industry. (RI IB at 94-104; RB at 105-114; RI Ex. 1.4 at 2)

Rock Island states it will retain two Engineering, Procurement and Construction ("EPC") contractors for the Project, one for the construction of the transmission line and the other for the construction and installation of the two converter stations. (RI IB at 95; RI Ex. 1.4 at 11) It has retained Kiewit Power Constructors Co. ("KPC") to provide engineering and other services during the development phase of the Project and "expects" to retain KPC as the EPC contractor for the transmission line. Rock Island states that the EPC contractor for the transmission line will provide the following services: solicit and evaluate bids for procurement of equipment and material; solicit and evaluate subcontractor bids and manage all subcontractors for the Project; supervise development of access to construction locations; install foundations for structures, assemble and erect towers and string wire; test and commission the line; and monitor compliance with Project permits and easement grants. (RI IB at 95; RI Ex. 1.4 at 12) Rock Island also states that it has contracted with Siemens Energy, Inc. ("Siemens") for provision of the HVDC converter stations and, after the development phase is completed, that it expects to enter into an EPC contract with Siemens for the converter stations. (RI IB at 95, citing RI Exs. 1.4 at 11-12, 15-16, and Ex. 2.0 at 15-16; RI RBOE at 41)

Rock Island states that KPC is an operating district of Kiewit, which is one of North America's largest construction, mining, and engineering organizations and has constructed a significant number of linear infrastructure facilities, including electric transmission lines and pipelines, and is very experienced in planning, tracking and monitoring these types of projects. (*Id.* at 95-96, citing RI Exs. 9.0 Rev. at 4, 9.4 Rev. at 4, and 9.5) RICL states that Kiewit recently completed a 345 kV, 135-mile double circuit transmission line project, most of which crossed agricultural land, which was completed on time and within budget, and that Kiewit also recently completed the installation of a 111-mile, 230 kV transmission line in Ontario, Canada, the entire length of which crossed rural, wooded lands. (*Id.* at 96, citing RI Exs. 9.0 Rev. at 4-5 and 9.4 Rev. at 3-4)

Rock Island asserts that KPC has developed the sequence of design and construction for the Project, and is "well prepared" to commence detailed scheduling and

final engineering and construction activities when the appropriate development milestones are met. KPC has also reviewed the terrain across the proposed route of the Project in Illinois and determined that it will be able to use conventional construction techniques for most of the line. (RI IB at 96, citing RI Ex. 9.0 Rev. at 6-7) Rock Island asserts that the structural design of an HVDC transmission line is similar to an AC line, and the construction processes and practices applicable to each type of line are similar. For example, National Electrical Safety Code design criteria must be met on both types of lines and there must be an adherence to local meteorological and geological conditions and construction loading requirements. (*Id.*, citing RI Ex. 9.0 Rev. at 4; RB at 112-113)

Rock Island states that Staff witness Mr. Rashid testified -- based on the testimony of the KPC witness and KPC's reputation as one of the larger construction organizations -- that KPC appears capable of handling the EPC role for the Rock Island Project. (RI IB at 96, citing Staff Ex. 1.0 at 15)

Rock Island states that Siemens, the HVDC converter station vendor for the Project, is a world leader in HVDC technology and has installed more than 17,000 MW of HVDC capacity worldwide, including at least 10 projects in the United States. Rock Island states that Siemens is providing services during the development phase of the Project, including providing detailed price estimates, technical specifications, schedules, market price information, interconnection design, drawings and other technical input into the RTOs' interconnection studies. (RI IB at 97, citing RI Exs. 1.4 at 15-16 and 2.0 at 16) Rock Island asserts that partnering with Siemens early in the project will help to ensure early identification of any design issues and an optimal and reliable design and efficient implementation for the converter stations. (*Id.*, citing RI Ex. 2.0 at 16; see also RI RBOE at 41-42)

Rock Island states that it has also engaged POWER Engineers, Inc. ("POWER") to provide transmission line engineering support for the Project during the development phase, and that POWER provides engineering/design, construction, asset management and other services to the power generation, power delivery and other industries. (RI IB at 97, citing RI Ex. 2.0 at 14-15) POWER has developed preliminary design criteria and structure designs and provided engineering support in the route development process. (*Id.*, citing RI Ex. 2.0 at 14-15)

Rock Island has also retained HDR Engineering, Inc. ("HDR") as its principal consultant for route development, permitting, environmental, land use and public outreach activities for the Project; and Contract Land Staff, LLC ("CLS") to assist in contracting and negotiating with landowners to secure rights of way. Rock Island describes HDR as a large, well-qualified engineering and consulting firm with more than 90 years of experience in engineering and design work for clients in the electric power industry and other infrastructure segments. Rock Island states that since 2008, HDR has provided routing studies for 10 transmission projects of 345 kV or greater, totaling over 3,000 miles of transmission lines. Rock Island states that CLS is experienced in land acquisition activities in the area where the Project will be constructed. (*Id.*, citing RI Exs. 2.0 at 14 and 8.0 at 3)

According to Rock Island, the assertion by IAA and Staff that HVDC lines are "rare" is unfounded. (IAA IB at 13; Staff IB at 62; RI RBOE at 45-46) Rock Island states that Mr. Galli testified that HVDC technology is neither experimental nor recently introduced technology, and in fact, there are over 30 HVDC installations in North America, some dating back as far as 1968. (RI Ex. 2.0 at 22-24; RI RB at 112) Mr. Galli further testified that worldwide, HVDC applications are commonplace and are continuing to increase in applications similar to Rock Island's planned use of HVDC for the Project. (RI Ex. 2.0 at 22-24; RI RB at 112)

Rock Island also states that National Grid, a principal owner of Clean Line, is one of the largest owners and operators of electric transmission facilities in the world, including HVDC lines, and that Rock Island's capability to effectively manage the construction of the Project is further supported by its ability to draw on National Grid's expertise in the planning, construction and operation of the Project. (RI IB at 103-104, citing RI Exs. 1.4 at 19 and 10.12 at 1-3; 12.0 at 2-3; Tr. 246; RI RB at 112; RI RBOE at 43, 46)

Rock Island states that it will require its EPC contracts with KPC and Siemens to include provisions that provide Rock Island with effective project controls to ensure that the Project is completed on time and on budget, and RICL describes those measures. (RI IB at 98, citing RI Ex. 1.4 at 14-16)

Rock Island states that Clean Line and Rock Island have designed an effective construction management organization for the Project and are in the process of filling the positions in the construction management organization. (RI IB at 98, citing RI Ex. 1.4 at 2-10) The construction management organization structure was provided on RI Exhibit 1.5. Each of the three lead positions (EVP of Transmission and Technical Services, General Counsel and Director of Development) has been filled. (*Id.*; RI IB at 99) The responsibilities of and qualifications for each position in the construction management organization were described in Mr. Skelly's rebuttal testimony. (RI IB at 99-100, citing RI Ex. 1.4 at 3-9)

Rock Island states that another component of its construction management organization will be an OE, who will act as the Rock Island's representative whose expertise and experience will supplement and support Rock Island's management of construction of the Project. An OE is a third-party entity, experienced in the engineering and construction of large-scale infrastructure projects, who is retained to assist the owner in project management and oversee the activities of the other contractors, including the EPC contractors, thereby supplementing the experience and expertise of the owner's internal team. (RI IB at 100, citing RI Exs.1.4 at 10 and 1.7 at 11; RI RBOE at 45)

Rock Island responded to the concern expressed by Staff witness Mr. Rashid that Rock Island's construction management organization is not yet fully staffed. (RI IB at 100, citing Staff Ex. 7.0 at 6) Rock Island stated that there are unfilled positions at this time because at the current stage of the Project, there is not meaningful work for those

positions, and that it would be uneconomical to hire individuals for positions that do not have any current or imminent duties. (*Id.* at 100-101, citing RI Ex. 1.7 at 5-7) Mr. Wynter, an officer of National Grid USA and member of Clean Line's Board of Directors, testified that positions should not be filled until there is meaningful and substantive work for the persons in these positions to perform, which will occur as additional development milestones are reached and the Project moves closer to definitive engineering, cost estimating and commencing actual construction. (RI IB at 101) Rock Island identified certain positions as filled, and stated that those positions are already filled because at the current stage of the Project, there are duties and responsibilities to be performed by those positions. (RI IB at 101, citing RI Ex. 1.7 at 6; see also RI RBOE at 47-49)

Rock Island responded to the arguments of Staff, ComEd, the ILA and the IAA that Rock Island may not be able to hire sufficiently experienced employees to complete its construction management organization to oversee construction of the Project. (RI RB at 110, citing Staff IB at 61; Staff RB at 10; ComEd IB at 33; IAA IB at 13) Rock Island stated that it has a reasonable plan for filling the remaining positions of its construction management organization and is confident that it will be able to fill the positions in a timely manner. (RI RB at 110; RI Exs. 1.4 at 9-10 and 1.7 at 7) Mr. Skelly and Mr. Wynter testified that both the Clean Line management team and National Grid have extensive professional networks in the electric power industry and will work with industry professionals and other resources to find the most qualified personnel to fill these positions. (*Id.*, citing RI Exs. 1.7 at 7 and 12.0 at 14) Mr. Wynter testified that based on National Grid's experience and knowledge of the current market for the types of personnel needed for the unfilled positions, Rock Island will be able to fill the remaining positions in the construction management organization and that National Grid will assist Rock Island in identifying qualified candidates to fill these positions. (*Id.* at 110-111, citing RI Ex. 12.0 at 14)

Rock Island responded to the arguments of the IAA that Rock Island's construction management team may not be sufficient to manage construction of the Project because some of the key members may have identical or similar duties for other subsidiaries of Clean Line and therefore may be "stretched thin." (RI RB at 111-112, citing IAA IB at 13) Rock Island states that certain members of the Clean Line management team may work on more than one project at any given time; however, such employees only spend a small amount of time on certain of those projects. (*Id.*, citing Tr. 242) According to RICL, Mr. Skelly testified that as the Project progresses closer to commencing construction, certain employees who have been spending time on multiple projects will have their time dedicated exclusively to the RI Project, and Mr. Galli testified that he anticipates the Clean Line and Rock Island organizations will grow in size as additional project milestones are achieved. (*Id.*, citing Tr. 239-240, 780; see also RI RBOE at 48-49)

Rock Island states that Jayshree Desai, EVP of Rock Island, and Mr. Skelly, President of Clean Line and of Rock Island, were responsible for the development and construction of more than 2,000 megawatts of wind farms and more than 180 miles of transmission lines at Horizon Wind Energy, and were responsible for hiring personnel to build that company's construction, procurement, operations and asset management

departments. (RI IB at 102, citing RI Ex. 1.4 at 17) Rock Island states that, at the height of Horizon Wind Energy's construction activities, Mr. Skelly and Ms. Desai managed over $2 billion worth of procurement and construction contracts. (*Id.*, citing RI Ex. 1.4 at 19) Rock Island also states that Dr. Galli, EVP of Transmission and Technical Services for Clean Line, while Director of Transmission Development at NextEra Energy Resources, was responsible for routing, siting and engineering for approximately 330 miles of new transmission lines, for vetting and awarding contracts to contractors, and participated in planning and project management for a 229-mile transmission line. (*Id.* at 103, citing RI Ex. 1.8 at 1) Rock Island provided additional information about the transmission and generation projects in which Ms. Desai, Mr. Skelly, Dr. Galli and other members of the Clean Line management team have been involved. (*Id.*; see also RI RBOE at 42-43)

Rock Island responded to comments by IAA, ILA, ComEd and Staff that neither Rock Island nor its parent company has ever built a transmission line. (RI RB at 106-107, citing IAA IB at 13-14; ILA IB at 30; ComEd IB at 32-33; Staff IB at 60, 62) Rock Island stated that those arguments fail to consider the evidence presented by RICL, including that members of Clean Line's management team and National Grid, a principal investor in Clean Line, have considerable experience with organizing construction management teams and overseeing the construction of large electric industry projects, including transmission lines. (RI IB 102-104 and RB at 106-107, citing RI Exs. 1.3; 1.4 at 17-19; 1.6; 1.7 at 2, 7, 9-10; Ex. 1.9; Ex. 10.12 at 5; and 12.0 at 2-3)

Rock Island also argues that National Grid, which has extensive experience constructing, owning, and operating transmission lines, is a 40% owner of Clean Line and therefore has a vested interest in Rock Island's effective management of the construction of the Project. Rock Island asserts that National Grid would not have invested $40 million of at-risk capital in Clean Line if National Grid did not have confidence that Clean Line and its subsidiaries will be able to efficiently manage the construction of their transmission line projects and bring them to completion. Rock Island reiterated that National Grid has committed to making its engineering, procurement, licensing, construction and project management skills and resources and technical advice available to Clean Line and Rock Island. (RI RB at 107-108, citing RI Exs. 10.26 at 9; 12.0 at 2-3, 6, 12-14; 1.4 at 19; 1.7 at 3; 12.0 at 13; and Tr. 246-247, 376, 842)

Rock Island disputed IAA's argument that none of the members of the Board of Clean Line have ever been involved in transmission line projects. (RI RB at 108-109, citing IAA IB at 13-14) Rock Island stated that Mr. Skelly, a Board member, has considerable experience in transmission line development. (*Id.*, citing RI Exs. 1.3; 1.4 at 17-19; 1.6; 1.7 at 9-10; 1.9; and Tr. 237, 799-780)

Rock Island also disputed what it characterizes as assertions of Staff, ComEd and the IAA that the individuals Rock Island has already hired to fill positions in its construction management organization do not have sufficient "relevant" experience. (RI RB 109, citing Staff IB at 61; ComEd IB at 33; IAA IB at 14) Rock Island cites "extensive evidence" describing how these individuals' prior professional experience is pertinent to

transmission line construction management and the supervision capabilities. (RI RB at 109, citing RI Exs. 1.3; Ex. 1.4 at 6, 7-9, 17-19; 1.6; 1.7 at 8-10; Ex. 1.8; and 1.9)

Rock Island states that several other state commissions have found that sister project companies of Rock Island, all of which are following the same business plan to develop long distance transmission lines to connect "wind-rich" areas to load and population centers (RI Ex. 1.0 at 13-14), have the necessary managerial and technical competence to construct their transmission line projects. (RI RB at 114; RI Ex 1.7 at 4-5)

Specifically, Rock Island states that: (1) the Oklahoma Corporation Commission, in granting Plains and Eastern Clean Line LLC public utility status in Oklahoma, found that Plains and Eastern possesses the financial, managerial and technical experience to build, own and operate transmission in Oklahoma (RI RB at 114 and RI Ex 1.7 at 4-5, citing Order No. 590530 dated October 28, 2011, Cause No. PUD 201000075, Order); (2) the Kansas Corporation Commission, in granting a certificate to Grain Belt Express Clean Line LLC, found that Grain Belt has the managerial, financial and technical experience to construct, operate and maintain the line (*Id.*, citing Order dated December 7, 2011 Approving Stipulation & Agreement and Granting Certificate, Docket No. 11-GBEE-624-COC, In the Matter of the Application of Grain Belt Express Clean Line LLC for a Limited Certificate of Public Convenience to Transact the Business of a Public Utility in the State of Kansas); and (3) the Indiana Utility Regulatory Commission, in granting Grain Belt a certificate to operate as a transmission-only public utility in the State of Indiana, found that Grain Belt has the necessary technical, managerial and financial capability to construct, own and operate its project. (*Id.*, citing Order of the Commission May 22, 2013, Cause No. 44264, Petition of Grain Belt Express Clean Line LLC)

Rock Island also states that PJM has concluded that Clean Line and its subsidiary operating companies, including Rock Island, satisfy the pre-qualification requirements for Designated Entity status under the PJM Amended and Restated Operating Agreement. Rock Island states that PJM evaluates companies for pre-qualification based on their ability to engineer, develop, construct, operate and maintain a generic transmission facility within PJM. (RI Ex. 1.7 at 3-4; RI RB at 113-114)

B. Staff and Intervenor Positions

1. Staff Position

Preliminarily, it is noted that Staff did not file a brief on exceptions on this issue. Prior to that, Staff addressed the issue in its testimony and briefs, as discussed below.

In its initial brief, Staff states that Staff witness Mr. Rashid, in his initial testimony, "voiced skepticism" concerning Rock Island's ability to efficiently manage and supervise the proposed project, stemming from the fact that RICL had provided no evidence that it or its parent company had ever managed or supervised a transmission line project, let alone of this magnitude. (Staff IB at 60, citing Staff Ex. 1.0 at 15; Staff RB at 9)

In his rebuttal, RICL witness Michael Skelly detailed Rock Island's plan to manage and supervise the construction of the proposed project. In RI Ex. 1.5, Mr. Skelly provided an organizational chart depicting the management structure of RICL, including different positions in that organizational structure. RICL plans to fill these positions with 34 to 35 individuals, but only 15 positions in that chart are currently filled. Staff states, "That means that RICL has yet to hire about 20 highly experienced employees and the Commission has no way to know whether RICL will find those essential employees." (Staff IB at 61; Staff RB at 10)

In his rebuttal testimony, Mr. Rashid testified that Mr. Skelly described the qualifications of the individuals who occupy the 15 filled positions, but did not explain each individual's involvement in previous transmission line projects. Mr. Skelly also attached an exhibit, which listed various projects in which he, Mr. Galli, and three other individuals were involved. Nevertheless, Staff comments, Mr. Skelly did not describe how these individuals' involvement in those projects was pertinent to transmission line construction management and supervision as required by Section 8-406(b)(2) of the Act. (Staff IB at 61; Staff Ex. 7.0 at 6 -7; Staff RB at 10)

Mr. Rashid testified that it was important for RICL to demonstrate solid experience managing and supervising of the construction and operation of transmission lines because the Commission needed to know that RICL has the demonstrated ability to construct, maintain, and operate a reliable, high voltage, direct current, electric transmission line. (Staff Ex. 7.0 at 7)

Staff asserted that RICL has not demonstrated 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 IB at 61) Staff argued, "Aside from a lack of experienced employees, RICL failed to demonstrate that it has the organization to make use of those employees to succeed in this project. (citation omitted) According to the record evidence, RICL has never built a transmission line project of any kind or of any size." (*Id.*, citing Staff Ex. 7.0 at 6, 8 and Tr. 838, 840)

Staff states that the proposed project is of a large scale and uses high voltage direct current technology that is not new, but is rather rare, and that in the entire United States, there are only a few high voltage direct current lines. (Staff IB at 62) Staff argued that a startup company like Rock Island, which has many vacancies in its management structure, would not be able to effectively and efficiently manage and supervise the construction of this $2.0 billion project. (*Id.*; Staff RB at 9-10)

As such, Staff argued, "Rock Island has not shown 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, as required under Section 8-406(b)(2) of the Act. 220 ILCS 5/8-406(b)(2)." (Staff IB at 62; see also Staff RB at 11)

2. ComEd Position

Section IV.A.3 of ComEd's initial brief is titled, "RI Has Not Proven that It Is Capable of Efficiently Managing and Supervising the Construction Process."

ComEd states that RI admits that neither RI nor Clean Line has ever constructed a single transmission line. (ComEd IB at 32, citing Tr. 1125, Berry) ComEd characterizes RI as a "shell company" with no assets and a very limited number of construction management personnel that would need to be supplemented to actually construct the project. RI's corporate parent, Clean Line, is similarly situated as a start-up development company with five transmission projects under similar stages of development. RI contends it will use third-party firms to provide much of the needed construction management expertise, but no construction or construction management contract has been entered into at this time. (*Id.* at 32-33, citing Tr. 854)

ComEd concurs with Staff that RI has not provided evidence establishing that it has the capability to efficiently manage and supervise the construction of the proposed project for various reasons including (1) RI has not established that it will be able to hire the highly experienced employees that it acknowledges will be needed to oversee construction of the project; (2) the lack of experience of the individuals that have been hired with respect to major transmission line projects in general and transmission line construction management and supervision in particular; and (3) RI has no experience constructing even a single transmission line. (ComEd IB at 33, citing Staff Exs. 1.0 at 15 and 7.0 at 6-8)

In ComEd's reply brief, it states that RI's Initial Brief bases its claim on the premise that "it will enter into contracts" that will provide it with such capability. (ComEd RB at 23, citing RI IB at 94-95, 98) ComEd responds, "At present, however, 'Rock Island and Kiewit Power Constructors … do not have a binding [engineering, procurement and construction ("EPC")] contract.' (ComEd RB at 23-24, citing Tr. 748, Galli and Tr. 853- 854, Adam)

RI also asserts it "has contracted with Siemens Energy, Inc. ('"Siemens") for provision of the HVDC converter stations." (RI IB at 95) ComEd, responds, "But what is broadly characterized as the 'contracted' for 'provision of the HVDC converter stations' in RI's brief, is only 'a memorandum of understanding … for the development phase of the Project.'" (ComEd RB at 24, citing RI Ex. 1.4 at 15) ComEd asserts, "RI confirms, rather, that it hopes to enter into 'an EPC contract for Siemens to engineer, procure, build, install, and commission the HVDC converters and related equipment at each end of the line,' but has not yet done so." (*Id.*, citing RI Ex. 1.4 at 16)

According to ComEd, "the claim that certain key personnel at RI and Clean Line could establish the requisite capability is not supported by the record. Personnel such as RI President Mr. Skelly are supporting all five of the Clean Line development projects and there is no assurance or showing they would be available for the Project." (*Id.*) Mr. Skelly stated, "Am I going to be a construction supervisor? I have done that before, but I'm not going to be able to do that on all five of these projects." (*Id.*, citing Tr. 275) ComEd further

argues, "Moreover, while RI apparently plans to have an affiliate agreement in place to obtain certain services from its parent to construct and operate the line, it has presented no such agreement. RI's President did not even contemplate the Commission approving the affiliate agreement under Section 7-101 of the PUA." (*Id.*, citing Tr. 276, Skelly)

3. ILA and IAA Positions

In its initial brief, ILA argues, "Rock Island, which has no operating history, has not met its burden to show that it is capable of efficiently managing and supervising the construction of the Project." (ILA IB at 30; see also ILA BOE at 13-14)

ILA further argues, "Staff's position, as evidenced in its prepared testimony and testimony during the hearings, is that based upon Rock Island's complete lack of experience in this kind of project, Rock Island has not demonstrated it is able to manage the construction of the propose line. [Tr. 703-704] In fact Staff witness Rashid has never seen a Commission CPCN proceeding for a transmission project involving an applicant that has never built a transmission line. [Tr. 713]" (*Id.*)

In its reply brief, ILA argues that Rock Island "can only point to individuals Clean Line has hired for development, along with its chances and desires for hiring additional individuals and contractors in the future to attempt to convince this Commission that it is capable of supervising the construction process." (ILA RB at 3)

ILA asserts that as of this time, Rock Island has engaged third-parties only for development, not construction. (*Id.* at 4, citing RI IB at 95, 97) ILA states that Rock Island's Initial Brief acknowledges that it has not hired Kiewit, or any other third-party, to construct the Project. ILA argues, "Essentially, there is neither evidence on the record that Rock Island can manage the construction, nor evidence it has – or will – hire anyone capable of doing so." (*Id.*)

Of further concern to ILA is the fact that Rock Island has filled less than half of the positions needed for its construction management organization. (ILA RB at 4)

In ILA's view, it is not reasonable to conclude that Rock Island can efficiently manage the construction of the proposed transmission line. ILA argues, "Its construction management team is woefully understaffed for what lies ahead. If one considers the positions that have been staffed, ambitions of filling the remainder of the positions with qualified personal are unrealistic, and no qualified third-parties have been engaged to actually construct the line." (*Id.* at 5)

ILA also argues that the financing condition addressed in Section VIII of this Order below should not be used to support a finding that that the managerial capability criterion has been met. (ILA BOE at 10-11, 14)

According to IAA, Rock Island has presented no evidence that it is capable of efficiently managing and supervising the construction of the Project. (IAA IB at 13) Moreover, Rock Island is seeking to build a high voltage DC transmission line which is

extremely rare, with only a few other similar lines existing in the country. (*Id.*, citing Staff Ex. 4.0R at 8) IAA asserts that the organizational chart of Rock Island is missing 20 of 35 key management employees, and most of these employees are also charged with identical duties for the 5 other subsidiaries of Clean Line. (*Id.*, citing Staff Ex. 4.0R at 6; see also IAA BOE at 23)

The Project is proposed to have a total cost of $1.8B. (*Id.*, citing Tr. 121, McDermott) IAA states that the proposed cost for the other subsidiary transmission projects of Clean Line totals roughly $8B. (*Id.*, citing Tr. 1107, Berry) IAA asserts, "According to Rock Island, the multiple projects are on similar progress timelines and, in theory, Clean Line and its subsidiaries could be constructing multiple transmission lines across the country at the same time." (*Id.*, citing Tr. 1107; IAA BOE at 23)

IAA states that none of the original Board of Directors of Clean Line had ever been involved with the construction of a transmission line before. National Grid became an owner of Clean Line and assumed two seats on the Board of Directors for Clean Line. IAA submits that the National Grid representatives have transmission line experience, but no control over day-to-day management. (IAA IB at 14, citing Tr. 377, Wynter) IAA states that National Grid has the right to purchase all the Project and take over management of the proposed transmission line pursuant to contract in the near term. (*Id.*, citing Tr. 244, Skelly) IAA argues that such facts make the Commission's ability to make a decision more complicated and confusing. (*Id.*)

IAA asserts that Rock Island is a start-up company that has never built a transmission line, and that its parent and sister companies have never built a transmission line and neither have any of the companies' senior management or key employees. (IAA IB at 14, citing Tr. 1125, Berry) IAA argues that Illinois residents should not be forced to be a part of this "new, risky business scheme" and that Rock Island is incapable of efficiently managing and supervising the construction of the Project. (*Id.*; IAA RB at 2)

4. IBEW and Environmental Intervenors Positions

As stated in its initial brief, the IBEW's position is that based on the record, the Commission should find that Rock Island is capable of efficiently managing and supervising the construction of the Project and has taken sufficient action to ensure efficient construction and supervision thereof. (IBEW IB at 8; see also IBEW RBOE at 4-5)

From the IBEW's perspective, an important component of Rock Island's capability to efficiently manage and supervise the construction process to ensure efficient construction is its decision to construct the Project in Illinois using union labor under project labor agreements. RICL witness Mr. Skelly testified that "the skills and qualifications of these union trades in Illinois provide additional assurances that the construction of the Project can and will be successfully executed." (*Id.* at 8, citing RI Ex. 1.7 at 12) IBEW witness Mr. Bates stated that the use of IBEW workers is instrumental to the construction of the Rock Island Project, because the IBEW promotes a highly skilled

workforce by providing extensive training and education to its members, and that this expertise results in projects being completed efficiently, safely, and reliably. (*Id.*, citing IBEW Ex. 1.0 at 4; see also IBEW RBOE at 4-5)

In their initial brief, Environmental Intervenors did not address the issue of whether RICL has shown that it is capable of efficiently managing and supervising the construction process.

In their reply brief, in response to Staff, Environmental Intervenors argue that RICL Staff is qualified to manage and supervise the construction process (EI RB at 4); that vacancies in the RICL management structure are due to a lack of need, not a lack of capability (*Id.* at 6); and that the fact that RICL has never built a transmission line is not evidence that it is unqualified to efficiently manage and supervise construction of the Project. (*Id.* at 8)

C. Commission Conclusion

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."

In its briefs, Staff contended that Rock Island has not made the necessary showing. As noted above, Staff did not file a BOE on this issue.

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 argue that Rock Island has not satisfied the management capability criterion in Section 8-406(b)(2). 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 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 adequately addressed them in its rebuttal testimony. Rock Island has designed a comprehensive construction management organization, and members of the management team have experience in overseeing the construction of large electric projects. Many lead positions

have been filled. While many positions are unfilled, Rock Island contends it would be premature to fully staff them at this point in the process. 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 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 additional 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.

VIII. FINANCING THE PROPOSED CONSTRUCTION – SECTION 8-406(b)(3)

One of the required showings 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."

A. Rock Island Position

Rock Island asserts that it has a feasible plan for raising the capital needed to construct the Project using a project financing approach, which is frequently employed to finance capital projects in the energy industry and other infrastructure sectors. Rock Island argues that the project finance approach, coupled with the financing condition to the CPCN proposed by Commission Staff and accepted by Rock Island, will prevent adverse financial consequences. (RI IB at 104)

According to Rock Island, the key characteristics of a project financing approach are that the project is owned by a single-purpose legal entity which has no businesses, assets or liabilities other than those of the project and its business operations; and that capital is raised to construct the project based on its anticipated revenues and assets from the project. Use of a single purpose legal entity to own the project to be financed is a common approach and is the norm for project financing, including in project financings

for electric generation and transmission projects. Project finance investors, and rating agencies, prefer the use of the single purpose legal entity so that the company does not have any other liabilities or business activities that could be the source of liabilities, and owns only assets relating to the project being financed. (Rock Island IB at 105, citing RI Exs. 10.14 Rev. at 15; 10.26 at 13-14; ComEd Ex. 2.06 at 8 (Standard & Poor's credit rating criteria); Tr.1015) Rock Island states that project financing is widely used to raise capital for projects in the energy industry, as well as for non-energy infrastructure projects, and that hundreds of billions of dollars of infrastructure projects have been successfully financed using this, including electric generation plants of various fuel types, such as wind generation, and electric transmission lines. (*Id.*, citing RI Exs. 10.0 at 32-33, 37; 10.16; 10.26 at 6; Tr. 987-988)

The proposed transmission line is characterized as a "merchant project," where the owner assumes the full market risk of constructing the project, pays all the costs of operating and maintaining the project, and recovers the costs through the revenues it receives from the customers who contract to take service from the project. (RI IB at 105, citing RI Exs. 10.13 at 11 and 10.14 Rev at 28, 48; Tr. 647-648, 951-952, 1007-1008, 1046) Rock Island states that the owner of a merchant project, such as Rock Island, does not look to recover its costs from a general base of retail customers, either by seeking to allocate the costs of the project to load through the cost allocation procedures of the applicable RTO, such as PJM or MISO, or through other mechanisms. (*Id.* at 105-106, citing Tr. 648)

According to Rock Island, if it were to be unsuccessful in bringing the Project to the point of being ready for construction financing, the investors' capital that was spent on development activities would be lost and this loss would be borne solely by the investors. Similarly, if the Project were completed and placed into operation but did not earn an adequate rate of return, the shortfall would be borne by the investors and would not be recovered through cost-allocated charges to ratepayers or the public. (RI IB at 106, citing RI Exs. 10.14 Rev. at 27-29, 35 and 10.26 at 8, 10)

Rock Island states that in its order granting Rock Island's request for negotiated rate authority for the Project, the FERC stated that "the developers of merchant projects assume all of the market risk of a project and have no captive customers from which to recover the cost of the project"; and that as a condition to granting Rock Island negotiated rate authority, FERC specified that "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 has no ability to pass on any costs to captive ratepayers." *Rock Island Clean Line LLC*, 139 FERC ¶ 61,142 (2012), at PP 1 footnote 1, 16. (RI IB at 106) Rock Island states that, in the instant proceeding, it has proposed a condition to its CPCN stating that Rock Island will not recover the costs of the Project through PJM or MISO regional cost allocation unless Rock Island first obtains the permission of this Commission in a new proceeding that would be initiated by Rock Island. (RI IB at 106, citing RI Ex. 10.26 at 18, 21-22)

Rock Island is currently in the "development phase" of the Project, which entails activities such as obtaining siting authority, interconnection studies, routing, permitting

and public outreach. Capital to fund the development activities for the Rock Island Project and the transmission projects of Clean Line's other project subsidiaries is being provided by Clean Line's equity investors, which currently consist of National Grid, ZAM Ventures, Michael Zilkha, and Clean Line Investment LLC. (RI IB at 106-107, citing RI Exs. 1.0 at 13, 39; 1.1 Rev.; 10.0 at 31; 10.12 at 1-3; ComEd Cross Ex. 4)

The objective of the development phase is to bring the Project to the point of being able to enter into long-term transmission contracts with customers; on the basis of those contracts, project-specific financing arrangements can be entered into with lenders, equity investors and/or other partners that will provide the capital to construct the Project. Rock Island states that when the permitting and licensing processes for the Project have been completed, including obtaining the major regulatory approvals, it will enter into long-term contracts with customers for transmission capacity on the Project. Rock Island will then issue debt secured by the revenues from the transmission contracts to raise the capital necessary to complete the final development activities, construct the Project, and place it into operation. (*Id.*, citing RI Exs. 10.0 at 31-32, 37; 10.13 at 3-4)

According to Rock Island, the U.S. wind power industry, in particular, has raised tens of billions of dollars of project-level debt and equity to fund its projects. (RI IB at 107, citing RI Exs. 10.0 at 37; 10.26 at 6; see also RI RBOE at 53) With respect to electric transmission projects, Rock Island witness David Berry provided a list of 12 electric transmission projects over the period from September 2003 through March 2013 which were purportedly financed through debt and/or equity financings accomplished through the project financing model. (RI Ex. 10.16) Rock Island states that these projects were owned by a single- purpose legal entity; the transactions relied only on the revenues from a particular project or group of projects rather than on a broad base of corporate assets; and the projects were independent transmission lines in the U.S. that successfully closed on construction financing and were completed and placed into commercial operation. (RI IB at 108, citing RI Ex. 10.26 at 4; Tr. 1014-1015)

Rock Island contends that the $7.2 billion of transactions listed on Rock Island Exhibit 10.16 demonstrate that independently financed electric transmission lines, including merchant transmission lines such as the Rock Island Project, can be successfully financed. Rock Island states that pipelines financed on the basis of contracts with individual shippers, and independent power generating facilities financed on the basis of long-term power purchase agreements with customers, are other examples of projects financed on the basis of capacity sales contracts. (*Id*. at 108-109, citing RI Exs. 10.14 Rev. at 12; 10.26 at 6; and Tr. 1014)

According to Rock Island, large amounts of liquidity exist in the capital markets for investments in transmission projects that have reached an advanced stage of development. Rock Island states that significant institutional investors have made debt and equity investments in transmission projects financed through the project financing approach, or have led such transactions. (RI IB at 109, citing RI Exs. 10.0 at 33-34 and 10.16) Rock Island states that transmission projects such as the Project are attractive to investors for a number of reasons: they offer stable cash flows due to the nature of the

service, a reasonable return, and an attractive risk profile, and are not subject to fuel price risks or to volumetric risks since transmission capacity charges are fixed payments. Further, transmission lines are long-lived assets which have a longer useful life than the term of the typical debt security; when the debt matures and must be repaid, a transmission line still has significant remaining value that can be used to retire or refinance the debt. (*Id.* at 109, citing RI Ex. 10.14 Rev. at 12-14)

Rock Island also contends that the Project is not likely to be subject to competitive market exposure; customers are unlikely to have viable alternatives to the Project, which is being built to address the lack of transmission infrastructure to transmit electricity from the Resource Area to markets in northeast Illinois and the PJM footprint. Rock Island states that several previous financing transactions for merchant transmission projects have been over-subscribed, meaning that the demand for investment securities in these projects exceeded the supply; the sponsor could have raised more capital than needed, on the same terms. (*Id.*, citing RI Ex. 10.14 Rev. at 12-15)

Rock Island states that the construction financings will be executed on the basis of transmission customer contracts for capacity and service on the Project. Rock Island expects there will be customers wanting to contract for transmission service on the Project, because: there is an increasing demand for renewable energy due to both state RPS mandates and voluntary purchases of renewable energy; the wind resources in the Resource Area are more abundant and cost-effective than the wind resources located in Illinois and other PJM states; there are wind developers active in the Resource Area who will require additional transmission infrastructure in order to sell the output of their facilities; high capacity factor wind energy that will be delivered by the Project is the cheapest form of renewable energy generation and is cost-competitive with thermal generation; and as environmental regulation of power plant emissions increase, wind energy is likely to become even more attractive. (*Id.*, citing RI Exs. 10.14 Rev. at 33-34; 10.26 at 31-32)

According to Rock Island, members of Clean Line's management team, including CEO Michael Skelly, EVP Jayshree Desai, and David Berry, who is Executive Vice President - Strategy and Finance, are experienced in raising capital in the energy industry. Ms. Desai was Chief Financial Officer of Horizon Wind Energy, where she oversaw transactions, including project financings, which raised several billions of dollars of capital for wind farm projects. Mr. Berry has worked on project finance transactions for wind farms totaling more than $2 billion and led the majority of those transactions. (RI IB at 111, citing RI Exs. 10.0 at 40-41; 10.14 Rev. at 10-11) Rock Island Exhibit 10.15 lists energy industry financing, acquisition and sale transactions in which members of the Clean Line management team participated, including over $2.4 billion of project finance transactions and $14 billion of other transactions.

RI states that, to provide assurances that it has raised sufficient capital to finance the entire construction cost of the Project and to avoid a scenario in which it starts but cannot complete construction, Staff proposed, and Rock Island accepted, a condition to Rock Island's CPCN which will ensure that Rock Island will not start construction of the

Project on easement properties unless and until Rock Island has obtained sufficient firm commitments for debt and equity financing to fund the entire Project construction cost. (RI IB at 115-116, citing RI Ex. 10.13 at 2-3) The terms of the condition are as follows:

> 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. For the purposes of this condition:
>
> (i) "install transmission facilities" shall mean to affix permanently to the ground transmission towers or other transmission equipment, including installation of bases and footings for transmission towers, but shall not include (A) preparatory work such as surveys, soil borings, engineering and design, obtaining permits and other approvals from governmental bodies, acquisition of options and easements for right-of-way, and ordering of equipment and materials, and (B) site preparation work and procurement and installation of equipment and facilities on property owned in fee by Rock Island including the converter station sites;
>
> (ii) "easement property" shall mean property on which Rock Island has acquired an easement to install transmission facilities;
>
> (iii) "has obtained commitments for funds" shall mean (A) for loans and other debt commitments, that Rock Island has entered into a loan agreement(s) with a lender(s) and has received the loan funds or has the right to draw down the loan funds on a schedule that is consistent with the need for funds to complete the Project, and (B) for equity, that Rock Island or its parent company has received the funds from the equity investors or that the equity investors have entered into a commitment to provide funds on a schedule that is consistent with the need for funds to complete the Project; and
>
> (iv) "total project cost" shall mean the total estimated remaining cost, at the time that Rock Island is prepared to begin to install transmission facilities, for the following Project activities: engineering, manufacturing and installation of converter stations; transmission line engineering; transmission towers; conductor; construction labor necessary to complete the Project; right of way acquisition costs; and other costs necessary to complete the Project. For reference, the total estimated project cost as of November 1, 2012 is $2.0 billion.
>
> To allow the Commission to verify its compliance with this condition, Rock Island shall submit the following 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:

a) On a confidential basis, equity and loan or other debt financing agreements and commitments entered into or obtained by Rock Island or its parent company for the purpose of funding the Rock Island Clean Line Project that, in the aggregate, provide commitments for funds for the total project cost;

b) An attestation certified by an officer of Rock Island that Rock Island has not, prior to the date of the attestation, installed transmission facilities on easement property; or a notification that such installation is scheduled to begin on a specified date;

c) A statement of the total project cost, broken out by the components listed in the definition of "total project cost," above, and certified by an officer of Rock Island, along with a reconciliation of the total project cost in the statement to the total project cost as of November 1, 2012 of $2.0 billion; and

d) A reconciliation statement, certified by an officer of Rock Island, showing that the agreements and commitments for funds provided in (a) are equal to or greater than the total project cost provided in (c).

Rock Island argues that the "documentation requirements" of the condition will enable Commission Staff to verify that Rock Island has in fact secured sufficient debt and equity capital, or binding commitments for capital, to finance the entire construction cost of the Project, and that any concerns about its ability to raise sufficient financing to complete the construction of the Project are resolved by the condition. (RI IB at 116-117, citing RI Ex. 10.14 Rev. at 3, 6) Rock Island states that Alan Pregozen, Manager of the Finance Department of the Financial Analysis Division of the Commission, recommended that, to ensure Rock Island does not begin construction of the project without sufficient funding in place to complete it, the Commission should impose the condition on Rock Island's CPCN. (*Id.* at 117, citing Staff Ex. 4.0 at 2)

As noted above, the financing condition proposed by Staff and accepted by Rock Island requires Rock Island to submit certain documents "to allow the Commission to verify its compliance with this condition." The Proposed Order would require, as part of the approval of the financing condition, that Rock Island "file a petition with the Commission requesting such verification."

In its BOE, Rock Island argues that the Order should not require Rock Island to file a petition to demonstrate that it has satisfied the financing condition. Rock Island argues that a petition is unnecessary and would increase the difficulty of securing financing. (RI BOE at 25-29)

In its RBOE, Rock Island disputes what it characterizes as erroneous assertions by ILA and ComEd that the Proposed Order "relies on the Staff financing condition as the

basis for its conclusion that Rock Island has satisfied the requirements of §8-406(b)(3)." Rock Island argues in part that the intent of the financing condition is to protect landowners from the risk of abandonment of a partially-completed project on their properties if Rock Island were unable to complete construction due to a lack of funding. (RI RBOE at 55-57)

Rock Island also argues in its BOE that the Order should include additional language as to the evidence and arguments regarding Section 8-406(b)(3). (RI BOE at 29-30; Exceptions at 29-32)

Response to ComEd

Rock Island states that ComEd witness Ms. Lapson testified that Rock Island's "financial resources are not currently sufficient to fund the construction of the proposed Project" (ComEd Ex. 2.0 at 5) and that Rock Island has not demonstrated that it is capable of financing the construction of the Project because it has not demonstrated "any current financial capability." (ComEd Ex. 5.0 at 1) Rock Island disputes Ms. Lapson's premise that an applicant for a CPCN must demonstrate that it currently has sufficient financial resources in place to fund the construction of the proposed project in order to demonstrate financial capability. Rock Island argues that it can demonstrate it is capable of financing the proposed construction, which is the relevant statutory test for purposes of receiving a CPCN, by setting forth a credible financing plan supported by evidence. (RI IB at 111-112, citing RI Ex. 10.26 at 2; see also RI RBOE at 51)

Rock Island states that the basis for Ms. Lapson's position falls into two areas: (1) Rock Island has not signed any transmission contracts with customers for the Project, and (2) Rock Island has not obtained any financing commitments from specific lenders and investors for construction of the Project. In response, Rock Island argues that transmission customers will not spend the time and resources to negotiate and enter into contracts for transmission service unless and until they know that the transmission provider will be able to construct the transmission line to provide the service, and this cannot be known until Rock Island receives the necessary regulatory approvals, including a Certificate from the Commission. Further, prospective transmission customers will want to know the cost of the transmission service before entering into a contract, which will require the transmission provider to have developed a firm construction cost estimate; but this cannot be accomplished until the transmission provider has an approved route and approval for its proposed transmission structures and design, and has completed various surveying and detailed design activities on the approved route. (RI IB at 112-113, citing RI Ex. 10.14 Rev. at 22-23)

Rock Island states that requiring Rock Island to demonstrate that it has financial commitments from lenders and investors for the construction of the Project is also unreasonable. Rock Island states that Ms. Lapson acknowledged, and the credit rating agencies' ratings criteria that she submitted demonstrate, that lenders and investors will not provide binding financial commitments for the construction of a project before the major regulatory approvals for the project have been obtained. (RI IB at 113, citing RI

Exs. 10.14 Rev. at 21 and 10.26 at 3-4; ComEd Ex. 2.03 (Moody's rating criteria for project finance debt) at 26 and ComEd Ex. 2.04 (Fitch's rating criteria for project finance debt) at 6) Rock Island submits that Ms. Lapson agreed that "a project receiving 'binding financial commitments' prior to the project's receipt of all required permits or authorizations is contrary to practice in the financial marketplace"; and that any such commitment would be contingent upon the receipt of the required approvals in a form satisfactory to the investor. (*Id.* at 113-114, citing RI Ex. 10.26 at 2-3; Tr. 991-993) According to Rock Island, debt and equity project lenders and investors require that energy projects using project finance receive the necessary permits and approvals as a condition precedent to funding a project loan or investment. (*Id.*, citing RI Exs. 10.0 at 36, 39 and 10.14 Rev. at 22)

In response to Ms. Lapson's concern that Rock Island's transmission capacity customers would not be able to demonstrate sufficient creditworthiness for their transmission contracts to provide a basis for financing (RI IB at 114, citing ComEd Exs 2.0 at 13 and Ex. 5.0 at 4, 8), Rock Island states that Mr. Berry described the credit conditions that will be required of Rock Island's transmission capacity customers. He testified that any of Rock Island's transmission capacity customers who do not have established credit ratings or meet designated financial metrics will be required to post additional credit support in the form of a parent guarantee, letter of credit or cash collateral. He stated that similar credit support is required by both MISO and PJM to purchase long-term transmission service. (*Id.*, citing RI Ex. 10.14 Rev. at 11-13)

Rock Island also asserts that a default by a transmission capacity customer is unlikely to occur because if the customer is a wind generator in the Resource Area, it will need the Project's transmission service to get its output delivered to market, so even if a customer were unexpectedly in financial distress, it must pay for the transmission service in order to receive any revenues from its wind generation facility. Even if a transmission capacity customer goes into bankruptcy or defaults on its obligations to its financing parties and other creditors, the customer's assets -- wind generation facilities -- may be seized by its lenders and/or sold to new owners, who would then need to pay for transmission service on the Project in order to realize value from the assets. (*Id.* at 115, citing RI Ex. 10.26 at 7) Further, Rock Island states, it will have a portfolio of transmission customers, which will diversify the Project's credit risk and reduce the impact of an individual customer default, were one to occur. (*Id.* at 114-115, citing RI Ex. 10.26 at 7)

In its reply brief, Rock Island disputed ComEd's argument that Rock Island must show that it has "present capability" to finance the Project. (ComEd IB at 34-35) Rock Island states that §8-406(b)(3) does not require this; rather, it requires Rock Island to show that it "is capable" of financing construction of the Project, which Rock Island contends it has shown. Rock Island further states that the statute does not require an applicant to demonstrate that, at the time of certification, it has either the capital in hand to finance construction of its Project, or binding financing commitments to cover the cost of construction. Further, Rock Island states that it is not relying on or asking for a "presumption" that it will be able to secure financing in the future. Rather, it is relying on the fact that it has a credible, achievable plan for raising the capital needed to construct

the Project, one that has been successfully used many times over many years to raise hundreds of billions of dollars for energy infrastructure projects; that the economics of the Project will be attractive to investors; and that its management team is experienced in executing this type of financing plan for merchant projects in the energy industry. (RI RB at 117-118; see also RI RBOE at 51)

Additionally, Rock Island contends that ComEd's argument is undercut by §8-406(f) of the PUA, which states: "Unless exercised within a period of 2 years from the grant thereof authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void." By this provision, Rock Island argues, the Legislature has recognized that an applicant for a CPCN cannot be expected, and is not required, to be presently able to carry out the requirements of its CPCN – including being "presently capable" of raising the capital to finance construction – at the time of certification. (*Id.* at 118)

Rock Island argues that ComEd's reliance on the case of *Northern Moraine Wastewater Reclamation Dist. v. ICC*, 392 Ill. App. 3d 542 (2d Dist. 2009), does not support ComEd's position, because all the court did in *Northern Moraine* was conclude that there was sufficient evidence in the record to affirm the Commission's conclusion that the applicant was "financially capable of serving the subject [service] area." (RI RB at 118-119, citing *Northern Moraine* at 568) Rock Island states that the fact the court found the specific information in the record in that case on the applicant's financial resources was sufficient, on appellate review, to sustain the Commission's finding, does not establish an evidentiary standard that must be met in every case. Rock Island also points out that in *Northern Moraine*, the Commission relied on the testimony of Staff witness Janis Freetly that "since the developers will fund all additions to the water and sewer systems without refund, the construction of new facilities will not have adverse financial consequences for the utility or its customers." (*Id.*, citing *Northern Moraine* at 551) Rock Island states that this is similar to its financing plan, i.e., the basis for raising the capital to finance construction of the Project is the transmission contracts that the transmission customers of the Project will enter into. (*Id.*; RI RBOE at 52)

As indicated below under "ComEd Position," ComEd proposed, as an alternative exception in its BOE, the following condition, "Rock Island will not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction of the subject line in Illinois, until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost." (ComEd BOE at 19-20)

In its RBOE, Rock Island opposes this condition. Rock Island contends that the condition is unclear and could arguably and improperly prevent such activities as conducting surveys, negotiating with landowners and engaging in design work, which would unduly delay the Project. (RI RBOE at 56-58)

Response to ILA and IAA

Rock Island responded to the arguments of IAA and ILA that Rock Island has not shown it is capable of financing the construction of the Project. (IAA IB at 15-16; ILA IB at 30-34) Rock Island states that IAA and ILA presented no witnesses on this topic and both rely on the testimony of ComEd witness Ms. Lapson, who was the only witness in this case submitting testimony that Rock Island is not capable of financing the construction of the Project. Rock Island's response to Ms. Lapson's position is summarized above. (RI RB at 114-115)

Rock Island responded to IAA and ILA's argument that Rock Island must compete with its sister companies for the allocation of capital from Clean Line. (IAA IB at 15; ILA IB at 31-32) Rock Island states that this would be true only with respect to capital for development activities, not with respect to capital for construction, because Rock Island and each other project of a Clean Line subsidiary will be financed separately, through the separate, single-purpose entity that owns each project, based on the transmission service revenue streams of each project. (RI IB at 108; RI RB at 115; see also RI IB at 107 with cite to record; see also RI RBOE at 52)

Rock Island states that to date, Clean Line has not experienced difficulty in raising capital to fund the development activities for the projects of its subsidiaries, including Rock Island. Rock Island also states that during the course of this docket, National Grid committed to invest $40 million in Clean Line, and ZAM Ventures has continued to invest in Clean Line beyond its original commitment. (RI RB at 115-116, citing RI Exs. 10.12 at 1 and 12.0 at 6; Tr. 819; ComEd Cross Ex. 4 Attachment 01) Rock Island states that the total amount of capital invested in Clean Line thus far and the total development expenditures on the Rock Island Project are very substantial amounts of at-risk capital that have been raised from private investors, and demonstrates the confidence of the investors that Clean Line's projects can be developed, financed, constructed and brought into operation. (RI RB at 116, citing RI Ex. 10.26 at 9) Additionally, Rock Island states that as the Rock Island Project and Clean Line's other projects achieve additional development milestones, such as Commission approval for the Project, it will be easier, not harder, to raise additional development capital. (RI RB at 115-116, citing RI Ex. 10.14 Rev. at 10)

Rock Island responded to ILA's statement that in order to finance the Project, Rock Island needs signed capacity commitments from generators representing 4,000 MW of capacity (ILA IB at 33), and to IAA's statement that in order to obtain 70% of its funding, Rock Island "speculates" that 60% of its load will need to be contracted with customers (IAA IB at 15). Rock Island explains that it presented an illustrative calculation to show that in order to raise approximately 70% of the construction cost of the Project through debt financing (20-year loans), it would be necessary to have contracted approximately 60% of the transmission capacity of the Project. (RI RB at 116, citing RI Exs. 10.0 at 38 and 10.8; Tr. 1120) Rock Island submits that the illustrative calculation shows it will be necessary to have contracted a substantial portion, but not all, of the transmission capacity of the Project in order to secure financing for construction. According to Rock

Island, the exact percentage of transmission capacity that needs to be under contract prior to obtaining full financing commitments will depend on the price, counterparty creditworthiness, and term in years of the transmission contracts. (*Id.* at 116-117, citing RI Ex. 10.0 at 37)

In response to IAA's assertion that Rock Island has "no idea" whether sufficient demand exists for its "load" to justify construction of the Project and to attract financing and that "as such, by [Rock Island's] own admission, it has no idea if it is capable of financing the proposed construction" (IAA IB at 15), Rock Island asserts that what its witness Mr. Berry actually testified to was that if one of Clean Line's projects were not built, the investors would lose their investment in that project. Rock Island states that Mr. Berry explained why there will be sufficient customer interest in the Project to support raising the capital necessary to construct the Project, and that Rock Island will be able to finance the proposed construction. (*Id.*, citing RI Exs. 10.0 at 33-37, 39-41; 10.14 Rev. at 9-16, 18-19, 33-35; 10.26 at 3, 6, 8-9)

B. Position of Staff

Staff witness Alan Pregozen testified regarding whether RICL meets the financing condition of Section 8-406 of the Act. Mr. Pregozen testified, "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 RI 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 IB at 62, citing Staff Ex. 4.0 at 2)

Rock Island witness David Berry described Rock Island's intent to raise sufficient funding to complete the Project before it permanently installs transmission towers on landowner property. (*Id.*, citing RI Ex. 10.13 at 2) Rock Island accepts the condition recommended by Mr. Pregozen to formalize its financing commitment in its Certificate of Public Convenience and Necessity.

The terms of this condition are set forth on pages 63-64 of Staff's initial brief, and they are also set forth in this order above under "RICL's Position."

In its reply brief, Staff notes that ComEd, IAA and ILA argue that RICL has not shown it is capable of financing the proposed construction, and that ILA argues that Rock Island has not shown it can raise the capital necessary to fund the project, which depends on Rock Island lining up sufficient generators as costumers that do not yet exist. (Staff RB at 12, citing ComEd IB at 33; IAA IB at15; ILA IB at 31-34) Staff responds, "However, the Staff/RICL agreed-to condition requiring Rock Island to raise all the capital needed to construct the line addresses this issue because it prevents Rock Island from beginning construction on a project that it cannot complete." (Staff RB at 30-34)

Staff also responds to ComEd's argument that RI's and Clean Line's assets and commitments together amount to less than 2% of the total estimated costs to build the

project, which does not meet the statutory requirement and is less than was the case in *Northern Moraine.* (ComEd IB at 34, citing *Northern Moraine,* 392 Ill. App. 3d 542, 568-569 (2nd Dist. 2009)) ComEd also states that the "unprecedented condition" does not demonstrate that the Company "has any present capability to finance the Project, as the law requires." (ComEd IB at 34) ComEd argues that RI has not provided evidence that it could obtain financing in the future as it is a "shell company, a developer with no material current financial ability." (*Id.* at 35)

According to Staff, ComEd misreads *Northern Moraine*. In that case, the Northern Moraine Wastewater Reclamation District ("District") appealed, on several bases, the Commission's granting of a Section 8-406 CPCN to Rockwell Utilities, LLC ("Rockwell"). One of the bases for the District's appeal was that the Commission's conclusion that Rockwell satisfied Section 8-406(b) of the PUA was unsupported by the evidence. The District argued that Rockwell's financing was insufficient because it was based on a sole financial provider's promise to loan Rockwell money when needed. The Appellate Court found that the record supported the Commission's finding that Rockwell was financially capable of serving the subject area. *Northern Moraine*, 392 Ill. App. 3d at 568-569. In so doing, it observed that Staff would have an opportunity to review information on a prospective basis to assess whether rates should be reassessed to ensure there would not be a negative impact on its ability to serve the subject area. *Id.* at 569. The information the ICC Staff would review on a prospective basis included Rockwell's plant investments, revenues, and expenses. *Id.*

In Staff's view, *Northern Moraine* stands for the proposition that an applicant's showing under Section 8-406(b)(3) need not be based entirely on assets on hand, held by the applicant itself, but may consist of the backing of a parent company, affiliate or (if an LLC) a member, which assets have been pledged, committed or promised. Furthermore, the *Northern Moraine* court considered ongoing oversight by Commission Staff of the company's financial health to be a significant safeguard against financial problems arising. (Staff RB at 13)

Staff argues that in the current proceeding, "the safeguards of the agreed-to condition similarly ensure that RICL must demonstrate financial viability prior to installation of transmission lines on landowner property." (*Id.* at 13-14)

Staff also argues, "Additionally, the Commission has previously granted a Section 8-406 Certificate to an entity that had no existing assets or revenues, and no existing financial ratios. (Illinois Power Company and Ameren Illinois Transmission Company, Order Docket No. 06-0179, May 17, 2007, 19.)" (*Id.* at 14)

Staff also states that Section 8-406(b)(3) requires the utility show that it "is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." 220 ILCS 5/8-406(b)(3) Staff contends that the harm to Rock Island, if it were a utility, is limited, as it owns no other facilities in the State of Illinois, and the agreed-to condition ensures Rock Island does not begin construction without the $1.8 billion required to carry out the Project. (*Id.*) Staff states that Rock Island's customers

for the Proposed Project would be: (1) wind energy producers in the Resource Area; and (2) buyers of electricity at the eastern end of the line, primarily wholesale market participants. (*Id.*, citing RI IB at 6) Therefore, Staff asserts, "RICL's customers are not traditional ratepayers. This Commission has stated that it is more concerned about impacts on customers who are ratepayers. [Docket No. 06-0179, Order at 28] ('Further, even assuming [Ameren Illinois Transmission Company] were adversely affected, there does not appear to be any likelihood that those adverse consequences for its 'customers' would involve actual harm to ratepayers. That is, the Commission is more concerned about impacts on 'customers' who are ratepayers than those who are not.')" (Staff RB at 14)

Staff believes that Section 8-406(b)(3) is met if the Commission adopts the Staff/RICL agreed-to condition. Staff explains, "If RICL does not raise all the capital needed to construct the entire project, construction will not begin and Rock Island and its 'customers' will not suffer significant adverse financial consequences. If RICL does raise all the capital needed to construct the entire project, then it follows that RICL could construct the entire project without significant adverse financial consequences to either RICL or its customers." (*Id.* at 14-15)

In its RBOE, Staff responds to arguments in the ILA and ComEd BOEs. Staff observes that the showing required in Section 8-406(b)(3) is "that the utility is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers." Staff states that the condition proposed by Staff witness Alan Pregozen is, as noted by Mr. Pregozen, calculated to: "ensure that Rock Island does not begin construction of the project without sufficient funding in place to complete it[.]" According to Staff, "[t]his condition will, logic dictates, prevent any adverse financial consequences to RICL or its customers, since no adverse consequences can result if no facilities are built." (Staff RBOE at 5-6)

C. ComEd Position

In ComEd's view, RI is not capable of financing the proposed construction. ComEd argues, "The plain language of [Section 8-406(b)] requires separate showings that: (i) the utility is capable of financing the proposed construction; and (ii) the utility is able to finance the construction without adverse financial consequences for the utility or its customers. (ComEd IB at 33-34, citing *Moraine Wastewater*, 392 Ill. App. 3d 542, 551 (2d Dist. 2009))

According to ComEd, the record proves that RI has no assets or loan or equity commitments capable of financing the $2 billion cost of the Project. ComEd, asserts, "While RI has obtained venture investments from Clean Line, those investments are only intended to finance exploration development (as opposed to construction) of the Project as well as the menu of other DC line concepts Clean Line entities are advancing around the country." (ComEd IB at 34, citing Tr. 1057, Berry) ComEd states that the bottom line is that all RI's and Clean Line's assets and commitments together amount to less than 2% of the total estimated costs to build the Project. (*Id.*, citing Tr. 1060-1061) ComEd argues, "This meager showing is far from sufficient to meet the statutory requirement, and

stands in stark contrast to evidence of actual revenues and assets of the utility or its committed backer found sufficient to establish financial capability in *Moraine Wastewater Reclamation*, 392 Ill. App. 3d at 568-69 (Citing evidence of actual revenues, assets, and equity presently available to operate, maintain, and construct additional facilities.)" (ComEd IB at 34; RB at 25; see also ComEd BOE at 18)

In ComEd's view, a condition that RICL will not install transmission facilities for the Project on easement property until such time as it has obtained commitments for funds in an amount equal to or greater than the total project cost does not demonstrate that RI has any present capability to finance the Project, as the law requires. (ComEd IB at 34-35; citing RI Ex. 10.l3 at 2-3) ComEd also argues that any such condition "neither prevents harm to customers in the meantime, including being threatened with eminent domain, nor does it prevent harm to the applicant itself, which the law also requires." (ComEd RB at 26-27)

ComEd contends that any claim RICL "likely can, and should be presumed to be able to, secure financing in the future" is speculative and unsupported by the evidence, "even if RI had generators and customers and a means to recover the Project's costs." (ComEd IB at 34-35) ComEd cites testimony by ComEd witness Lapson that "all evidence highlights the fact that [RI] is a shell company, a developer with no material current financial ability. Testimony regarding the financial capability of [RI]'s parent Clean Line or the financial strength of investors in Clean Line fails to demonstrate that Clean Line or its investors and backers have any commitment to provide funds to [RI]." (*Id.*, citing ComEd Ex. 5.0 at 15)

ComEd concludes, "But even if RI's claim that it could access financing in the future were somehow substantiated and putting aside the uncertainties and current lack of any customers to shoulder the Project's costs, a future prediction cannot satisfy the statutory requirement that RI prove that it is capable, at the time of certification, of financing the Project. There is no doubt on this record that RI is not and, therefore, RI fails to satisfy this critical element for receiving a CPCN." (ComEd IB at 35; see also ComEd BOE at 18-19)

In its reply brief, ComEd responds to RI's statement that it "plans to raise the capital needed for the construction of the Project using a project financing approach." (RI IB at 104-05) According to ComEd, the fact that revenues must be locked in ahead of financing inherently adds yet another layer of risk and uncertainty, as such financing depends both on success in the energy market in pre-subscribing customers and then in the financial market in inducing investors to lend based on those subscriptions. (ComEd RB at 26) ComEd asserts, "But here, RI faces even greater risk. RI admits not only that signing up such customers is necessary, but that those generation customers do not now even exist. See Skelly, Tr. 271:24 - 272:19; Davis, Tr. 235:17-24; Lapson, Tr. 1020:6-7; Berry, Tr. 1117:2-7." (*Id.*) ComEd argues, "Thus, RI's 'plan' is contingent not only on its own ability to secure financing from the capital markets, but also on the positive reaction of hypothetical future customers to RI's plan." (*Id.*)

In its BOE, ComEd also argues that if a Certificate is granted over ComEd's objections, the financing condition proposed by Rock Island and Staff, whereby Rock Island would be prohibited from "install[ing] transmission facilities" until it secures the requisite financing, should be revised. According to ComEd, RI would implicitly be permitted to undertake a host of other development activities before satisfying that condition; thus, the Commission should instead subject the CPCN to the condition that "Rock Island will not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction of the subject line in Illinois, until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost." (ComEd BOE at 19-20; Exceptions at 149)

In its RBOE, ComEd notes that the financing condition proposed by Staff and accepted by RI requires Rock Island to submit certain documents "to allow the Commission to verify its compliance with this condition."

ComEd also notes that the Proposed Order would require, as part of the approval of the financing condition, that Rock Island "file a petition with the Commission requesting such verification." In ComEd's view, RI's argument that this requirement should be deleted should not be accepted. ComEd contends that ensuring compliance with that condition in an open and transparent manner in front of the Commission is reasonable and proper. (ComEd RBOE at 15-18)

D. ILA and IAA Positions

In ILA's view, Rock Island has not met its burden to show that it is capable of financing the proposed construction without significant adverse financial consequences. (ILA IB at 30; BOE at 7-11)

ILA asserts that ComEd expert witness Ellen Lapson offered testimony demonstrating that Rock Island is unable to show the requisite financial capability to satisfy its statutory burden. (ILA IB at 30, citing ComEd Exs. 2.0 and 5.0) ILA witness Paul Marshall stated that the organization has concerns with Rock Island's financials, and whether or not the line would actually be built. (Tr. 588- 589) ILA states that the record shows that in Dr. Marshall's experience as a banker and farm manager, "a hypothetical company with a similar profile as Rock Island – i.e. approximately one percent equity, one percent or less collateral, no contractually committed source of equity, no contractually committed customers, and no contractually committed revenue stream [Tr. 597] -- would be unlikely to be financed." (ILA IB at 31, citing Tr. 600)

According to ILA, "It became more apparent during the cross-examination of Rock Island witnesses just how precarious Rock Island's financial condition is, both from the standpoint of its own continued survival during the development of the many projects currently in the portfolio of Rock Island's parent Clean Line Energy Partners, and the seemingly insurmountable hurdles Rock Island must clear in order to accomplish the project financing it requires in order to construct its Project." (*Id.*)

ILA states that Clean Line Energy Partners has five separate transmission projects in early stages of development, with projected project costs as noted below:

1. Plains and Eastern Clean Line – 700 miles, 3 states, $2 billion
2. Rock Island Clean Line - 500 miles, 2 states (incl. Illinois), $2 billion
3. Centennial West Clean Line – 900 miles, 3 states, $2.5 billion
4. Grain Belt Express – 750 miles, 4 states (incl. Illinois), $2 billion
5. Western Spirit Clean Line – 200 miles, 1 state, $350-$400 million

(ILA IB at 31, citing RI Petition; RI Ex. 1.1REV; Tr. 192-196, 269)

ILA submits that as can be seen from the above list, Clean Line is facing the task of raising financing not just for the Rock Island Project, but over $8 billion for all of its projects. (ILA IB at 32, citing Tr. 1107) At the hearings, certain confidential cross-examination exhibits were introduced showing development expenses incurred by Clean Line to date, and projected additional development expenses through 2015. (e.g., ILA Group Cross Ex. 1 CONF) Beyond the 2015 projected year, as Mr. Skelly testified, Clean Line will need to continue to spend additional monies on development. (ILA IB at 32, citing Tr. 211-212) ILA states that Clean Line's Board of Directors determines how available development capital is allocated among its subsidiaries and projects. (*Id.* citing Tr. 215-216, ComEd Cross Ex. 10 PUBLIC) Consequently, ILA argues, "Rock Island does not control its own capital sourcing or spending, as those decisions are made at the parent company level; it is fair to say that Rock Island has to compete with other Clean Line project entities for capital." (*Id.*)

ILA states that Clean Line has $15 million left in committed development capital, that coming from National Grid. (ILA IB at 32, citing ComEd Cross Ex. 4 PUBLIC; Tr. 1110) Based on its capital available both on-hand and committed, at present rates of development spending, Mr. Berry testified at the hearing, "Based on these projections, and assuming the board allocates capital consistently with these projections, we would need to raise additional capital from our investors or other sources sometime in 2014." (Tr. 1111)

ILA states that Mr. Berry explained how Clean Line plans to finance the actual construction of its projects ($8 billion plus) once they reach a financeable stage. (Tr. 1087-1101) ILA submits, "He stated that, for the Rock Island Project, in order to obtain binding debt financing (60-80% of total cost; Tr. [1089]) commitments for the construction, investors would require signed capacity contracts with anchor tenants assuring a revenue stream that Rock Island would pledge to secure repayment. See Tr. [1093])" (ILA IB at 33; BOE at 8) ILA continues, "The capacity contracts would be signed, according to Mr. Berry, before any generators had constructed any generation in the Resource Area. The generator customers of Rock Island, which become the shippers, will be expected to make binding minimum revenue commitments to Rock Island, both before the Project starts construction and before the generating project starts construction, but the revenue commitments would not be contingent on either (transmission line or generating facility) being built." (ILA IB at 33)

According to ILA, "Mr. Berry says that is a risk that the shipper will take. Tr. [1096-1098]. In order to finance the Rock Island Project in this manner, Rock Island would need signed capacity commitments, with corresponding revenue assurances, from generators representing about 4,000 MW of capacity." (ILA IB at 33) ILA contends that at an estimated cost of $1.5 million/MW, generators in aggregate would be committing to the development of generation in the Resource Area at a total cost of $6 billion. (*Id.*, citing Tr. 1098-1101; see also ILA BOE at 8)

In ILA's view, the scenario that Mr. Berry described, seems like an "incredibly risky undertaking" for the generator-subscribers. ILA argues, "On top of what Mr. Berry explained, the generators will need to find ways to finance their $6 billion of new generation, thereby injecting yet another significant contingency and element of risk." (ILA IB at 33-34) ILA contends, in summary, that Rock Island faces the dual financial challenge of finding sufficient development capital to continue on its quest, and then, assuming it is able to do that, to find financing providers and subscribing generators at levels sufficient to permit the actual construction of the Project. (*Id.* at 34)

In its reply brief, ILA argues that in showing that it "is capable of financing the proposed construction," it is not enough for RICL to conclude, even if it were true, that Rock Island has a "viable plan for raising the capital needed to fund the construction of the Project" through project financing. (ILA RB at 10, citing RI IB at 33)

ILA also presented other arguments on the financial capability issue in its reply brief. The Commission observes that the purpose of reply briefs is to provide parties with an opportunity to reply to other parties' initial briefs, not to file a supplemental initial brief to which other parties would not have an opportunity to reply. Except for the one citation to Rock Island's initial brief noted above, the financial capability section of ILA's reply brief does not contain any citations to, or otherwise refer to, the initial briefs filed by RICL or any other party.

In its RBOE, ILA states that Rock Island "asks that the Order be revised to include more discussion on the 'capable of financing' criterion under §8-406(b)." (ILA RBOE at 4) ILA takes issue with Rock Island's suggested language and argument. (*Id*. at 4-8)

IAA Position

IAA argues that Rock Island has not demonstrated it is capable of financing the Project. (IAA IB at 15; see also IAA BOE at 25)

The Project is proposed to have a total cost of $1.8B. (*Id.*, citing Tr. 121, McDermott) The proposed cost for the other subsidiary transmission projects of Clean Line totals roughly $8B. (*Id.*, citing Tr. 1107, Berry) IAA states that Rock Island has produced financial records, but it does not have sufficient cash-on-hand to self-finance, and the monies of Clean Line are not segregated or budgeted among its subsidiary projects. (Id, citing Tr. 215-216, Skelly) IAA also asserts that National Grid has not committed to investing any additional capital in the Project (Tr. 332, Wynter), and that

Clean Line may or may not commit financing to a particular project, including Rock Island, and does not have sufficient cash to fund any of its transmission projects across the country. (IAA IB at 15)

Should the Project be approved by the Commission, Rock Island depends upon funding from the capital markets. According to IAA, in order to obtain 70% of its funding, Rock Island speculates that 60% of its load will need to be contracted with customers (Tr. 1120, Berry), and has no idea whether sufficient demand, i.e. need, exists for its load to justify the construction of the Project and attract financing. (IAA IB at 15, citing Tr. 1107-1109, Berry) IAA agues, "As such, by Rock Island's own admission, it has no idea if it is capable of financing the proposed construction. The Farm Bureau asserts that it does not and, at best, Rock Island's ability to obtain financing is tenuous." (IAA IB at 15)

IAA urges the Commission to attribute significant weight to ComEd witness Ellen Lapson's opinion on Rock Island's inability to finance the Project. According to IAA, after careful and detailed analysis, Ms. Lapson has correctly concluded, among other things, that (1) any "[r]esources pledged to Clean Line are not directly available to Rock Island," (2) "Clean Line may choose to support any project or withhold support from any project," including Rock Island, and, (3) "[e]ven if all of Clean Line's available and committed resources were allocated to Rock Island …, Rock Island would still be a shell company." (IAA IB at 15-16, citing ComEd Ex. 5.0 at 10)

In its RBOE, in response to Rock Island's BOE, IAA argues, "Rock Island's argument that the proposed order should not require Rock Island to file a petition to demonstrate that it has satisfied the financing condition should be rejected." (IAA RBOE at 7)

E. Environmental Intervenors, WOW and IBEW Positions

Section IV.A.3 of Environmental Intervenors' initial brief is titled, "The Commission should adopt Commission Staff's and RICL's financing condition." (EI IB at 13)

EI argue that under 220 ILCS 5/8-406(b), "RICL does not need to demonstrate that it has secured all of the financing necessary to construct and operate the Project. RICL must only demonstrate that it is 'capable' of securing the financing without harming itself or its customers. RICL meets this financing requirement." (*Id.* at 13-14)

ComEd Witness Lapson stated, "The information provided by [RICL] in its Petition and direct testimony demonstrates that [RICL]'s financial resources are not currently sufficient to fund the construction of the proposed Project. At best, the information regarding access to financing can only be described as 'aspirational.'" (ComEd Ex. 2.0 at 5) According to EI, "Her testimony, even if true, is largely irrelevant. The germane question is whether RICL is 'capable' of securing the financing necessary to construct the Project, and she failed to rebut RICL's testimony that it is capable of securing the financing." (EI IB at 14)

EI argue that halting the CPCN process until Rock Island achieves full financing would effectively eliminate the ability for merchant transmission owners to compete with incumbent utilities, thereby harming competition in the state and eventually resulting in higher rates for Illinois consumers. They further contend, "Competitive merchant transmission owners such as RICL must get financing entirely from outside sources to fund their new projects. There is a chicken and an egg problem inherent in the merchant transmission model." As Mr. Berry explained, 'Project lenders always, in my experience, mandate that receipt of the necessary permits and approvals are a condition precedent to funding project loan.'" (EI IB at 14, citing RI Ex. 10.0 at 36)

According to EI, "to break this stalemate," RICL adopted ICC Staff witness Pregozen's recommended and "sensible" financing condition. Given this commitment, which would be a condition to the Commission's order in this proceeding, EI suggests the Commission can be assured that the Project will not proceed unless and until RICL has all necessary resources in place to complete the Project. (EI IB at 14-15)

In their RBOE, Environmental Intervenors take issue with ComEd's alternative exception that the Commission should order that "Rock Island will not undertake any activities or exercise any rights that require or are subject to receipt of a CPCN, including construction of the subject line in Illinois, until such time as Rock Island has obtained commitments for funds in a total amount equal to or greater than the total project cost." According to EI, ComEd's proposal is unnecessary, vague, and overly broad, and could prohibit such activities as conducting surveys and contracting with landowners for easements. (EI RBOE at 2)

IBEW; WOW

The IBEW urges the Commission to find Rock Island to be capable of financing the proposed construction taking into account the "financing condition" that has been agreed to by Rock Island and the Commission Staff. (IBEW IB at 9, citing RI Ex. 10.13 at 2-3, and Staff Ex. 4.0 at 2) The IBEW believes the record is clear that receipt of a Certificate from the Commission is a necessary prerequisite to Rock Island being able to sign both transmission contracts with customers and obtain binding financing commitments from investors. (*Id.*, citing RI Ex. 10.14 Rev. at 2, 21-22; and Tr. 991, 994-995) In IBEW's view, the record shows the financing approach Rock Island will be using is an established, frequently-used approach for raising capital for energy industry projects and other infrastructure-type projects. (*Id.*, citing RI Exs. 10.0 at 32-33, 10.14 Rev. at 33, and 10.26 at 2) IBEW further argues that the condition agreed to by Rock Island and Commission Staff provides protection against adverse consequences should Rock Island ultimately be unable to raise sufficient funds for the construction of the Project. (*Id.*, citing RI Exs. 10.14 Rev. at 5-6 and 10.26 at 9-13; IBEW RBOE at 5-6)

The IBEW is concerned that if the Commission were to require Rock Island -- or future, similar merchant project developers -- to have signed transmission customer contracts and/or binding commitments for permanent financing before being granted a

certificate, this will seriously delay the Rock Island Project and discourage or eliminate future projects of this type. (IBEW IB at 9-10; IBEW RBOE at 5-6)

In its RBOE, IBEW urges rejection of "ComEd's [BOE] argument that Rock Island should not be allowed to exercise its certificate for the project until it has satisfied all the conditions imposed by the order." In IBEW's view, "There is no reason why Rock Island, having met the requirements of Section 8-406 and being granted a Certificate for the Project, should nonetheless be precluded … from negotiating easement acquisition agreements with landowners, entering landowner property (after providing the statutorily-required notice) to conduct land surveys pursuant to Section 8-510 of the Act …, or engaging in other ongoing Project development activities as a Certificate holder." (IBEW RBOE at 6-7)

Similarly, WOW recommends that the Commission "deny ComEd's request to prohibit Rock Island from exercising actions pursuant to the CPCN until all conditions are met…." (WOW RBOE at 5-10)

In their BOEs, IBEW and WOW argue that the Commission's Order should not include the following statement contained at the end of the conclusion in the proposed order, "As part of its approval of the condition, the Commission finds that Rock Island shall file a petition with the Commission requesting such verification." (IBEW BOE at 8-11; WOW BOE at 2-5)

F. Commission Conclusion

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

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. However, as discussed by Staff, these parties' do not argue whether Rock Island is capable of financing the proposed Project in the context of harm to its customers; instead they choose only to focus on whether Rock Island has secured the necessary financing to prove that it is immediately capable of paying for the Project. As Staff states in its RBOE, "in examining a statute, it **must be read** as a **whole** and all relevant parts should be considered." *People v. Lewis,* 158 Ill. 2d 386, 389; 634 N.E.2d 717, 719 (1994) (emphasis added). In keeping with this precedent, the Commission agrees with Staff that ComEd, ILA and IAA cannot simply ignore the second half of the clause in order to deem RI deficient in satisfying this requirement.

In response to the challenges presented by this particular financing situation, Staff witness Pregozen, Manager of the Finance Department in the Financial Analysis Division at the Commission, proposed a solution. 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)

The terms of the Staff-proposed solution, which were accepted by RI, are set forth in Part VIII.A., p. 137-138 above. The first sentence 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. In order to assist the Commission in verifying that Rock Island has met its commitment it also provides, "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.

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

The Commission agrees with Staff's assertions that under the circumstances, its solution helps to strike an appropriate balance and should be imposed as a requirement of the CPCN granted to Rock Island. 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 landowners' property unless such commitments are obtained, thereby establishing proper protection for ratepayers.

The Commission takes seriously the unique balance that must be struck in this proceeding. As observed elsewhere in this Order, this is a case of first impression for the Commission, and there are many uncertainties associated with the "merchant" nature of the Project that require careful evaluation. It is important that the decisions made here do not unfairly disadvantage merchant transmission line projects across the board by setting a precedent that would not allow them to operate within their business model. At the same time, the Commission must ensure that said business model will not harm ratepayers and that the utility meets all of its requirements under Section 8-406 of the PUA. The Commission finds that the compromise reached through RI's acceptance of Staff's proposed requirement offers the flexibility necessary for a merchant transmission project to be feasible, while still operating within the parameters of our current regulatory structure.

As noted above, Rock Island is directed to submit certain documents "to allow the Commission to verify its compliance with this condition." In order to avoid any unnecessary delay, but to also ensure proper Commission oversight of Rock Island's fulfillment of this requriement of its CPCN prior to construction of the line, Rock Island is directed to submit a compliance filing in this docket, to be served on all the parties and reviewed by the Illinois Commerce Commission's Director of the Financial Analysis Division and the Director of Public Safety & Reliability Division.

IX. PROPOSED ROUTES; LAND ACQUISITION; RELATED ISSUES

As proposed, the 500-mile transmission line project would originate at a converter station in O'Brien County, Iowa, "traverse Iowa" for 379 miles, cross the Mississippi River near Princeton, Iowa, and then enter Illinois south of Cordova, Illinois. (Petition at 2-3)

In Illinois, the proposed line route would extend for approximately 121 miles from Cordova to the Collins Substation in Grundy County.

A. Proposed Routes

1. Rock Island Position

Rock Island describes the Rock Island Project within Illinois as consisting of two sections: (1) the HVDC section ("DC Section") from the Mississippi River crossing to the eastern converter station located in Channahon, Grundy County, Illinois, and (2) the Alternating Current section (the "AC Section") from the eastern converter station to the interconnection with the PJM 765 kV grid at ComEd's Collins Substation in Grundy County. (RI IB at 123, citing RI Exs. 7.0 Rev. at 4 and Ex. 8.0 at 4-5) Rock Island asserts that the AC Section is needed because the electricity transmitted over the DC section needs to be converted from DC to AC in order to be delivered into the existing AC grid at the Collins Substation. (*Id.*, citing RI Ex. 2.0 at 5)

Rock Island states that it developed and presented Preferred Routes and Proposed Alternative Routes for the DC Section and the AC Section in Illinois, and that no party took the position that the Proposed Alternative Routes, rather than the Preferred Routes, should be adopted. (RI IB at 123-24) Rock Island believes that the Preferred Routes are superior to the others studied in its route development process, and therefore, the Preferred Routes should be approved as the route of the Project in Illinois. (*Id.* at 124) RI Exhibits 7.2 and 7.4 provide the legal descriptions of the Preferred Routes for the DC Section and the AC Section in Illinois. Pages 5 and 6 of Rock Island Ex. 8.2 provide one-page maps of the entire DC Section and AC Section of the Preferred Route and alternate route in Illinois, and Rock Island Ex. 8.1 provides maps showing both the Preferred Routes and the Proposed Alternative Routes in Illinois.

The DC Section is a nominal ±600 kV HVDC transmission line that starts at the Project's western converter station in O'Brien County, Iowa and runs to the proposed eastern converter station in Channahon, Illinois. The DC Section will span just over 117 miles in Illinois, crossing the Mississippi River at Princeton, Iowa and entering Illinois in Rock Island County. (Petition ¶58; RI Exs. 7.0 Rev. at 4, 6 and 8.0 at 4)

Rock Island provided the following description of the Preferred Route:

> From the Mississippi River crossing at Princeton, Iowa, the Preferred Route continues east for approximately nine miles, where it enters Whiteside

> County. The Preferred Route continues east for approximately three miles, then turns south for approximately 4.5 miles, where it enters Henry County. The Preferred Route turns east again for approximately nine miles before turning south to run alongside State Highway 78 for approximately one mile and then east again for approximately four miles before entering Bureau County. The Preferred Route continues east for approximately 40 miles through Bureau County and then enters LaSalle County. The Preferred Route then continues east for approximately 2.5 miles before turning south for approximately one mile, turns east again for approximately 26 miles, and then south again for approximately 2.5 miles, where it enters Grundy County. The Preferred Route turns east in Grundy County for approximately 11.5 miles before turning south for approximately 4.5 miles, where it reaches the site of the eastern converter station.
> (Rock Island Ex. 7.0 Rev. at 6-7; RI IB at 124)

Rock Island proposes that the AC Section consist of three circuits of 345 kV AC transmission lines that will run from the eastern converter station to the Collins Substation. (RI Exs. 7.0 Rev. at 4 and 8.0 at 4-5; RI IB at 125) The AC Section consists of one single circuit 345 kV line and a double circuit 345 kV line. Rock Island asserts that, generally, a double circuit 345 kV line is sufficient to move the expected MW over the AC Section, but a third circuit will enable any one circuit to be out for maintenance and still enable the line to deliver the full capacity of the Project. (RI Ex. 2.0 at 29-30; RI IB at 125) The Preferred Route of the AC Section is approximately 3.2 miles and begins at the eastern converter station in Grundy County. From the eastern converter station, the Preferred Route runs south for approximately 1.9 miles before turning east for approximately 1.3 miles; it ends at the Collins Substation in Grundy County. (RI Exs. 7.0 Rev. at 8 and 8.2 at 89; RI IB at 125)

Rock Island states that it only intends to build two 345 kV lines -- one single circuit and one double circuit -- on the AC Section of the Preferred Route as described in Rock Island's Petition (RI IB at 125, 136; Petition at ¶ 6, 58; and will not pursue other alternatives for the AC Section, such as a 765 kV line to which "ComEd objects," that were discussed in testimony. (RI RB at 133, citing ComEd IB at 36)

Rock Island originally proposed to connect into the Collins Substation either by (i) placing transformation facilities on land to be acquired by Rock Island adjacent to or near the Collins Substation and then running a short 765 kV connection into the substation; or (ii) placing the transformation facilities inside the Collins Substation. (RI IB at 125, citing RI Ex. 2.0 at 5-6, 33) RICL states that during the course of the proceeding, ComEd indicated that it would not allow Rock Island to place its transformation facilities within the Collins Substation. (*Id.*, citing ComEd Ex. 4.0 Rev. at 25) Therefore, it will be necessary for Rock Island to locate its transformation facilities on land that Rock Island will acquire from a third party or parties, adjacent to or nearby to the Collins Substation. (*Id.*) Much of the land around Collins Substation is owned by Midwest Generation, which has entered into an agreement to sell its assets to NRG Energy Holdings. Rock Island states that it has been in discussions with Midwest Generation to purchase a parcel of land for its

transformation facilities and is currently waiting for the Midwest Generation-NRG transaction to be completed. (*Id.*, citing Tr. 459-461)

As part of its filing in this case, Rock Island states that it provided the names and addresses of the landowners of record of all parcels of land that would be crossed by the Preferred Routes or the Proposed Alternative Routes of the DC Section and the AC Section in Illinois, as shown on the records of the tax collector for the applicable county within 30 days preceding the filing of Rock Island's Petition, as required by 83 Ill. Admin. Code §200.150(h). (*Id.*, citing Petition Attachment 12; RI Exs. 7.0 Rev. at 9 and 7.6)

Routing Criteria

Rock Island asserts that the Preferred Routes and Proposed Alternative Routes were developed through a detailed and comprehensive process conducted by a Routing Team comprised of representatives of Rock Island, HDR, POWER and KPC. (RI IB at 126, citing RI Exs. 7.0 Rev. at 6 and 8.2 at 11; RB at 126) According to Rock Island, the Routing Team developed Routing Criteria based upon the Routing Team's transmission line siting experience, state and federal regulations, prior Commission orders on certificate applications, and stakeholder feedback. (RI IB at 126, citing RI Exs. 7.0 Rev. at 12 and Ex. 8.2 at 11) RICL states that the Routing Criteria, which are listed in Exhibit 8.2 at 13-17, included Sensitivities, Opportunities, and Technical Guidelines, and were used to guide the route development process and determine the Preferred Routes and Proposed Alternative Routes. (*Id.*, citing RI Exs. 7.0 Rev. at 11 and 8.2 at 12)

Sensitivities were described as resources or conditions that can potentially limit transmission line development and may include areas restricted by regulations, or areas where impacts would be very difficult or impractical to mitigate. They are listed on pages 13-16 of Rock Island Exhibit 8.2, and include land use constraints such as homes, agriculture, religious facilities, schools, designated environmental areas, sensitive habitats, areas identified as conservation land, cultural resources, airports, and aeronautical and telecom structures. According to Rock Island, the Routing Team sought to develop the Preferred Route by minimizing impacts to Sensitivities. (RI IB at 126, citing RI Ex. 8.2 at 12)

Opportunities were described as pre-existing linear infrastructure or features that may reduce impacts to Sensitivities and allow for a transmission line to be built with less disruption to the surrounding environment. They include roads, existing pipelines and transmission lines, and public land survey system divisions of land. A list of Opportunities is included in Table 1 on page 16 of RI Exhibit 8.2. Rock Island states that while paralleling existing linear infrastructure can reduce land use and visual impacts, utilizing an Opportunity may not always be desirable. For example, homes are often located along or near roads, so attempting to parallel roads may increase the number of homes that are impacted. (RI IB at 127; RI Ex. 7.0 Rev. at 29) Paralleling existing linear infrastructure may also increase the route length, because it may not be the most direct route, and may adversely impact other Sensitivities. (*Id.*, citing RI Ex. 7.0 Rev. at 29)

Technical Guidelines were described as the specific engineering requirements and objectives associated with construction of the Project, and they are listed on page 17 of RI Exhibit 8.2. (*Id.*)

Route Development Process

Rock Island developed the Preferred Route through four successive stages, which were (1) Project Area Identification; (2) Study Corridor Identification; (3) Alternative Route Corridor Identification; and (4) Route Identification and Selection. The Routing Study, Rock Island Exhibit 8.2, describes the route development process in greater detail. Rock Island states that throughout the routing process, it sought feedback from government bodies, agencies and officials, environmental and agricultural organizations, and members of the public, which along with the Routing Criteria then guided each successive stage of the route development process. (RI IB at 127-128 and RB at 125, citing RI Exs. Ex. 7.0 Rev. at 13, 8.0 at 5, 9)

In the first stage -- Project Area Identification -- the Routing Team identified a broad Project Area based on the location of converter stations at the western and eastern ends of Illinois. Rock Island conducted initial desktop and field surveys of the Project Area, and held initial introductory meetings with local, state, and federal government officials and agencies, as well as with conservation and agricultural organizations. According to Rock Island, after the field surveys and initial introductory meetings were completed, the Routing Team held a series of six meetings to which it invited public officials, government agencies and departments, and representatives of local environmental, conservation, and agricultural organizations. There, the Routing Team described the Project, answered questions, presented maps of the Project Area, and obtained comments and feedback on initial siting considerations and major Opportunities. (RI IB at 128, citing RI Exs. 7.0 Rev. at 14, 18-19; 8.0 at 5-6 and 8.2 at 7)

A major component of the Project Area Identification Stage was identifying the appropriate crossing point of the Mississippi River, since any potential routes considered in Illinois must start from the Mississippi River crossing point. An analysis was conducted to consider the many Sensitivities and Opportunities that can be present at potential river crossing points, and to evaluate which crossing areas would be best from environmental, engineering and construction perspectives. The area for potential crossings was constrained on the north by the U.S. Fish and Wildlife Service ("USFWS") Upper Mississippi River National Wildlife and Fish Refuge and on the south by the USFWS National Wildlife Refuges that comprise the Mark Twain Refuge Complex, since the USFWS considers a transmission line to be a non-compatible use of these areas. As a result of this consideration and the presence of other state lands such as wildlife management areas and state preserves that would constrain a river crossing, the area reviewed in detail for the location of the Mississippi River crossing extended from Cordova, Illinois to approximately four miles south of Fruitland, Iowa. (RI IB at 128-129, citing RI Ex. 8.2 at 20-21)

Eleven potential crossings within this area were identified and examined; a map of the 11 crossings is provided at page 22 of Rock Island Exhibit 8.2. Rock Island eliminated all the potential crossing points except Port Byron, Illinois and Princeton, Iowa; it conducted a detailed analysis on each crossing point and eliminated nine of the 11 identified potential crossings. The other crossing points were eliminated for reasons such as close proximity of residences, potential impacts to wetlands, and karst features being present at the crossing site. An analysis of all the potential Mississippi River crossings is contained in Appendix C of Rock Island Exhibit 8.2. Rock Island asserts that the crossing point at Princeton, Iowa was selected because it follows an existing overhead 69 kV transmission line and thereby provides an opportunity to keep similar infrastructure adjacent to each other, which minimizes land use impacts, visual impacts and environmental impacts, particularly with respect to avian species; and that USFWS expressed a preference for the Princeton crossing for that reason. (*Id.* at 129, citing RI Ex. 8.2 at 20-23; RI RB at 130)

Rock Island states that in the second stage, Study Corridor Identification, it identified Study Corridors three to 10 miles wide within which to develop more detailed routing considerations. While developing the Study Corridors, it sought to exclude, to the extent possible, areas with relatively high concentrations of Sensitivities, such as large population centers and highly sensitive environmental areas. It also sought to include Opportunities such as lower-impact river crossings and paralleling existing linear infrastructure. ((RI IB at 129-130, citing RI Exs. 7.0 Rev. at 14-15; 8.0 at 6; 8.2 at 29) The Routing Team continued to meet with local, state, and federal government officials to review and obtain input on the Study Corridors. The Study Corridors were then presented for public review and comment at a series of open house meetings held in the Project Area in Illinois. Rock Island also consulted with conservation groups and non-governmental organizations to identify other potential river crossing locations and potentially sensitive areas that should be avoided. (*Id.* at 130, citing RI Exs. 7.0 Rev. at 15, 19-20; 8.0 at 6; 8.2 at 7)

Rock Island further narrowed the geographic focus in the third stage, Alternative Route Corridor Identification, by identifying small route segments across the Study Corridors. It analyzed more than 1,200 route segments to attempt to identify the best route segments, then connected those segments into Alternative Route Corridors, which were refined to generally 3,000 feet wide corridors. The Routing Team again met with local and state government officials to review the Alternative Route Corridors, and then presented the Alternative Route Corridors for public review and comment at a second round of open houses. Rock Island continued to receive public comments and suggestions after the second round of open houses. (RI IB at 130-131, citing RI Exs. 7.0 Rev. at 15, 26; 8.0 at 6; 8.2 at 35, 39-40)

Rock Island states that in the Route Identification and Selection stage, it analyzed all the data obtained from the previous stages, along with public comments, to develop five Study Routes for the DC Section and three Study Routes for the AC Section. The Routing Team then met numerous times to review all the information and available options to determine which of the Study Routes should be selected as the Preferred

Routes and the Proposed Alternative Routes. (*Id.* at 131, citing RI Exs. 7.0 Rev. at 15-16 and 8.0 at 6-7)

Rock Island responded to ILA's assertion that Hans Detweiler, Rock Island's Director of Development, lacked appropriate experience to supervise the Rock Island Routing Team (ILA IB at 37). RICL asserts that as Deputy Director of the Illinois Department of Commerce and Economic Opportunity, Mr. Detweiler administered the Bureau of Energy and Recycling, with responsibility for all incentive programs targeting renewable power, energy efficiency, renewable fuels, recycling, and waste reduction and was responsible for overseeing the grant application process for potential projects and supervising the review by engineers of potential candidate projects and applications for funding. The projects reviewed included large facilities such as ethanol plants and wind farms. (RI RB at 125, citing RI Ex. 7.0 Rev. at 1-2 and Tr. 517) As Director of State Policy for the American Wind Energy Association and as a policy advocate for the Environmental Law and Policy Center, he was also "active on issues relating to endangered species, habitats and other siting issues." (*Id.*, citing Tr. 513-514)

Rock Island also states that all members of the Routing Team were involved in the route development process, including HDR Engineering, Inc. ("HDR"), which conducted the Routing Study, and Matthew Koch of HDR, who was the witness sponsoring the Routing Study as an exhibit in this case. The 19-member Routing Team consisted of environmental professionals, public involvement specialists, and engineers from HDR, RI, POWER Engineering, Inc. and KPC. (RI RB at 126, citing RI Exs. 7.0 Rev. at 1, 6; 8.0 at 1; 8.2 at 1 and at App. A) The qualifications and experience of HDR, POWER and KPC are described in RI Exhibits 2.0 at 14-15; 8.0 at 3; 9.0 Rev. at 3-5; and 9.5. (RI RB at 125-126)

According to Rock Island, the Routing Team as a whole, and HDR and Mr. Koch in particular, have experience conducting routing studies. HDR has provided engineering and environmental services for over 25,000 miles of transmission lines nationwide. Within the last five years HDR has performed, or currently is performing, routing studies for 10 electric transmission line projects with voltages of 345 kV or greater. Mr. Koch has experience in routing, agency consultation, and public outreach gained by working on a number of electric transmission and natural gas pipeline projects. He has also performed routing studies, agency consultation, public involvement and permitting for other projects in the Midwest. (*Id.* at 126, citing RI Exs. 8.0 at 2-4; 8.2 at 7-8)

Rock Island responded to ILA's argument that because the Staff did not conduct their own investigation into possible Project routes or consult with the IDNR, the Staff's acceptance of the Preferred Route should not be interpreted as an endorsement of the Preferred Route (ILA IB at 41). Rock Island contends that in light of its "thorough and extensively documented route development process," which Staff reviewed, including additional supporting information provided in discovery, there was no need for Staff to conduct an independent route development process. (RI RB at 127)

Rock Island also states that it consulted with the IDNR concerning the potential impacts of the Preferred Route and Proposed Alternative Route on threatened and endangered species and Illinois Natural Areas Inventory sites, and reported IDNR's conclusions for the record in this case, so that the Commission may take the IDNR's input into account. (*Id.*)

Railroad ROW; I-80

Section IV.B.1.d of Rock Island's IB is titled, "Rock Island Determined that Using the Old Rock Island Railroad ROW or the Interstate 80 ROW Would Increase Impacts on Sensitivities and Would Not Be Acceptable."

As part of its analyses, RICL considered utilizing the ROW of the former Rock Island Railroad in Iowa and Illinois; however, it determined that using this ROW would impact too many Sensitivities and this option was dismissed. (RI IB at 131-132)

RICL disagreed with the contention in ILA's initial brief that the Routing Team dismissed the Rock Island Railroad right-of-way as a routing option without proper analysis. (RI RB at 127-128, citing ILA IB at 39).

RICL states that the Routing Team spoke with local government officials and inspected the railroad ROW by hi-rail and car. Rock Island asserts that many municipalities developed along railroads, and the Routing Team found the Rock Island Railroad ROW to be within close proximity of a significantly greater number of homes than other alternative routes. Additionally, considerable other infrastructure, such as grain elevators and electric distribution lines, were located along the railroad ROW and would be impacted if the Project utilized the railroad ROW. Rock Island considered whether the Project could avoid these Sensitivities by departing from the railroad ROW at problematic areas and then rejoining it in more suitable locations, but determined that this rerouting would significantly increase the length -- therefore impacting more landowners -- and cost of the line and would increase impacts to other Sensitivities in the areas through which the Project would be re-routed. Consequently, during the second stage of the route development process, the Routing Team determined that the use of the Rock Island Railroad ROW should not be used. (RI IB at 131-132 and RB at 127-128, citing RI Exs. 7.0 Rev. at 30-31 and 8.2 at 31-32)

The Routing Team performed two separate assessments of the potential for utilizing the Interstate 80 ("I-80") ROW for the Project. The Routing Team contacted the Illinois Department of Transportation ("IDOT") early in the route development process to discuss potential safety concerns and IDOT regulations on providing access to highway ROWs. IDOT advised that it does not permit transmission structures within an interstate highway ROW and that overhangs into an interstate highway ROW are allowed only in limited instances. IDOT's restrictions would only allow the Project structures to be placed on private land adjacent to I-80's right-of-way. Rock Island determined that attempts to parallel I-80 would lead to numerous conflicts with existing homes, businesses, and infrastructure. If the line were placed along I-80, the route would need to be detoured

around problematic areas, which would increase the length and cost of the route and would increase the total impacts to landowners in the areas to which the Project was rerouted. Rock Island states that the possibility of paralleling I-80 was dismissed during the first stage of the route development process.

In response to suggestions made at open houses, Rock Island conducted an additional review of the I-80 area to determine if there was a viable routing option that was previously overlooked. This review determined that, compared to the DC Section Preferred Route, the potential I-80 routes increased the route length by approximately 12 miles, encountered significantly more homes, required the removal of a home in the DC Section, encountered 36 times as many non-residential structures within 100 feet of the centerline, and required more angle structures, all of which increase land use impacts and costs. Based on this additional analysis, Rock Island again concluded that routing the Project along I-80 was not feasible. (RI IB at 132, citing RI Exs. 7.0 Rev. at 30-33; 8.2 at 32-33, 42, 48-49)

Selection of Preferred Routes

Section IV.B.1.e of Rock Island's initial brief is titled, "The Preferred Routes Best Meet the Routing Criteria."

After completing the route development process, Rock Island selected a Preferred Route and a Proposed Alternative Route for both the DC Section and the AC Section. The Preferred Routes were selected as those routes that best minimized impacts to Sensitivities and maximized use of Opportunities. According to Rock Island, both the DC Section and AC Section Preferred Routes minimize impacts to Sensitivities because they have the overall lowest impact on homes, other structures, agriculture, and other land use features when compared with the other Study Routes. Rock Island states that the DC Section Preferred Route has the fewest number of homes within 200, 500, and 1000 feet of the centerline of the route, the fewest number of non-residential structures within 100 and 200 feet of the centerline, and crosses the fewest number of parcels owned by the fewest number of landowners.

The AC Section Preferred Route requires the purchase and removal of one home, and Rock Island has already acquired an option to purchase this home. Additionally, Rock Island explains, the AC Section Preferred Route has the fewest homes within 67.6 to 200 feet of where the two transmission lines would be located, and ties with the other AC Section Study Routes for the fewest homes within 201 to 1000 feet, for crossing the fewest parcels and for impacting the fewest landowners. The ROW requested for each 345 kV line in the AC Section is 135 feet (270 feet in total for the two 345 kV lines); therefore, a home within 67.5 feet of the centerline of either 345 kV line would be within the ROW. (RI IB at 133, citing RI Exs. 7.0 Rev. at 27-28; 8.2 at 65, 99)

Rock Island asserts that the DC Section and AC Section Preferred Routes are the shortest Study Routes for their respective Sections, and "avoid or cause" the least permanent impact on currently operating center pivot irrigation systems and do not cross

any designated Agricultural Preservation Areas. Further, RICL states that the Preferred Routes will not impact any schools, hospitals, daycares, airports, cemeteries or religious facilities. (*Id.* at 133-134, citing RI Exs. 7.0 Rev. at 27-28; 8.2 at 65, 99, 102, 104)

Rock Island also asserts that the Preferred Routes minimize impacts to environmental and conservation Sensitivities, and do not cross any Illinois Nature Preserve Commission lands or any historical buildings, structures, or sites, and cross the least amount of streams. Rock Island contends that there are no designated critical habitats within one mile and no known or observed eagle nests within 660 feet of either Preferred Route; that USFWS National Bald Eagle Management Guidelines recommend that any disturbances occur at least 660 feet from any eagle nests; and that the Preferred Routes also limit the acres of forested wetland areas and number of archaeological sites crossed. (RI IB at 134, citing RI Ex. 8.2 at 78-82, 106-107, 110)

Rock Island states that both the DC Section and AC Section Preferred Routes take advantage of existing Opportunities, and that the DC Section Preferred Route will utilize existing linear infrastructure for 22.4 miles. The DC Section Preferred Route will parallel an existing transmission line crossing of the Mississippi River and an existing pipeline crossing of the Fox River. Rock Island states that paralleling the existing pipeline crossing of the Fox River takes advantage of the existing area from which trees have been cleared for the pipeline. The DC Section Preferred Route also will parallel a pipeline in LaSalle County and existing transmission lines in Grundy County. The AC Section Preferred Route will parallel an existing transmission line for approximately 1.9 miles, which is more than one-half the length of the AC Section. (RI IB at 134, citing RI Exs. 7.0 Rev. at 29, 33 and 8.2 at 94)

Rock Island responded to ILA's claim that the Routing Study is out of date because it has not been amended to include new information discovered since September 2012. Rock Island states that ILA identified five potential Sensitivities it alleges make the Routing Study out of date: (1) a new distribution line; (2) one new home; (3) a wind farm in Bureau County; (4) a possible commercial development near Morris; and (5) a possible private airstrip in Bureau County. (ILA IB at 37-38)

Rock Island responds that Mr. Koch of HDR viewed the new distribution line and determined that the Preferred Route will not cross the new distribution line. (RI RB at 131, citing RI Ex. 8.3 Rev. at 19) Rock Island states that the one new home that has been constructed is located approximately 300 feet from the Preferred Route, outside the ROW which will be 100 feet on either side of the centerline. (*Id.* at 131, citing RI Ex. 8.3 Rev. at 18-19) Rock Island agreed there is one new planned wind farm in Bureau County along the Preferred Route, and stated that it has been in contact with the developer of the wind farm and has coordinated with the developer on placement of structures so as not to conflict with engineering or technical standards of either project. (*Id.*, citing RI Ex. 7.35 Rev. at 24)

Rock Island also states that it is aware of the potential commercial development that may be built near the Preferred Route near Morris, Illinois. Rock Island states that is

committed to negotiating with the owner regarding any specific siting concerns. (RI RB at 131, citing Tr. 395) Rock Island states that it is aware that there is a potential private airstrip in Bureau County. Rock Island also states that ILA did not raise the potential commercial development or private airstrip as a concern in its testimony, and therefore, Rock Island had no reason to discuss them in rebuttal or surrebuttal testimony; however, ILA has identified no specific concerns relating to them. (*Id.* at 131-132, citing Tr. 395-396)

Rock Island also responded to the argument in ILA's brief that when considering Sensitivities, Rock Island gave the same weight to occupied homes as to unoccupied homes (ILA IB at 38). Rock Island states that ILA identifies no situation along the Preferred Route where the route could or should have been different had an unoccupied home been given lesser weight. Rock Island argues that it was prudent in giving the same weight to unoccupied homes as to occupied homes because circumstances along the Preferred Route may change over time. (RI RB at 132)

Rock Island responded to the argument in ILA's brief that the Routing Study is "flawed" because Rock Island has not attempted to contact landowners to determine the location of any Conservation Reserve Program ("CRP") land. (ILA IB at 40-41) Rock Island states that information on CRP land is not made publicly available by the U.S. Department of Agriculture, so there is no systematic way of identifying the locations of CRP land. (RI RB at 132, citing RI Ex. 8.3 Rev. at 8) Rock Island also states that although ILA claims its members comprise a substantial portion of the landowners whose property will be crossed by the Preferred Route in Illinois, ILA identified only one landowner as having CRP land on his property. (*Id.*, citing ILA Ex. 2.0 at 5-6) Rock Island states that this landowner has informed Rock Island that he does not wish to be contacted, and so Rock Island is limited in determining the impacts the Project may potentially have on his CRP land. (*Id.*, citing RI Ex. 7.30 at 19)

IDNR Involvement

Rock Island states that it consulted with the Illinois Department of Natural Resources ("IDNR") to obtain IDNR's input and comments on the Preferred Routes and the Proposed Alternative Routes. On August 14, 2013, IDNR staff provided Rock Island with written comments on the Preferred Routes and Proposed Alternative Routes, which are provided in Rock Island Exhibit 8.8. (RI IB at 134-135, citing RI Exs. 8.8 and 7.30 at 38) RICL states that IDNR initially suggested the transmission line should cross the Mississippi River farther south, outside the Mississippi River-Cordova Illinois Natural Area. (*Id.* at 135, citing RI Ex. 8.8 at 1) The IDNR also pointed out potential areas along the Preferred Route that could entail forest fragmentation. (*Id.*, citing, RI Ex. 8.8 at 2-3)

Rock Island responded to the IDNR's August 14 letter, addressing each of IDNR's comments. In its response, Rock Island explained the considerations and reasons the Princeton, Iowa location was chosen as the Mississippi River crossing point, as well as the increased impacts if the Project crossed the Mississippi River at a different location. (*Id.*, citing RI Exs. 8.3 Rev. at 37 and 8.8 at 5-8) Rock Island also detailed the mitigation

efforts it would undertake to minimize potential impacts from constructing and maintaining the Project. (*Id.*, citing RI Ex. 8.8 at 6) Rock Island met with IDNR staff on October 26, 2013 to discuss the August 14 IDNR letter and Rock Island's response. According to RICL, IDNR staff stated that they had no concerns relating to impacts on protected species. (*Id.*, citing RI Ex. 8.10 at 4)

On November 8, 2013, IDNR issued its final written comments, which stated that "it is unlikely that the project will result in any adverse impacts to state-listed species or their habitats," but expressed some concerns regarding forest fragmentation at specific locations. RICL states that IDNR also noted Rock Island was able to avoid protected species for a 120 mile project in Illinois, and stated that it recognized that other project planning and regulatory considerations factor into the final routing. (RI IB at 135, citing RI Ex. 8.12 at 1)

Rock Island responded to ILA's assertion that the Routing Study is inadequate because Rock Island did not consult with the IDNR prior to siting the Mississippi River crossing (ILA IB at 39-40), by stating that Rock Island initiated communications with IDNR about the Project in July 2010 (RI Ex. 8.2 at 9), identified the Mississippi River crossing point in 2011, and did not complete the route determination process, as embodied in the Routing Study, and the selection of the Preferred Route and Proposed Alternative Route until shortly prior to filing this case in October 2012. (RI RB at 128) Rock Island states that it has no control over when the IDNR would respond to information provided by Rock Island, but Rock Island would not expect the IDNR to provide comments on a proposed route until the developer presented the complete, proposed route to IDNR. (*Id.*) Further, the IDNR's final consultation letter to Rock Island did not object to the Mississippi River crossing point, although it did note that the Project will cause forest fragmentation "in the vicinity of the Mississippi River." (*Id.* at 128-129, citing RI Ex. 8.12 at 1) Rock Island asserts that in Illinois, "only 5.2 miles of the Preferred Route, are in forested areas" (*Id.* at 129, citing RI Ex. 8.2 at 75)

Rock Island responded to the ILA's observation that the IDNR initially suggested that the line cross farther south than the Princeton crossing (ILA IB at 40). Rock Island states that a reroute farther to the south would impact a significantly larger number of homes on the Iowa side. (RI RB at 130, citing RI Ex. 8.9 at 1) According to Rock Island, a reroute would also require a large amount of tree clearing along Illinois Highway 84 or be complicated by past mining activities. Rock Island also asserts that while the Princeton crossing does run through forested area, that area is already actively being logged as commercial timber. (*Id.*, citing RI Ex. 8.9 at 1-2)

Rock Island contends that ILA's criticisms ignore the extensive effort that went into evaluating potential Mississippi River crossings and selecting the crossing point. (RI RB at 129-130) These efforts are also described on pages 128-129 of Rock Island's initial brief, and are summarized above "Route Development Process."

Rock Island also states that ILA implies the overall Preferred Route in Illinois would be different if the Mississippi River crossing point were different. (RI RB at 131, citing ILA

IB at 39) In response, Rock Island asserts that the end point of the DC Section is the converter station site in Channahon, Illinois, so even with a different Mississippi River crossing point the route would need to converge to the Preferred Route. (*Id.*) RICL also argues that although ILA suggested a crossing point farther south on the river, after crossing the Mississippi River, the Preferred Route heads generally south and east, so, according to Rock Island, with a different, slightly more southerly crossing point, the route would likely rejoin the Preferred Route not far from the river crossing. (*Id.*)

In summary, Rock Island argues that "based on the record on the development of the Preferred Routes, the specific characteristics of the Preferred Routes with respect to impacts on Sensitivities and use of Opportunities, and the lack of specific recommendations for deviations or alternatives, the Commission should approve the Preferred Routes for the DC Section and the AC Section as set forth on Rock Island Exhibits 7.2 and 7.4, respectively." (RI IB at 136)

2. Positions of Staff and Intervenors

Staff Position

Staff provides a description of the proposed route, which extends for approximately 121 miles in Illinois from a point where it crosses the Mississippi River in Rock Island County to the Collins Substation in Grundy County. (Staff IB at 64, citing Petition at 2-3)

After examining Rock Island witnesses' testimony and the exhibits attached to them, including the Routing Study, Staff "has no reservations concerning RICL's process or procedure concerning the route selection." (*Id.* at 66, citing Staff Ex. 1.0 at 14) In addition, "if the Commission were to approve RICL petition, Staff would have no objection to the preferred or the proposed alternative routes that RICL identifies in its filing." (Staff IB at 66)

IAA and ILA Positions

In its initial brief, IAA "takes no position on the proposed route." (IAA IB at 16)

The ILA "is not an advocate for any particular routing for the proposed project. However, the record indicates that Rock Island has engaged in a flawed, incomplete, and already out of date routing study, in its attempt to fragment forests and spoil prime farmland rather than parallel existing infrastructure." (ILA IB at 36)

ILA argues that Hans Detweiler, who "supervised the routing team," lacked qualifications for such an undertaking. (ILA IB at 37, citing Tr. 413-415) ILA asserts that the extent of his formal education is a Bachelor of Arts degree in political science, and that all of his experience prior to being hired by Clean Line was in public policy, policy advisement, outreach, and communications. (*Id.*, citing Tr. 413) ILA argues, "It is only once he got a job working for a company proposing to build a two-state HVDC

transmission line did Mr. Detweiler begin to gain any experience in "infrastructure development." (*Id.*, citing Tr. 413)

ILA states that Rock Island's routing study began several years ago, in March of 2010; that the most recent visual inspection relied upon by the routing study took place nearly two years ago; and that the routing study has not been amended to include any information learned of or discovered since September 2012. ILA argues, "That fact, given that construction will not be proceeding until 2017, seven years after the routing study began, and over four years from when Rock Island ceased gathering and considering new information, renders the study outdated." (ILA IB at 37-38, citing Tr. 393- 395, RI Ex. 8.3 at lines 409-411)

ILA asserts that within just over a year, Rock Island has missed a home, other distribution lines, a commercial development near Morris, and a private airport. (ILA IB at 38, citing RI Ex. 8.3 at lines 411-419, Tr. 395-396) ILA also states that the study does not consider the location of possible wind turbines for the Walnut Ridge wind farm in Bureau County (*Id.*, citing RI Exs. 8.10 at lines 65-67 and 7.35 at lines 533-538).

ILA also states that Rock Island's routing study relied upon a principle that any residential structure counts as a full sensitivity, whether occupied, not occupied, already impacted by existing infrastructure, or in a non-impacted location; that when considering the Rock Island Railroad, a benefit of that corridor was that it was "made up of land already impacted to some degree"; and that homes already impacted – at least visually – are to be given less weight. (ILA IB at 38-39, citing RI Exs. 8.2 at 23 and Ex. 8.3 at lines 665- 666; Tr. 400-401)

According to ILA, railroads are defined as a routing opportunity by Rock Island, and the so-called Rock Island Railroad right of way was initially identified as a beneficial corridor for the development of this Project but was dismissed early on due to RICL's claim of development of population centers along the railroad. (ILA IB at 39) ILA argues that the "limited study" of the Rock Island Railroad opportunity did not include a detailed quantitative analysis of bypassing any population centers along that route, and that Rock Island's witness was unable to provide any information as to distance of homes to the railroad. (*Id.*, citing Tr. 399-400) Accordingly, ILA contends, this potentially attractive corridor and routing option was dismissed early, and not adequately studied, and instead, Rock Island chose to proceed across miles and miles of prime farmland. (*Id.*)

ILA asserts that Rock Island's entire routing study depends upon the place where it starts at the western edge of Illinois and enters this State, i.e., the location of the Mississippi River crossing; that identification of the Mississippi River crossing was part of the first step in the development process; and that the river crossing analysis was completed in January 2011, but consultation with the Illinois Department of Natural Resources did not begin until 2011 after the crossing was chosen, and was not concluded until November 8, 2013. ILA states that IDNR suggested that the crossing determined by Rock Island be moved further south due to mussel concentrations and forest fragmentation, with the latter concern never being resolved, and that the suggestion to

move the line further south would have placed the line at a location already identified as an opportunity. (ILA IB at 39-40)

According to ILA, Rock Island's routing study does not consider impacts to Conservation Reserve Program ("CRP") property; that Rock Island has no idea as to the extent to which the proposed route will impact CRP property; that Rock Island claims the location of such land is confidential and it "cannot determine" the extent of these lands; that it never attempted to contact any landowners to determine the location of CPR land, despite being able to do so by mail; and that when it became aware of CRP land, Rock Island did not contact any Farm Service Administration personnel about the same. (ILA IB at 40-41)

ILA asserts that Staff's lack of opposition to the proposed Project's is based solely upon Staff's review of the routing study provided by Rock Island; and that Staff did not undertake any independent investigation, look into possible routing along existing infrastructure near Interstate 80 or the Rock Island Railroad right of way, or consult with IDNR. (ILA IB at 41, citing Tr. 701-702)

ILA concludes, in part, "Overall, the record indicates that the routing study is flawed by Rock Island's failure to seek out or consider appropriate input data, its failure to follow its own routing criteria, the fact it is already outdated, and will only become further outdated, and otherwise." (*Id.*)

ComEd Position

ComEd takes no position on RI's proposed route. ComEd states, however, that "RI has not provided the detailed level of evidence and route descriptions historically required by the Commission in CPCN cases, particularly for the 765 kV line that they belatedly and alternatively proposed for the first time in Dr. Galli's surrebuttal." (ComEd IB at 35)

3. Commission Conclusion

As proposed, the 500-mile transmission line Project would originate at a converter station in O'Brien County, Iowa, "traverse Iowa" for 379 miles, cross the Mississippi River near Princeton, Iowa, and then enter Illinois south of Cordova, Illinois. (Petition at 2-3)

From there, the proposed line would extend for approximately 121 miles in Illinois to the Collins Substation in Grundy County.

Rock Island's route development process for Illinois is described in some detail above. A Routing Study was used to select preferred and proposed alternative routes for the DC and the AC portions of the proposed transmission line. The routing team that performed the study included environmental professionals and engineers from two engineering firms and Kiewit Power Constructors.

The main elements of the routing criteria that were used to develop the routes were sensitivities, opportunities, and technical guidelines.

The Staff witness "has no reservations concerning RICL's process or procedure concerning the route selection." (Staff Ex. 1.0 at 14) If the Commission were to approve the Rock Island petition, Staff would have no objection to the preferred or the proposed alternative routes that RICL identifies in its filing. (Staff IB at 66)

In its initial brief, IAA states that it "takes no position on the proposed route." (IAA IB at 16)

ILA "is not an advocate for any particular routing for the proposed project," and ILA does not appear to actually propose any alternate routes. ILA does express criticisms of the proposed routing, most of which appeared for the first time in its initial brief. There, ILA argues that Rock Island has engaged in a flawed, incomplete, and out of date routing study. (ILA IB at 40)

In its brief, ILA argues that the "potentially attractive" Rock Island Railroad right-of-way corridor was dismissed prematurely. In response, Rock Island explained that its analysis of the Railroad ROW indicated that the ROW was within close proximity of a significantly greater number of homes than other alternative routes, and that considerable other infrastructure, such as grain elevators and electric distribution lines, were located along the railroad ROW and would be impacted if the Project utilized the railroad ROW. Upon reviewing the record, the Commission finds that Rock Island's decision not to use the railroad ROW was reasonable.

In its brief, ILA states a concern that possible routing along existing infrastructure near Interstate 80 was not properly explored. In response, Rock Island explained that its review determined that, compared to the DC Section Preferred Route, the potential I-80 routes increased the route length by approximately 12 miles, encountered significantly more homes, required the removal of a home, encountered 36 times as many non-residential structures within 100 feet of the centerline, and required more angle structures, all of which increase land use impacts and costs. Rock Island concluded that routing the project along I-80 was not feasible. Upon reviewing the record, the Commission finds that conclusion to be reasonable.

In response to the comment in ILA's brief that IDNR suggested the river crossing be moved further south, Rock Island indicates that a reroute farther to the south would impact a significantly larger number of homes on the Iowa side. Rock Island also points out that the IDNR's final consultation letter to Rock Island did not object to the Mississippi River crossing point, although it did note that the Project will cause forest fragmentation "in the vicinity of the Mississippi River." Upon reviewing the record, the Commission finds that the selection of the site for the river crossing was the result of a detailed analysis and was reasonable.

Rock Island also responded to claims appearing in ILA's initial brief that the routing study is out of date. The first two examples cited by ILA are that Rock Island missed a home and a distribution line. Rock Island explains that the one new home that has been constructed is located approximately 300 feet from the Preferred Route, outside the ROW which will be 100 feet on either side of the centerline, and that Rock Island determined that the Preferred Route will not cross the new distribution line. Upon reviewing the evidence, the Commission finds that ILA's argument that the routing study is too out of date to be relied upon is not supported by the record.

In its brief, ComEd took no position on Rock Island's proposed route. However, ComEd did note that a 765 kV line for the AV segment was belatedly and alternatively proposed for the first time in Dr. Galli's surrebuttal. In its reply brief, Rock Island clarifies that it will not pursue the 765 kV AC line alternative to which "ComEd objects."

Having reviewed the record, the Commission finds that the route development and selection process and analysis were detailed and comprehensive, and gave proper consideration to the routing criteria that were used to develop the routes. A reasonable effort was made to minimize impacts to sensitivities, such as proximity to homes and disruptions to the environment, while utilizing identified "opportunities" where feasible. The record also indicates that proper consideration was given to the cost of the preferred route relative to alternative routes.

In conclusion, the Commission finds that the preferred route developed by Rock Island is reasonable and should be approved.

The Commission also finds that the 765 kV line alternative referenced above is not before the Commission for consideration in this proceeding, and it is not approved in this order. Rather, the four-mile AC segment to the Collins substation will consist of two parallel 345 kV lines.

B. Easement Width

1. Rock Island Position

For the DC Section, Rock Island states that the ROW for the Project will vary between 145 feet and 200 feet wide, depending on requirements at particular locations. To accommodate the possible need for the maximum width at specific locations, Rock Island is requesting authority for a 200 foot ROW for the entire DC Section of the Project. Because there are two parallel 345 kV lines proposed for the AC Section -- one a single-circuit line and the other a double-circuit line -- Rock Island states that a larger ROW will be necessary, and is requesting authority for a 270 foot ROW for the AC Section. Rock Island states that the Commission has previously authorized ROWs of up to 150 feet for individual 345 kV transmission lines, and although this would seem to indicate that 300 feet would be needed for two parallel 345 kV transmission lines, Rock Island believes it can construct the AC Section with a 270 foot right-of-way. (RI IB at 136, citing RI Ex. 2.0 at 29-30)

According to RICL, the ROW width is based on the need to maintain electrical safety clearances and provide access for construction and maintenance of the line. Wind blowing on transmission line wires will cause them to sway away from the center of the ROW towards the side. The ROW must be wide enough to allow for this predicted wire movement on both sides of the ROW, while still maintaining the required electrical clearances from vegetation, structures and other infrastructure. As the span length of the transmission wire between the supporting structures increases, the amount of predicted transmission wire sway increases. Rock Island states that based on the structures that it will be using, the requested 200-foot ROW for the DC Section and 270-foot ROW for the AC Section are sufficient for typical span lengths. (*Id.* at 136-137, citing RI Exs. 2.0 at 31 and 2.11 Rev. at 7)

In two locations along the Preferred Route, where a longer than average span will be needed, a larger ROW width will be necessary and is being requested. First, the Preferred Route crosses Indian Creek, and in order to span this waterway, the length between structures will be approximately 1,973 feet. In this location, a larger ROW is necessary to allow for increased sway of the transmission conductors in high winds. Rock Island is requesting a ROW width of 235 feet for a segment beginning approximately one-half mile from the western bank of Indian Creek and ending approximately one-half mile beyond the eastern bank of Indian Creek. Second, where the Project enters Illinois after crossing the Mississippi River, there will be a need for increased span lengths for the first several spans, covering the first mile of the transmission line in Illinois. For this segment, Rock Island is requesting authority for a ROW greater than 200 feet for approximately the first mile of the Preferred Route from the eastern bank of the Mississippi River. (*Id.* at 137, citing RI Ex. 2.0 at 31-32)

Rock Island is also requesting that the Commission "grant it a temporary construction easement" beyond the 200 foot ROW in the DC Section or the 270 foot ROW in the AC Section for locations at which the permanent ROW is insufficient for construction activities or to access the construction area. Any temporary construction easement reverts to the landowner when construction is finished. (RI IB at 137-138, citing RI Ex. 2.0 at 32-33)

In response to IAA's allegation that Rock Island has no knowledge of whether the requested easement widths are "market competitive" (IAA IB at 17), RICL asserts that easement width is not a "market" issue but rather a technical issue, determined by the need to maintain required electrical safety clearances and to provide for access for construction and maintenance of the line. The ROW needs to be wide enough to allow for the predicted "blowout" of the wires under extreme wind conditions while still maintaining required electrical clearances from vegetation, structures, and other infrastructure. As the length between the structures increases, a wider ROW is necessary, and vice versa. According to Rock Island, having a ROW easement width of 200 feet in the DC section of the Project will allow for a span length between structures of up to approximately 1,750 feet, with a typical span length of 1,200 feet. (RI RB at 138-139, citing RI Ex. 2.0 at 30-32)

Rock Island responded to ILA's allegation that the Project will render aerial application of chemicals on agricultural property unavailable for some landowners and therefore will decrease production (ILA IB at 42). Rock Island states that it researched aerial application practices, and learned that aerial applicators can employ a variety of different techniques to adapt to varying field conditions, such as flying alternative patterns across the field. Rock Island asserts that it found no evidence that aerial applicators have been unable to spray an entire field due to concerns regarding transmission lines. (RI RB at 133-134, citing RI Ex. 7.35 at 22)

In developing the route of the Project, Rock Island considered Routing Criteria designed to minimize impacts to aerial application in several ways. First, the Routing Criteria included as Sensitivities private airports and airstrips and aerial fertilizer and herbicide application ability; Rock Island sought to avoid impacting private airports and airstrips. Rock Island also considered the amount of diagonal orientations to attempt to minimize the impacts on aerial application of fertilizer and herbicides. Second, Rock Island sought to place the transmission line along field lines, property lines, and Public Land Survey System ("PLSS") lines -- generally on east/west or north/south orientations -- as Opportunities to minimize impacts on utilizing aerial applications. According to Rock Island, this positioning allows for a smaller number of straight-line application runs than diagonal alignments, an easier flight pattern for aerial applicators. Rock Island states that where diagonal alignments across fields were selected, this was generally done to avoid other Sensitivities, such as homes. (RI RB at 134, citing RI Exs. 7.30 at 11 and 8.2 at 13-14, 16)

Rock Island also states that its research indicates that aerial applicators need to maintain a 25-foot separation from the cross-arms; therefore, aerial applications will not be able to fly over approximately 70 feet of the 100 foot easement on either side of the transmission line but will still be able to access part of the easement area. (*Id.* at 135, citing RI Exs. 2.0 at 30 and 7.30 at 12)

Rock Island asserts that the concerns regarding aerial application of fertilizer and chemicals are not unique to the Rock Island Project, but are inherent with respect to any transmission line. Rock Island states that it will work with landowners to negotiate specific placement of the line and structures on properties to minimize impacts on aerial spraying operations. (*Id.* at 136, citing RI Ex. 7.30 at 26)

Rock Island responded to ILA's assertion that RICL ignored the fact that land taken out of production is not limited to the structure footprint, but also includes areas around the structure. (ILA IB at 42) Rock Island states that landowners will still be able to farm almost the entire easement. RICL witness Mr. Koch calculated the acreage that will be covered by structure footprints by assuming all structure footprints will be seven feet in diameter, then by assuming all structure footprints will be 11 feet in diameter, totaling 1.27 acres on the entire line. Moreover, not all structures will be 11 feet in diameter or placed on agricultural land and some structures will be placed along property lines and field lines,

all of which will reduce the actual amount of agricultural land impacted by the structures. (RI RB at 134-135, citing RI Exs. 7.0 at 39; 8.3 Rev. at 5; and 8.4 Rev.)

Rock Island responded to IAA's assertion that Mr. Detweiler lacks the necessary experience to lead Rock Island's easement acquisition and infrastructure siting efforts (IAA IB at 17), by stating that Mr. Detweiler has both supervisory experience and experience with infrastructure siting issues. Rock Island states that it continues to hire individual employees and retain contractors with expertise in transmission line easement acquisition and infrastructure siting. Rock Island states that Deann Lanz, Clean Line's Director of Land Services, will be primarily in charge of the easement acquisition efforts. As Director of Land Services, Ms. Lanz coordinates, manages and provides strategic direction for all ROW acquisition efforts. She is currently engaged in landowner contact and initial easement acquisition activities, as well as in other permitting activities. (RI RB at 136-137, citing RI Exs. 1.4 at 8; 1.5; 1.7 at 6)

According to Rock Island, Ms. Lanz oversees the ROW acquisition contractor, Contract Land Staff ("CLS") and its employees and will work closely with the construction managers to ensure that ROW acquisition efforts are consistent with construction management policies and practices. Rock Island states that Ms. Lanz has extensive experience in managing ROW and land issues pertaining to the development of large-scale energy generation and transmission projects. Prior to working at Rock Island, she served as Vice President, Land for BP Wind Energy North America, Inc. and was responsible for the land issues for more than $1 billion of energy generation assets. She also has supervisory experience managing a cross-functional team of personnel in geographic information systems, land acquisition, due diligence and property administration. (RI RB at 137, citing RI Exs. 1.4 at 8-9 and 1.8 at 6)

According to Rock Island, CLS, which RI has engaged to assist with activities related to ROW acquisition, has significant experience in ROW acquisition, and has been involved in planning, managing and executing hundreds of ROW acquisition and land management projects covering over 25,000 miles across the country. (*Id.* at 137-138, citing RI Ex. 1.4 at 17)

2. Positions of Staff and Intervenors

Staff states that RICL requests a 200 feet ROW for the HVDC portion of the transmission line and 270 feet for the HVAC portion of the transmission line. (Staff IB at 66, citing RI Ex. 2.0 at 29-30)

Staff does not express an opinion regarding the proposed easement widths.

IAA and ILA Positions

The Farm Bureau "takes no particular issue with the proposed easement widths of Rock Island," but does take issue with Rock Island's ability to obtain and negotiate such easements moving forward in anticipation of construction. (IAA IB at 16-17)

Rock Island's easement and infrastructure siting efforts in Illinois are led by Hans Detweiler. (IAA IB at 17, citing Tr. 493, Detweiler) IAA states that Mr. Detweiler has never worked for a transmission company, sited transmission infrastructure, negotiated easements, or otherwise been involved with the construction of a transmission line. (*Id.*, citing Tr. 493-496) With regard to easement width, easement compensation, and crop damage reimbursement, Rock Island has relied upon the recommendations of its contractor, Contract Land Management, and studied market standards. (*Id.*, citing Tr. 498, 502) IAA asserts that "despite this," Rock Island has no knowledge of whether the easement widths or associated compensation formulas are market competitive or appropriate, and has no idea why the easement widths and compensation that it is offering is less attractive than that offered by Illinois utilities. (*Id.*, citing Tr. 507)

IAA states that "Rock Island's reliance on its inexperienced employees to site a $1.8B project in Illinois and negotiate easements therefor should not instill any sense of confidence in the Commission." IAA concludes, "The Farm Bureau's members' continued experience with Rock Island, a company that has never built a transmission line anywhere, is with its 'boots on the ground' representatives who have also never been involved with transmission lines before. As such, smooth and voluntary easement negotiations should not be assumed." (*Id.*)

In its initial brief, ILA states that Rock Island "attempts to minimize the impression of the impact of the easements it seeks by stating that only a very small portion of land will be taken out of permanent production within those easements." (ILA IB at 42) ILA asserts, "Rock Island, however, in addition to not adequately addressing issues of compaction, ignores the fact production isn't lost just for a tower superstructure's footprint, but also for areas around it." (*Id.*, citing Tr. 608)

Additionally, ILA submits, "production will be decreased insofar as the important tool of aerial application is rendered no longer usable for some landowners," and Rock Island failed to provide any witness that is qualified to speak to the application of herbicides, pesticides, or fungicides by air. (*Id.*, citing ILA Exs. 1.0 REV at lines 291-298 and 4.0 at lines 90-107; Tr. 401-402, 414)

3. Commission Conclusion

For the DC Section, Rock Island states that the ROW for the Project will vary between 145 feet and 200 feet wide, depending on requirements at particular locations. To accommodate the possible need for the maximum width at specific locations, Rock Island is requesting authority for a 200-foot ROW for the entire DC Section of the Project. Because there are two parallel 345 kV lines proposed for the AC Section -- one a single-circuit line and the other a double-circuit line -- Rock Island asserts that a larger ROW will be necessary, and is requesting authority for a 270-foot ROW for the AC Section.

According to Rock Island, the ROW width is based on the need to maintain electrical safety clearances and provide access for construction and maintenance of the

line. Wind blowing on transmission line wires will cause them to sway away from the center of the ROW towards the side, and the ROW must be wide enough to allow for this predicted wire movement on both sides of the ROW, while still maintaining the required electrical clearances from vegetation, structures and other infrastructure. As the span length of the transmission wire between the supporting structures increases, the amount of predicted transmission wire sway increases. Based on the structures that it will be using, Rock Island states that the requested 200-foot ROW for the DC Section and 270-foot ROW for the AC Section are sufficient for typical span lengths.

In two locations along the Preferred Route, where a longer than average span will be needed, a larger ROW width will be necessary and is being requested, as explained above.

Rock Island is also requesting that the Commission "grant it a temporary construction easement" beyond the 200-foot ROW in the DC Section or the 270-foot ROW in the AC Section for locations at which the permanent ROW is insufficient for construction activities or to access the construction area. Any temporary construction easement reverts to the landowner when construction is finished.

It appears that other parties do not specifically object to the proposed easement widths, and no alternative widths were proposed.

ILA does note concerns such as compaction and aerial application. While IAA "takes no particular issue with the proposed easement widths of Rock Island," it does take issue with Rock Island's ability to obtain and negotiate such easements. These issues are addressed elsewhere in this order.

The Commission finds that the easement widths proposed by Rock Island, as identified above, including those proposed for temporary construction easements, are reasonable and should be, and are hereby, approved.

C. Easement Acquisition and Landowner Compensation

1. Positions of Parties

Rock Island Position

Rock Island's Petition in this case does not include a request for eminent domain authority pursuant to §8-509 of the PUA (220 ILCS 5/8-509). Rock Island states that its "objective" is to obtain all necessary land rights for the Project in Illinois through voluntary negotiations and agreements with landowners. (RI IB at 138) Rock Island states that it understands that to obtain eminent domain authority for specific parcels pursuant to §8-509, it will need to demonstrate that it has engaged in reasonable, good faith negotiations with the landowners or has been precluded from doing so by the landowner. (*Id.*)

Rock Island states that it intends to engage in respectful and equitable negotiations with landowners in order to support voluntary transmission line easement acquisitions; that it will comply with the requirements of 83 Ill. Admin. Code Part 300; and that it has provided a copy of its informational packet that was sent to landowners. (*Id.* at 138-139)

Rock Island states that it adopted a Code of Conduct for its land acquisition agents' interactions with landowners, which requires that all communications with landowners and other persons made by right-of-way agents and subcontractor employees representing Rock Island must be factually correct, made in good faith, respectful and reflective of fair dealing, and respectful of the privacy rights of property owners. (*Id.* at 139, citing RI Exs. 7.0 Rev. at 38-39 and 7.17)

Rock Island states that while it understands the Commission does not determine what compensation should be paid to landowners, it provided information on the compensation package it intends to offer landowners for transmission line easements on their properties. Rock Island plans to offer a compensation package to landowners that will consist of (i) a payment for the easement itself, (ii) a separate payment for each structure placed on the landowner's property, and (iii) payments for specific damages and losses caused by the construction and operation of the transmission line, such as crop losses during construction or maintenance activities, field repair for soil compaction and drainage tile damage, the value of commercially-marketable timber that is felled, and temporary or permanent impacts to the operation of center-pivot irrigation systems.

Rock Island states that it will offer an easement payment of 90% of the fair market value, as determined by an independent appraisal firm, of the fee interest in the property for the entire easement space; the landowners will be allowed to continue to farm within the portions of the easement area that are not used during construction of the transmission line and are not occupied by transmission structures when the line is placed into operation. (RI IB at 139, citing RI Exs. 7.0 Rev. at 39; 7.35 at 17; 10.14 Rev. at 62-64)

The separate, per-structure payment that Rock Island will offer will be, at the landowner's option, a one-time payment of $6,000 or an annual payment of $500 for monopole structures for as long as the structure is on the property and Rock Island retains the easement. The intent is that the combined easement payment and structure payments will result in compensation to any landowner with at least one structure on his or her land that is at least 100% of the fair market value of the land used for the easement. (*Id.* at 140, citing RI Exs. 7.0 Rev. at 39-40, 7.30 at 17; 7.31 Rev. at 1)

With respect to crop damages or losses during construction, Rock Island states that it will make an advance payment to the landowner for crop damages based on use of a 50-foot strip of the entire easement during construction in order to provide compensation to the landowner prior to the growing season in which the impacted crops would otherwise be cultivated and harvested, rather than requiring the landowner to wait until after the construction is completed to receive compensation for crop damages caused by construction. However, if the landowner believes that actual crop loss

damages resulting from construction prove to be greater than the advance payment, Rock Island will negotiate with the landowner to pay any additional amounts above the advance payments. (RI IB at 140-141, citing RI Exs. 7.35 at 11-12, 17-18 and 7.31 Rev. at 1; Tr. 520-521)

In response to IAA's and ILA's assertion that Rock Island's easement compensation package is inadequate (IAA IB at 17; ILA IB at 43), Rock Island states that neither party offered any evidence that Rock Island's planned compensation for easements – as summarized above -- is an inappropriate compensation level. (R I RB at 139)

Rock Island responded to ILA's claim that Rock Island will not adequately compensate landowners for commercial timber operations on landowner property, specifically because, the ILA claims, Rock Island is only offering compensation for fully grown trees and not trees not yet commercially marketable (ILA IB at 43). Rock Island states that ILA did not raise this issue in its prepared testimony, so Rock Island did not address this topic in its rebuttal or surrebuttal testimony. (RI RB at 140) RI states that if timber is being grown as part of commercial timber operations, then the timber would be considered commercially marketable timber for purposes of damage payments by Rock Island. Rock Island asserts that it intends to use an independent timber appraiser to determine the market value of timber, and will separately compensate the landowner for the value of any such timber that is cut down in the construction process. (*Id.*) Referring to ILA's example of the felled trees on a landowner's property that were sold for over $1,000 per tree (ILA IB at 43), Rock Island submits that if that were the appraised market value of the timber that is felled for construction of the Project, that is the compensation that Rock Island will pay the owner. (RI RB at 140)

Rock Island states that only approximately five miles of the 120-mile Preferred Route in Illinois is forested land, and ILA witness Mr. Simpson is the only landowner along the Preferred Route who has been identified with a marketable timber operation. Rock Island asserts that while Mr. Simpson and his property manager Mr. Cole expressed concern about the Project's impact on his timber business, Mr. Simpson has also expressed the desire to build a housing development on his property, which demonstrates that his own objectives are inconsistent with concerns about the impact on his timber business. Rock Island reiterated that it will compensate Mr. Simpson for 90% of the fair market value of the easement, for any structures placed on his land, and for the appraised value of any timber within his commercial operations that is felled during the construction process. (RI RB at 140-141, citing RI Exs. 7.30 at 25; 8.2 at 75, 103; and 8.3 Rev. at 19)

Rock Island also responded to ILA's assertion that erosion is a concern when felling timber on landowner property. (ILA IB at 43) Rock Island states that it will work with its EPC contractor to ensure that any landowner concerns about erosion are properly addressed, and that the Illinois Environmental Protection Agency ("IEPA") will require Rock Island to develop a Storm Water Pollution Prevention Plan ("SWPPP"), which will include best practices to prevent soil erosion during Project construction. According to Rock Island, the SWPPP will not only include the best management practices that will be

utilized to generally address soil erosion, it will also address site specific measures such as work near roads and work near waters and streams. The SWPPP will also prescribe pollution prevention management measures, including setbacks for streams and wetlands, notification and clean-up requirements in the event of a spill, and hazardous material storage requirements. Rock Island also states that KPC intends to utilize erosion control measures that the IEPA has established as the best management practices for erosion control. (RI RB at 141, citing RI Exs. 8.3 Rev. at 21-22, 36-37; and 9.2 at 8)

Rock Island states that it will also compensate landowners for a reasonable time period for damage to property and reduced crop yields due to soil compaction caused by the construction of the Project. (RI RB at 141-142) In response to ILA's concern that Rock Island has not provided a specific length of time for which it intends to compensate landowners for reduced crop yields (ILA IB at 44), Rock Island submits that because each property is different and may be impacted in different ways, the damage determinations beyond the standard advance payment for crop damages need to be made on a parcel by parcel basis. (RI RB at 142, citing RI Ex. 7.35 at 17-18 and Tr. 444-446)

Rock Island states that the best practices that will be employed by its EPC contractor for avoidance, minimization and remediation of soil compaction are described on pages 144-147 of Rock Island's initial brief and in §IV.C.2.b.vii of its reply brief.

Rock Island responded to ILA's assertion that Rock Island witness Mr. Detweiler lacked agricultural education or experience to provide testimony on compensation for damage due to soil compaction or to review studies cited by ILA witness Dr. Marshall concerning soil compaction (ILA IB at 44). Rock Island states that Mr. Detweiler read the studies cited by Dr. Marshall and pointed out certain statements in the studies that were inconsistent with Dr. Marshall's position. According to Rock Island, the studies stated that any long-term impacts from compaction would be rather small in crop yield percentage terms and would only occur on a small percentage of the easement area. (RI RB at 142-143, citing RI Ex. 7.30 at 7; Tr. 439) Rock Island submits that Mr. Detweiler simply pointed out that while Dr. Marshall asserted that the studies establish that additional passes of equipment over soil exacerbate compaction and reduce crop yields, the studies indicated that the large yield reductions he referred to were the result of compaction that was deliberately created for purposes of the studies, with no attempts to use methods to prevent, avoid, minimize or remediate the compaction. Additionally, the studies attempted to measure compaction and its effects caused by normal farming practices on entire agricultural fields, not to study construction impacts in limited, defined portions of a field using carefully designed and implemented avoidance, mitigation and remediation methods that Rock Island and KPC will use. Therefore, Rock Island states, the studies are not applicable to the current situation in which its contractor will access only limited areas of the property and will take specific precautions to avoid or minimize soil compaction. (*Id.*, citing RI Ex. 7.35 at 15; Tr. 440-441)

ILA and IAA Positions

ILA states that Rock Island has attempted to obtain easements from only a "very small number" of affected landowners. (ILA IB at 42, citing Tr. 421-422)

ILA asserts that many individuals and businesses will be impacted by the proposed Project even though construction may not occur on their property. One such category of individuals is aerial applicators. ILA contends that the record shows Rock Island has provided no competent testimony from any witness that can speak as to the aerial application business. Yet, Rock Island does not plan on compensating any aerial applicators for loss of business. (*Id.* at 43, citing ILA Ex. 4.0, lines 113-123; Tr. 401-402, 414, 441)

According to ILA, those with timber operations on their property will also not be adequately compensated. The cutting of timber within the Project's right of way and erosion from construction will impact large swaths of timber. In ILA member Simpson's timber operation, trees sell for as much as $1,000 each. However, Rock Island only intends to compensate landowners with timber operations for the value of timber that is commercially valuable at the time of clear cutting. Despite the uncontroverted statements in the record regarding values of approximately $1,000 a tree, Rock Island's only offer of compensation for growing trees, not yet commercially marketable, and the loss of ability to grow any marketable timber in the right of way, is a one-time payment of 90 percent the fair market value of the easement. In ILA' view, Rock Island's compensation package simply does not add up for those with timber operations. (*Id.* at 43-44, citing ILA Exs. 5.0 at lines 52-54; 6.0 at lines 28-30; Tr. 443, 519)

Finally, ILA asserts that Rock Island refuses to provide any standards for the length of time it intends to compensate landowners for reduced crop yields due to the project, instead suggesting it will compensate for such damages for a "reasonable time period." (ILA IB at 44, citing RI Ex. 7.3 at line 542, and Tr. 446) ILA argues, "Perhaps the inability to provide a standard is due to the selection of Mr. Detweiler to provide testimony as to damages from soil compaction. Mr. Detweiler, having no agricultural education or experience, and otherwise being utterly unqualified to opine on these matters, reviewed studies regarding compaction, summarized them, and drew the conclusion that long-term impacts from compaction would be rather small." (*Id.* citing Tr. 439) According to ILA, Mr. Detweiler "summarily dismissed" studies cited and endorsed by Dr. Paul Marshall, who holds a Ph.D. in forestry and botany and a bachelor's degree from the University of Illinois College of Agriculture, because Mr. Detweiler "found those studies ... to be not applicable to the situation...." (*Id.*, citing Tr. 440-441)

In its initial brief, the IAA "restates and realleges its allegations" in Section IV.B.2 of its initial brief. (IAA IB at 17) Those arguments are summarized above under "Proposed Easement Width."

2. Commission Conclusion

Rock Island's Petition in this case does not include a request for authority pursuant to Section 8-509 of the PUA (220 ILCS 5/8-509), which would allow Rock Island to seek eminent domain before the courts.

According to Rock Island, it understands that to obtain relief pursuant to Section 8-509, it will need to demonstrate that it has engaged in reasonable, good faith negotiations with the landowners or has been precluded from doing so by the landowner.

ILA states concerns as to whether Rock Island's compensation package properly considers impacts on aerial applications, soil compaction, and erosion from the cutting of timber.

The Commission observes that in other dockets, when determining whether a utility has made a reasonable effort to negotiate for easements needed to construct an authorized transmission line, the Commission has relied upon several factors, some of which relate to offers of compensation. These include, among others, the number, nature and extent of contacts with the landowners; whether the utility has adequately explained its offer of compensation; whether the offers of compensation are comparable to offers made to similarly situated landowners; whether the utility has made an effort to address landowner concerns; and whether further negotiations will likely prove fruitful. Order, Docket 13-0456 at 3; see also Order, Docket No. 06-0706 at 88, and Order, Docket 13-0446 at 33-34.

The Commission expects that, at a minimum, Rock Island will in engage in negotiation efforts that are respectful to the landowners, and will proceed in a manner that reasonably considers the factors identified above.

Except as otherwise noted in this Order, the Commission will not make any further determinations in this proceeding regarding monetary compensation issues.

Concerns regarding aerial applications and soil compaction -- other than those relating to compensation -- are addressed elsewhere in this order.

X. PROJECT DESIGN AND CONSTRUCTION

A. Structures

1. Positions of Parties

Rock Island's Position

Rock Island proposes "that the transmission line will be a bi-pole HVDC line," with a voltage rating and operating voltage of ±600 kV. The voltage between the poles will be 1,200 kV. Each pole will carry one-half of the power, 1,750 MW per pole, with a peak

operating current of approximately 2,917 amperes. In certain circumstances, such as a maintenance condition or a contingency, only one pole may be available for transmitting power, in which event the single pole may be able to transmit somewhat more than 1,750 MW. (RI IB at 141, citing RI Ex. 2.0 at 24-27)

Rock Island asserts that in North America, there are over 30 HVDC installations, dating as far back as 1968, including 11 HVDC lines with a combined capacity of approximately 14,000 MW; and that worldwide, HVDC applications are commonplace and are continuing to increase in applications similar to the Rock Island Project, with significant HVDC transmission applications in Australia, New Zealand, Brazil, China, India, Japan and Europe. (RI IB at 141, citing RI Ex. 2.0 at 22-24) The purported advantages of using HVDC technology in a long distance application such as the Project, and for transporting large amounts of variable generation, as described by Rock Island, are discussed elsewhere in this Order.

Rock Island entered into an Agricultural Impact Mitigation Agreement ("AIMA") with the Illinois Department of Agriculture ("IDOA"). With respect to structure types, Paragraph 3 of the "Construction Standards and Policies" section of the Agreement states:

> Tangent structures (straight-line, non-turning structures) will utilize only single, drilled-pier type concrete foundations or direct embed type foundations that are typical of single pole type structures. Clean Line will not use multi-foundation lattice type structures for tangent structures, though such structures may be used for turns, long spans such as river crossings, and similar situations where specific engineering and environmental challenges are present. The use of guy wires will be avoided to the extent feasible. If guy wires are required, they will be marked with highly visible guards.
> (*Id.* at 141-142, citing RI Ex. 7.28 at 3-4)

The single-pole structures that Rock Island proposes to use will be steel monopoles or lattice mast structures. Rock Island Exhibit 2.9 Rev. provides drawings of these structures. These single-pole structures would have a typical span between structures of 1200 feet, and heights in the range of 100 to 175 feet depending on terrain topology. River crossings and certain other situations may require taller towers. Rock Island plans to use 2156 circular mil ("kcmil") ACSR conductors in a triple bundle configuration for the pole conductors. For the dedicated metallic return of the HVDC line, Rock Island plans to use two 1780 kcmil ACSR conductors, subject to final design refinement based on the final Commission-approved route. (RI IB at 142, citing RI Exs. 2.0 at 27, 29; and 2.11 Rev. at 7)

Rock Island states that ILA acknowledges Rock Island will be using lattice mast structures with a single base and that this structure type is preferable to other structure types with larger footprints. (RI IB at 144, citing ILA IB at 45) Rock Island's response to ILA's assertion that landowners will be required to "farm around" these obstacles and that some may lose the ability to aerially apply chemicals (RI IB at 144-145, citing ILA IB at

45) is addressed elsewhere in Rock Island's brief and is summarized elsewhere in this order.

In response to ILA's assertion that "any obstacle lowers the value of entire parcels" (ILA IB at 45), Rock Island responds that the only support offered for this assertion is a single incident in which ILA witness Dr. Marshall subjectively concluded that a piece of farm property in a foreclosure sale sold for a lower price than was anticipated because of the presence of an easement on the property for a municipal sewer line and lift station. Rock Island submits that Dr. Marshall acknowledged there were "other contributing factors" in this situation. (RI RB at 145, citing Tr. 612-617) Rock Island reiterates that its separate payment to the landowner for each structure placed on the property provides specific compensation for any difficulty in "farming around" the structure bases. (*Id.*)

Rock Island states that ComEd objects to the possibility that Rock Island would seek to build a 765 kV line in the AC Section of the Project to connect the eastern converter station to the Collins Substation. (RI RB at 145, citing ComEd IB at 36) Rock Island clarifies that it is not asking for approval for a 765 kV line for the AC Section that was described in Dr. Galli's surrebuttal testimony (RI Ex. 2.15), but rather is requesting approval to construct a single-circuit 345 kV line and a double-circuit 345 kV line, with a combined ROW of 270 feet, from the eastern converter station to the Collins Substation, as described in Rock Island's Petition and direct testimony. (RI RB at 145)

Staff Position

Under "Design and Construction of the Project," Staff first states that this proposed HVDC transmission line originates in O'Brien County, Iowa and terminates in Grundy County, Illinois. The total length of the transmission line is approximately 500 miles, 121 miles of which are in Illinois. The transmission line's nominal voltage will be ± 600 kilovolt ("kV") direct current ("DC"). This is the first DC transmission line proposed for Illinois. All other transmission lines in Illinois operate using alternating current ("AC").

High voltage direct current ("HVDC") technology has advantages over high voltage alternating current ("HVAC") technology when power flows are large and transmission distances are long. Some of these advantages are lower power losses, lower construction cost, and narrower horizontal clearance for the transmission line, which means the DC transmission line can operate safely and reliably inside a narrower ROW. (Staff IB at 66-67, citing RI Ex. 2.0 at 20-21)

Rock Island indicated that the proposed project would be rated at ± 600 kV DC, which could be as high as ± 640 kV to ± 660 kV DC, based on the final design of the proposed project. (RI Petition at ¶ 6) Mr. Galli testified that Rock Island will utilize a bipolar design for the project. (Staff IB at 67, citing RI Ex. 2.0 at 24) A bipolar design utilizes two poles for the transmission line. In this case, a pole means a conductor through which energy transmits. In AC transmission, conductors through which energy transmits are called "phases." In DC transmission, the conductors are called "poles". Used in this context, "pole" is best defined as either of the two terminals of an electric cell, battery,

generator, or motor. Because of the polarity nature of DC voltage, the potential difference (the DC voltage) between the two poles will be 1,200 kV. Mr. Galli testified that the proposed project could operate in a monopolar mode in case one of the two poles is not available. (*Id.*, citing RI Ex. 2.0 at 25)

Section IV.C.1 of Staff's initial brief is titled, "Proposed Structures and other Components." (Staff IB at 68-69) According to the Petitioner, the HVDC portion of the proposed transmission line will originate from an AC-to-DC converter station at O'Brien County in Iowa and will terminate at a DC-to-AC converter station ("eastern converter station") located approximately four miles north of the Collins Substation in Grundy County. (Petition at 2-3) The converter stations are essential for HVDC transmission technology. (Staff IB at 68) The energy generated in wind farms is in AC form; to transmit this energy over a HVDC transmission line, the energy must be converted to DC form. In addition, since the energy used domestically is in AC form, the DC energy transmitted through the HVDC transmission line must be converted back to AC form before delivery to customers.

Rock Island will also install a 345/765 kV step-up transformer facility to interconnect to the Collins Substation. (*Id.*, citing RI Petition at ¶6) Rock Island witness Wayne Galli stated that the proposed project would originate within O'Brien County, Iowa, where it would connect to a 345 kV AC transmission system, and would terminate in Grundy County, Illinois where it would connect to the existing 765 kV AC transmission system at the Collins Substation. (Staff IB at 68, citing RI Ex. 2.0 at 5) Rock Island will construct three parallel 345 kV AC transmission lines between the eastern converter station and a new substation adjacent to ComEd's existing Collins Substation -- a distance of approximately 3 to 4 miles -- where the voltage will be stepped-up to 765 kV using two or three 345/765 kV transformers for interconnection to the Collins 765 kV bus. The 345 kV AC transmission lines will consist of one single circuit and one double circuit running contiguously. (*Id.*)

Staff states that Rock Island provided information regarding the structures that Rock Island intended to use for the transmission line and the ROW that Rock Island would need for the transmission line. (Staff IB at 69, citing RI Ex. 2.0 at 27-32) Mr. Galli stated that "two primary structure types have been identified: lattice structures and tubular steel "monopole" structures." (*Id.*, citing RI Ex. 2.0 at 27) Mr. Galli added, "Rock Island has not made a determination as to the final structure type but would like to have flexibility in such a determination so that landowner concerns, project costs, terrain, land use, and other relevant factors can be considered when making a final selection. It is likely that a mix of structures could be utilized to help maximize flexibility and optimize costs." (*Id.*, citing RI Ex. 2.0 at 27-28)

On May 31, 2013, Rock Island filed an Agricultural Impact Mitigation Agreement ("Agreement" or "AIMA") that it negotiated with Illinois Department of Agriculture. One of the issues that the Agreement addressed in Paragraph 3 of the "Construction Standards and Policies" section was Rock Island's potential use of the lattice towers, which require

a larger base than the monopole structure design. (RI Ex. 7.28) The provisions of that paragraph are set forth above in the summary of RI's position.

ILA and IAA Positions

The ILA recognizes that many of the supporting superstructures proposed for this project are lattice box structures with a single base. According to ILA, while such a superstructure is preferable to other means of supporting transmission lines with larger footprints, suggesting that the only land permanently impacted is that at the structure base is incorrect. Landowners will be required to farm around those obstacles, and some may lose the ability to hire aerial applicators for portions of the land. ILA further argues that any obstacle lowers the value of entire parcels. (ILA IB at 44-45, citing ILA Ex. 1.0REV at lines 190-197 and 291-298; ILA Ex. 4.0 at lines 90-107; Tr. 608)

IAA states, "Since Rock Island has apparently committed to use monopole structures in the Project, the Farm Bureau takes no position the proposed structures and other components." (IAA IB at 44)

ComEd Position

ComEd notes that the Petition does not request authority to construct, operate and maintain a 765 kV AC line, whether on single-circuit poles or any other structures. In his surrebuttal testimony, RI witness Dr. Galli mentions such a concept for the first time. (ComEd IB at 36, citing RI Ex. 2.15 at 42) According to ComEd, presentation in surrebuttal of a new type of line – operating at a different voltage, with a different capacity – is far too late. (*Id.*, citing *Northern Moraine Wastewater Dist*., 392 Ill. App. 3d at 575-576)

Moreover, even this belated testimony includes no detail about the line or the structures on which it will be built, detail that the Commission has historically required. There is no cross-section diagram, analysis of right-of-way requirements or specification of right-of-way utilization, and no project-specific cost estimate of the 765 kV line, or the required transformation and substation equipment. ComEd asserts that the Commission has never authorized a 765 kV line – or any major project – based on such little information. (*Id.*)

2. Commission Conclusion

As proposed, the 500-mile transmission line Project would originate at a converter station in O'Brien County, Iowa, "traverse Iowa" for 379 miles, cross the Mississippi River near Princeton, Iowa, and then enter Illinois south of Cordova, Illinois.

From there, the proposed line would extend for approximately 121 miles in Illinois to the Collins Substation in Grundy County.

The energy generated in wind farms is in AC form. To transmit this energy over a HVDC or "DC" transmission line, the energy must be converted to DC form. The DC portion of the proposed transmission line will originate from an AC-to-DC converter station at O'Brien County in Iowa and will terminate at a DC-to-AC converter station to be located approximately four miles north of the Collins Substation in Grundy County. From the converter station, a four-mile AC segment, consisting of two parallel 345 kV AC lines, will connect to ComEd's existing 765 kV AC transmission system at or near the Collins substation.

The DC transmission line's nominal voltage will be ± 600 kilovolt direct current. The line is characterized as the first DC transmission line proposed for Illinois.

Rock Island asserts that HVDC technology has advantages over high voltage alternating current technology when power flows are large and transmission distances are long, including lower power losses, lower construction cost, and narrower horizontal clearance for the transmission line, which means the DC transmission line can operate safely and reliably inside a narrower ROW.

Rock Island signed an Agricultural Impact Mitigation Agreement ("Agreement" or "AIMA") with the Illinois Department of Agriculture. One of the issues that the Agreement addressed was Rock Island's potential use of the lattice towers, which require a larger base than the monopole structure design. The Agreement provides:

> Tangent structures (straight-line, non-turning structures) will utilize only single, drilled pier type concrete foundations or direct embed type foundations that are typical of single pole type structures. Clean Line will not utilize multi-foundation lattice type structures for tangent structures, though such structures may be used for turns, long spans such as river crossings, and similar situations where specific engineering and environmental challenges are present.

The single-pole structures that Rock Island proposes to use will be steel monopoles or lattice mast structures which would have a typical span between structures of 1200 feet, and heights in the range of 100 to 175 feet depending on terrain topology.

Consistent with the provisions of the AIMA discussed above, the Commission directs Rock Island to comply with above-referenced "tangent structure" provision, as well as the other terms and provisions, of the Agricultural Impact Mitigation Agreement.

In its initial brief, ComEd notes that the Petition does not request authority to construct a 765 kV AC line in the AC Section of the Project to connect the eastern converter station to the Collins Substation, but that Rock Island witness Dr. Galli belatedly raises such a concept for the first time in surrebuttal testimony. In its reply brief, Rock Island clarifies that it is not asking for approval for a 765 kV line for the AC Section that was described in Dr. Galli's surrebuttal, but rather is requesting approval to construct a single-circuit 345 kV line and a double-circuit 345 kV line, with a combined ROW of 270

feet, from the eastern converter station to the Collins Substation, as described in its Petition and direct testimony.

The Commission finds that the 765 kV AC line alternative referenced above is not before the Commission for consideration in this proceeding, and it is not approved in this order.

Subject to determinations made and requirements noted above and elsewhere in this Order, the Commission finds that the use of the types of transmission lines and structures as proposed for the Project is appropriate and is approved.

B. Landowner Concerns about Impacts of Construction

1. RI Position

a. AIMA

According to Rock Island, it entered into an AIMA with the IDOA which the IDOA has determined meets the IDOA's requirements to minimize and mitigate impacts to landowners. (RI IB at 143, citing RI Exs. 7.28 and 7.30 at 4) The AIMA sets forth a series of requirements that the IDOA has determined appropriately protect landowners from potential impacts of the Project.

They include the following: (1) Rock Island will discuss pole placement with landowners so as to minimize interference with cropland (AIMA Section 3); (2) for tangent structures (straight-line, non-turning structures), Rock Island will use only single, drilled pier type concrete foundations or direct embed type foundations that are typical of single pole type structures (AIMA Section 3); (3) Rock Island will not use multi-foundation lattice type structures for tangent structures though such structures may be used for turns, long spans such as river crossings, and similar situations where specific engineering and environmental challenges are present (AIMA Section 3); (4) Rock Island will avoid the use of guy wires (AIMA Section 3); (5) temporary and permanent access roads on landowner property will be located by agreement with the landowner (AIMA Section 4); (6) transmission structures will be relocated, to the extent reasonably possible, to avoid interference with drain tile (AIMA Section 5); (7) Rock Island will repair, or will compensate landowners for, damaged drain tile; a landowner can also retain his own contractor to repair damaged drain tile and be reimbursed by Rock Island (AIMA Section 5); (8) Rock Island will decompact cropland to a depth of 18 inches and pasture land to a depth of 12 inches (AIMA Section 7); and (9) Rock Island will repair any damage to soil conservation practices and will work with landowners to prevent excessive erosion (AIMA Sections 9 and 10). (*Id.* at 143-144, citing RI Ex. 7.28)

Rock Island explains that the AIMA also provides that its terms will be incorporated into Rock Island's easement agreements with landowners (AIMA Section 18). Rock Island represents, however, that if a landowner requests that the methods specified in the AIMA not be used or that different measures be employed, Rock Island will attempt to

negotiate a satisfactory alternate approach with the landowner. (*Id.* at 144, citing RI Exs. 7.28 at 1, 7; 7.35 at 3, 5; 9.4 Rev. at 12, 14)

Rock Island also states that, as set forth in the AIMA, it has agreed to employ an independent agricultural inspector ("IAI") to verify compliance with the provisions of the AIMA by Rock Island and to vest the IAI with authority to stop contractors' construction activities that the IAI determines are out of compliance with the AIMA (AIMA Section 13). The IAI will also have authority to stop contractors' activities that are not in compliance with the landowner's easement agreement. (*Id.*, citing RI Exs. 7.28 at 6; 7.30 at 6; 7.35 at 10)

b. Impacts of Construction

Soil Compaction

Rock Island recognizes that a certain level of soil compaction can be expected to occur in the construction of the Project on agricultural property, but states that it and its contractors will take steps to avoid or minimize soil compaction; Rock Island will use chiseling and other approved means to remediate any soil compaction that occurs; further, Rock Island will compensate landowners for damages they incur associated with any soil compaction caused by the construction or maintenance of the Project, including compensation for reduced crop yields. (RI IB at 144-145, citing RI Ex. 7.30 at 5-8)

Rock Island states that Rock Island and its EPC contractor will employ several construction methods that are designed to avoid or limit soil compaction. First, the EPC contractor will minimize soil compaction by limiting the area actually traversed by construction vehicles and equipment. Specifically, to the extent practicable, access to the specific construction areas will be obtained either (i) from an existing public road or other existing access road directly to the structure location, or (ii) by traveling from a public road or other existing access road within the easement right-of-way. Rock Island states that the primary construction activities on landowner property will occur at or near the locations of the transmission structures, which are expected to be placed at least 1,200 feet apart. Further, although the proposed easement widths will be 200 feet, Rock Island and its contractors expect to use only about 50 feet of the easement width during construction. Rock Island asserts that the avoidance measures will minimize the overall soil compaction that will occur during construction. (*Id.*, citing RI Exs. 7.35 at 5, 11; 9.2 at 2-3)

Second, Rock Island submits that, to the extent possible, the EPC contractor will use tracked equipment on agricultural property in the construction of the Project, which will cause less soil compaction than tire mounted equipment because the weight of the equipment is distributed over a much larger area and thus there is significantly less pressure transmitted to the ground. Third, the EPC contractor will construct access roads and construction pads using crushed stone and geotextile, which will also serve to spread the weight of equipment over a larger area as well as allowing for appropriate drainage. Rock Island states that KPC will also shape access roads and construction areas by

constructing access roads and construction pads with a crown to allow water to drain. Further, KPC will typically not perform construction activities during inclement weather, particularly in heavy rains, or under extremely wet soil conditions. (RI IB at 145-146, citing RI Ex. 9.2 at 2-3; 9.4 Rev. at 12)

Rock Island represents that if a landowner objects to any of the compaction avoidance measures Rock Island and KPC plan to use, Rock Island and KPC will not use them and will negotiate alternative methods or measures with the landowner to prevent soil compaction. Rock Island further states that the AIMA requires Rock Island to discuss the mitigation measures it intends to employ with the landowner before implementing them. (*Id.* at 146, citing RI Exs. 7.28 at 1 and 7.35 at 5-6)

With respect to remediating soil compaction, Rock Island asserts that it has committed to decompact cropland where necessary to a depth of 18 inches, and pasture to a depth of 12 inches, as specified in the AIMA, and if landowners wish, Rock Island will apply fertilizer to disturbed soils, which, Rock Island states, is consistent with remediation recommendations in a University of Wisconsin study that ILA witness Dr. Marshall cited. Rock Island also submits that landowners can choose to self-perform decompaction activities on their land or retain a contractor of their choice to do this work, the reasonable cost of which will be paid by Rock Island; or can elect to not have any chiseling performed on their property. Rock Island further represents that if the landowner believes some depth other than 18 inches is appropriate, Rock Island will work with the landowner to effectuate the landowner's recommendation. Rock Island also acknowledges that there may be circumstances where chiseling beyond 18 inches may be needed. (RI IB at 146, citing RI Exs. 7.28 at 5; 7.30 at 5; 7.35 at 3, 6)

Rock Island states that in the event that if soil compaction still occurs, despite the measures described above, any impacts in terms of reduced crop yields will be limited to the relatively small portion of the easement property where construction activities occurred, and not the entire easement area. Rock Island expects the areas in which construction activities -- structure assembly and installation and cable pulling -- will occur or that will be traversed by construction vehicles, including access roads, will comprise only about 20% of the easement area, thereby leaving the majority of the easement area untouched and undamaged. Further, Rock Island contends that its compensation package will pay the landowner an amount in excess of the full fee value of the easement area (assuming at least one structure on the landowner's property), yet the landowner is allowed to continue to farm within the easement. (Rock Island IB at 146-147, citing RI Exs. 7.0 Rev. at 39; 7.35 at 13, 17; 10.14 Rev. at 62-64)

Rock Island also represents that it will compensate landowners for soil compaction damages to the extent such losses are caused by construction or maintenance activities for the Project; that there is no maximum period of time for which Rock Island will compensate landowners for soil compaction damages; and that it will compensate landowners for long-term impact, should it occur. (RI IB at 147, citing RI Ex. 7.30 at 5, 21)

In response to ILA's assertion that KPC, the EPC contractor, may not "sufficiently appreciate or mitigate soil compaction" because, among other things, the "low-impact tracked equipment" that Mr. Adam described KPC will use will "exert at least 17 pounds per square inch of ground pressure" (ILA IB at 49), Rock Island states that while even relatively "light" equipment may cause soil compaction, KPC will employ specific construction methods and procedures, as are described above, to avoid and limit soil compaction. (RI RB at 153, citing RI Ex. 9.2 at 3 and RI IB at 145) Rock Island also asserts that commonly used farm equipment is of similar or greater weight than many of the items of equipment that KPC will use to construct the Project, and in fact can cause greater damage because the farm equipment is driven over bare land, as opposed to over prepared access roads. (*Id.*, citing RI Ex. 9.4 Rev. at 10-11) Rock Island states that Dr. Marshall testified that the increasing size of farm equipment, as it relates to soil compaction, is "becoming a significant issue." (*Id.*, citing Tr. 611, 623-24; 628)

In response to the ILA's assertion that Rock Island witness Mr. Detweiler did not have sufficient qualifications to review and "provide conclusions" from certain studies and articles concerning soil compaction that were cited by ILA witness Dr. Marshall (ILA IB at 46), Rock Island argues that Mr. Detweiler did no more than review the studies and other articles that were cited by Dr. Marshall and, based on the "plain language" of the studies, pointed out portions that undercut Dr. Marshall's testimony. (RI RB at 154) RI asserts that Mr. Detweiler identified numerous inconsistencies between Dr. Marshall's testimony and the studies and articles Dr. Marshall cited. Rock Island described four such "inconsistencies" in its reply brief. (RI RB at 154-155, citing RI Ex. 7.35 at 4, 14-16)

Drainage Tiles

Rock Island states that prior to construction, KPC will complete a due diligence process to identify the locations of drainage tiles so as to avoid damaging them during construction and maintenance activities. The due diligence process will include locating mapped and unmapped existing drainage tiles by (i) visiting local soil and water conservation districts and consulting other available documents that describe the location of drainage tiles, (ii) consulting with any contractors that installed drainage tiles, and (iii) meeting with landowners and walking their fields. Rock Island further explains that once drainage tiles are located, KPC may use a "street plate" (a carbon steel plate that typically is one inch thick) or other matting to spread the loads of the construction equipment, thereby reducing the pressure being exerted on the tiles, and consequently reducing the possible damage to the tiles. (RI IB at 147-148, citing RI Exs. 7.30 at 8 and 9.2 at 4-5)

In the event drainage tiles are damaged by construction or maintenance of the Project, Rock Island represents that it will repair or replace -- with equal or better quality -- damaged drainage tiles, or will compensate landowners to make such repairs. (RI IB at 148, citing RI Ex. 7.30 at 9; see also RI RB at 155) Rock Island also represents that it will repair, replace or compensate landowners for damaged drainage tiles associated with the construction and maintenance of the Project for a reasonable period of time after construction is completed. Rock Island states that these commitments are specified in the AIMA. (*Id.*, citing RI Exs. 9.2 at 10 and 7.28 at 4-5; see also RI RB at 155) Rock

Island witness Mr. Adam testified that evidence of damaged drain tile is typically observed the following crop season, or if a crop season experiences drought or near-drought conditions, the damaged drain tile should become evident in the subsequent crop season. (*Id.*, citing RI Ex. 9.2 at 5) Rock Island also states that, after construction is complete, it will have personnel available to landowners to address any remaining drainage tile issues. (*Id.*, citing RI Ex. 7.30 at 9)

In response to the ILA's assertion that Rock Island has "refused to agree unconditionally to move transmission line structures when they are known prior to construction to interfere with drainage tile" (ILA IB at 49-50), Rock Island states that the AIMA specifies that Rock Island must avoid such interferences "to the extent reasonably possible," rather than being unconditionally required to move structures in all instances where the structure intercepts a drain tile. Rock Island also states that relocating a transmission structure in each instance where there is an interference, rather than simply relocating the drain tile, may result in additional or other impacts to the landowner. (RI RB at 155, citing RI Exs. 7.28 at 4 and 7.35 at 7) Therefore, Rock Island suggests, these situations should be evaluated on a case-by-case basis. Finally, Rock Island cited testimony by Mr. Adam that "structures are moved all the time for a lot of different reasons and if a structure has to be moved 10 feet to avoid a drain tile it is typically not a big issue." (*Id.*, citing Tr. 881)

Aerial Application Activities

ILA witnesses expressed concern that the Project would inhibit aerial applications of fertilizer, insecticides and pesticides to agricultural property. Rock Island responds that it has considered impacts to aerial applicators and that the Project will not materially restrict aerial application activities. (RI IB at 148-149) First, Rock Island explains that its Routing Criteria included Sensitivities of Private Airports/Airstrips and Aerial Fertilizer and Herbicide Application Ability so as to minimize impacts to aerial application. Further, in developing the Preferred Routes and Proposed Alternate Routes, Rock Island "considered" following field lines, property lines, and Public Lands Survey System ("PLSS") lines as Opportunities to avoid impacting aerial application (and other agricultural activities). Rock Island states that placing transmission lines along field lines, property lines, and PLSS lines reduces impacts to aerial applicators because it allows for a smaller number of straight-line application runs than would transmission lines placed in diagonal alignments. (RI IB at 148-149, citing RI Exs. 7.30 at 11 and Ex. 8.2 at Table 1)

Rock Island also contends that ILA witnesses' assertions ignore that aerial applicators regularly work in the vicinity of existing transmission lines in Illinois, and that, with the potential exception of the internal corner of 90 degree turns, there should not be any reduction in the ability of aerial applicators to treat crops outside the easement area of the Project. Rock Island states that while an aerial applicator needs to maintain a reasonable distance from transmission structures and appurtenances, the width of the easement should provide more than enough clearance to maintain the required distance. (*Id.* at 149, citing RI Ex. 7.30 at 11-12) Rock Island states that the easement width in the DC Section of the route will be 200 feet, or 100 feet on each side of the structure, so

maintaining a 25 foot separation from cross-arms will enable an aerial applicator to cover part of the easement area. (*Id.*, citing RI Exs. 7.30 at 12 and 2.0 at 29) Rock Island asserts that ILA witness Mr. Nelson's contention that aerial applicators will require 50-100 feet of clearance, and not 25 feet as suggested by Rock Island, because guy wires and "different transmission structures" may be used, ignores that Rock Island has no intention to use guy wires in Illinois, and that Section 3 of the AIMA states that the "use of guy wires will be avoided to the extent feasible." Rock Island submits that Mr. Nelson has not identified any other specific features that would require greater clearance than 25 feet or why "different transmission structures" would require greater clearance. (RI IB at 149-150, citing RI Exs. 7.28 at 4 and 7.35 at 20-21)

In response to Mr. Nelson's statement that Rock Island failed to recognize the cumulative impact of existing transmission lines and new transmission lines on aerial applicators (ILA Ex. 4.1 at 4), Rock Island states that the instances in which the Project will cross or parallel existing transmission lines will be very limited, as the Preferred Route crosses other existing transmission lines only eight times in Illinois and parallels existing transmission lines only three times for a total of 8.4 miles, of which only 7.5 miles is through agricultural land. (RI IB at 150, citing RI Exs. 7.35 at 23 and 8.10 at 2-3)

Rock Island contends that Mr. Nelson's assertion that Rock Island failed to account for the cumulative effect of existing wind farms on the Project (ILA Ex. 4.1 at 4) ignored that across its 120-mile length in Illinois, the Preferred Route passes within one-half mile of only a single existing wind farm and through one area in which a new wind farm is proposed; that the distance between the Preferred Route and the existing wind farm is well over a half mile, which is too great a distance to result in any cumulative impacts to aerial application; and that Rock Island is working with the developer of the wind farm to coordinate development and placement of structures. (RI IB at 150-151, citing RI Exs. 7.35 at 23-24 and 8.10 at 3)

In response to Mr. Nelson's assertion that Rock Island did not account for the cumulative impact to population centers (ILA Ex. 4.1 at 4), Rock Island contends that aerial application of chemicals in the vicinity of population centers should already be very limited, if done at all, and also that there are only three instances where the Preferred Route runs through or within one-half mile of a population center. (*Id.* at 151, citing Rock Island Exs. 7.35 at 24 and Ex. 8.10 at 3)

In response to Mr. Nelson's assertion that the Morris Municipal Airport will be impacted because the transmission line will have a negative impact on precision approaches, so fewer aircraft will use the airport in adverse weather (ILA Ex. 4.0 at 7-8), Rock Island submits its review of Federal Aviation Administration requirements indicates that the Project can be constructed along the Preferred Route in the area of Morris Municipal Airport in accordance with those requirements. (*Id.* at 150, citing Rock Island Ex. 8.3 Rev. at 31)

Limitations on Land Use

Rock Island responded to the concerns of ILA witnesses that the Project will limit land use because structures will obstruct large farm equipment, the Project will take valuable land out of agricultural production, and the Project will prevent certain future land uses. Rock Island contends that it sought to minimize impacts on the use of large farm equipment near Project structures by including a preference for routing along field lines, property lines, and PLSS lines in its Routing Criteria, as routing in this manner can reduce the amount of navigation around support structures; and that the typical transmission line spans will be 1,200 feet with single-foundation structures, which means that typically there will be four to six single foundation structures placed per mile. (RI IB at 151, citing RI Exs. 7.30 at 15, 17; and 8.3 Rev. at 7)

Rock Island also states that it will provide to landowners the GPS coordinates of transmission structures so that landowners with self-navigating farm equipment will be able to utilize such equipment to navigate around structures. (*Id.* at 151-152, citing Rock Island Ex. 7.30 at 16) Rock Island witness Dr. Galli testified that based on the nature of the HVDC line, results of prior studies, and the fact that the GPS system is based on numerous satellites, it is extremely unlikely that the HVDC line would interfere with GPS signals or systems. (*Id.* at 152, citing RI Ex. 2.11 Rev. at 46-48)

With respect to the concern that valuable farmland will be taken out of production, Rock Island maintains that the Project's transmission structures will occupy less than two acres of land in total in Illinois, not all of which will be farmland that is currently in agricultural production. (*Id.*, citing RI Exs. 7.30 at 17 and 8.3 Rev. at 5) With respect to potential limitations on the future use of land, Rock Island asserts that it considered known future developments in the Project Area in its development of the Preferred Route, and beyond that, concerns about possible but unknown future land uses are inherently speculative and should not be a routing criterion for siting the line. (*Id.*, citing RI Exs. 8.3 Rev. at 7 and 7.30 at 18)

Impacts on Wetlands, Forests, Historical Sites and Conservation Areas

Rock Island responded to the concerns of Landowner witnesses that the Project could damage existing wetlands, forests, historical sites and other conservation areas. Rock Island argues that the record establishes that these concerns are overstated or unfounded. (RI IB at 152, citing ILA exhibits) Rock Island asserts that these features were identified as Sensitivities in the route development process in order to determine a route that minimizes adverse impacts to these features. (*Id.*, citing RI Ex. 8.3 Rev. at 2) With respect to any of these types of features that the Preferred Route may cross, such as wetlands, Rock Island states it will avoid adverse impacts to such land to the extent possible and will employ measures to minimize impacts where those impacts are unavoidable.

Rock Island also represents that it will comply with all applicable state and federal regulations governing construction, maintenance and other Project activities on such

lands. (*Id.*, citing RI Ex. 8.3 Rev. at 3) Rock Island further maintains that the Preferred Routes do not cross any historical sites and that Rock Island plans to span the seven archaeological sites the Preferred Route crosses. (*Id.*, citing RI Exs. 8.2 at 63, 84, 85, 98, 109, 110; and 8.3 Rev. at 3) Regarding forested lands, Rock Island states that of the 120 miles of the Preferred Route in Illinois, "only" about five miles is forested. (RI IB at 153, citing RI Ex. 8.2 at 75, 103)

Rock Island states that Staff summarized the parties' positions regarding the concern that the Project may impact wildlife, wetlands, forests, historical sites, and other conservation areas, including Mr. Koch's rebuttal testimony (RI Ex. 8.3 Rev. at 2-4, 16) on these issues, and that Staff points out that no witnesses responded to the portions of Mr. Koch's rebuttal testimony regarding how Rock Island had taken into account potential impacts to wildlife, wetlands, forests, historical sites, and other conservation areas. (RI RB at 158-159, citing Staff IB at 38-40). Rock Island also states that Staff concludes that Rock Island's route development process identified potential wetland areas and that Rock Island sought to avoid impacting them. (*Id.*, citing Staff IB at 47)

Visual Impacts

Rock Island responded to concerns of landowner witnesses that the Project would impair their views of scenic landscapes. Rock Island states that the Preferred Route for the DC Section in Illinois, which is approximately 117 miles, has no homes within 0-200 feet, 11 homes within 201-500 feet, and 66 homes within 501-1,000 feet. (RI IB at 153, citing RI Ex. 8.2 at 66) Further, the Preferred Route does not come within two miles of any designated scenic overlooks or historic landscapes. (*Id.*, citing RI Ex. 8.3 Rev. at 6) Rock Island also explains that it sought to maximize the use of visually-related Opportunities, including paralleling existing linear infrastructure such as roads, railroads and other transmission lines. Further, Rock Island states that in accordance with the AIMA, it will use single foundation, single mast structures for straight-line segments of the Project with the structures typically placed approximately 1,200 feet apart, and therefore, only four to six structures will be placed per mile of the route. (*Id.*, citing RI Exs. 8.3 Rev. at 6-7; 8.10 at 2; 7.30 at 15, 17)

c. Individual Landowners' Property-Specific Concerns

A total of eight intervenor witnesses who are landowners or managers for landowners expressed concerns about the specific impacts of having the transmission line on their parcels, and a ninth intervenor witness expressed concerns due to purported impacts on his aerial chemical spraying business. (*Id.* at 153-154, citing Rock Island Ex. 7.30 at 18-19) Rock Island states that many of these property-specific concerns mirror the general concerns raised by the ILA, which are addressed in §IV.C.2.a through f of Rock Island's Initial Brief and are summarized above. Rock Island represents that it is fully committed to working with all landowners to understand their parcel-specific concerns and to develop plans to address them. The property-specific concerns expressed by landowner witnesses are discussed below.

In its BOE, Rock Island argues that certain of the conditions imposed by the Proposed Order in response to landowner concerns should be modified or deleted. (RI BOE at 32-53) Among other things, Rock Island asserts that the AIMA comprehensively covers all aspects of Rock Island's structure placement and construction activities on landowners' agricultural properties, and that some of the conditions duplicate applicable provisions of the AIMA. In addition, Rock Island provides revised text for many of the conditions. Rock Island states that it is providing such text so that the terms of the conditions can be satisfied by Rock Island through its own actions and are appropriately limited by considerations of reasonableness and practicality, and so that the condition is a complete stand-alone, self-contained statement. (*Id*. at 32-35)

Larry and Steve Gerdes' Property-Specific Concerns

In response to Mr. Larry Gerdes' concern that the Project will have a downward impact on his property values and will interfere with aerial spraying activities on his properties, Rock Island stated that the Preferred Route does not cross any of the three properties identified as owned by Mr. Larry Gerdes and in fact will be 1.5 miles to four miles from these properties. (RI IB at 154, citing RI Exs. 7.30 at 31and 8.3 Rev. at 28)

In response to Mr. Steve Gerdes' assertion that the Project will hinder aerial spraying, irrigation, and farming activities on his properties, Rock Island stated that Mr. Steve Gerdes does not appear to own any property that is crossed by or adjacent to the Preferred Route. (*Id.*, citing RI Exs. 7.30 at 33; and 8.3 Rev. at 29)

Mr. James Bedeker's Property-Specific Concerns

In response to Mr. Bedeker's concern that the Project will adversely affect his use of his mechanical irrigation system, Rock Island states that while the Preferred Route does cross the area irrigated by one of Mr. Bedeker's center pivots, Rock Island can avoid placing a structure in that area, and by spanning the center pivot irrigator can thereby avoid any permanent impacts to the irrigator. (RI IB at 154-155)

Rock Island further states that if the Project were to create some limitation on Mr. Bedeker's use of the existing irrigation system, it would compensate him for any additional equipment that may be required. (RI IB at 154-155, citing RI Exs. 8.3 Rev. at 29 and 7.30 at 36)

Rock Island states that Mr. Bedeker also expressed concern that his property regularly floods and he is concerned that construction activities would create additional adverse impacts on his property. Rock Island responds that it should not be expected to solve Mr. Bedeker's pre-existing flooding problems; however, it will employ appropriate construction methods to limit and mitigate soil compaction under wet ground conditions and will compensate for crop damages that result from construction or maintenance of the Project. (RI IB at 155, citing RI Ex. 7.30 at 36)

In response to Mr. Bedeker's assertion that his enjoyment of his home will be impacted by the visual impacts of the Project being installed close to his home, Rock Island states that Mr. Bedeker's home is already located in close proximity to an overhead 765 kV transmission line owned by ComEd, which is in clear view from his home and which was in place before he built the home. (*Id.*, citing RI Exs. 8.3 Rev. at 30 and 8.6-8.7)

Mr. Bedeker also raised concerns regarding protected wetlands on his property. Rock Island responded that it is likely the wetlands on Mr. Bedeker's property can be spanned; further, if the Project were to impact the wetlands, Rock Island will obtain the necessary permits from the USACE prior to construction. (*Id.*, citing RI Ex. 8.3 Rev. at 31)

Lastly, Mr. Bedeker expressed a concern that the Project will render his property "valueless." Rock Island responded that Mr. Bedeker has not obtained any appraisals, valuation reports or other similar documents, or communicated with any appraisers or other similar professionals regarding the purported financial impact of the Project on his Property, and therefore his assertion is entirely unsupported and without basis. (*Id.*, citing RI Cross Ex. Bedeker 1) RI also states that Mr. Bedeker's property is already located in close proximity to a 765 kV line and is presumably not "valueless" today. (*Id.* at 155-156, citing RI Exs. 7.30 at 36-37; 8.3 Rev. at 30)

Dr. Paul Marshall's Concerns

Dr. Paul Marshall stated a concern that the Project will cause extensive soil compaction and damage to his clay tile system during construction and maintenance of the Project. (ILA Ex. 1.0 at 12-13) Rock Island states that, as explained in §IV.C.2.a and b of its Initial Brief, Rock Island and KPC have plans to avoid, mitigate and remediate any soil compaction and damage to drain tiles that occurs during construction or maintenance of the Project. Also, Rock Island will compensate Dr. Marshall for crop damages and damages to drainage tile caused by construction or maintenance of the Project. (RI IB at 156, citing RI Ex. 7.30 at 20-21)

Dr. Marshall also identified a concern that the easement will lower his property values and restrict his ability, in the future, to allow his land to be used for mining purposes. (ILA Ex. 1.0 at 15) Regarding these concerns, Rock Island states that the easement and structure payment that Rock Island will pay Dr. Marshall compensates for future land-use restrictions on his property, as Rock Island is paying in excess of 90% of the fee value of the easement area. Rock Island further states that, based upon review of the location of Dr. Marshall's property relative to existing mining operations in the area, mining seems to be an unlikely future use of Dr. Marshall's property unless there were considerable geographic expansion of the mining activities currently in the area. (RI IB at 156, citing RI Ex. 7.30 at 22)

Lastly, Dr. Marshall stated a concern that the transmission line will affect his ability to alternate soybean and corn plantings because, due to the Project's purported impacts

to aerial spraying, he would not be able to choose which specific crops to plant near the power line. (ILA Ex. 1.0 at 14-15) Rock Island responds that, as discussed in §IV.C.2.c of its Initial Brief, any impacts to aerial spraying will be limited to a portion of the easement area and therefore "would not justify a decision to never plant corn" on the entirety of Dr. Marshall's parcel. (RI IB at 156-157, citing RI Ex. 7.30 at 22-23)

Mr. Bill Cole's and Mr. Ed Simpson's Concerns

Mr. Bill Cole is a manager for Mr. Ed Simpson's timber land, and both of their testimonies addressed Mr. Simpson's property, which is located near the Mississippi River in the area where the Project will cross the river. They both stated that the Project will necessitate the removal of trees and therefore (i) Mr. Cole will lose out on some measure of paying work, and (ii) erosion will result beyond the easement area. (ILA Ex. 6.0 at 3; ILA Ex. 5.0 at 4) Rock Island states that it cannot determine what acreage of trees may be removed from Mr. Simpson's property at this time because, among other reasons, Mr. Simpson has denied Rock Island survey access to his property. (RI IB at 157, citing RI Exs. 7.30 at 25; 8.3 Rev. at 20-21) Rock Island stated that, at the appropriate time and when access to the property is allowed, Rock Island will evaluate the extent to which tree clearing can be avoided or minimized, and will compensate Mr. Simpson for commercially marketable timber that is felled in the construction process. (*Id.* and RI RB at 149-150, citing RI Exs. 7.30 at 25 and 8.3 Rev. at 20)

Mr. Cole expressed a concern that the vegetation clearing needed for the Project will require spraying "harsh chemicals" to control regrowth of weeds and brush, and these chemicals could leach through the sandy soils and end up in the area's water supply. (ILA Ex. 6.0 at 3) Rock Island responds that if it must spray to control vegetation regrowth, it will only use products that are specified for use in this application. (RI IB at 157, citing RI Ex. 8.3 Rev. at 21)

Mr. Simpson stated a concern that extreme erosion will occur at the Mississippi River crossing and that there are areas to the north and south of the proposed crossing that have less vulnerable and less steep property. (ILA Ex. 5.0 at 3) Rock Island responded that it will be required to develop a Storm Water Pollution Prevention Plan which will include specifying the best practices to prevent soil erosion during construction of the Project. (*Id.* at 157-158, citing RI Ex. 8.3 Rev. at 21-22) Rock Island asserts that KPC will use erosion control measures such as silt fences, erosion control blankets and construction matting, and will follow the Illinois Environmental Protection Agency's best management practices for erosion control as applicable to each location. Rock Island states that KPC may also be required to obtain National Pollutant Discharge Elimination System Permits for work in certain locations, which will prescribe specific conditions and mitigation to be followed. (*Id.* at 158, citing RI Ex. 9.2 at 7-8)

With respect to the location of the Mississippi River crossing, Rock Island maintains that it selected the crossing point after performing a detailed analysis, including consideration of the alternate locations suggested by Mr. Simpson. Rock Island determined that the planned crossing was the best choice because, among other

reasons, it is located at an existing overhead transmission line crossing, which minimizes overall land use impacts, visual impacts and environmental impacts. Rock Island states that the USFWS expressed a preference for the proposed Mississippi River crossing because it would be located adjacent to an existing overhead transmission line crossing, which would make the two transmission lines more visible to eagles, thereby making it less likely that eagles would collide with transmission line conductors or shield wires. (*Id.*, citing RI Ex. 8.3 Rev. at 23, 25-26)

Mr. Cole also asserted that Mr. Simpson's property is highly sought after for housing, farming and recreation, and that Mr. Simpson's land is the most pristine woods privately held in the area. (ILA Ex. 6.0 at 2, 4) Rock Island states that, other than submitting preliminary or conceptual drawings Mr. Simpson prepared in 2005 and 2010 that depict two different potential subdivision concepts, Mr. Cole and Mr. Simpson did not provide any documentation to establish that the property is highly sought after for housing development or any other purpose. Rock Island further asserts that the suggestion that this land is "pristine" conflicts with the logging activities that are conducted on the property. (RI IB at 158, citing RI Ex. 8.3 Rev. at 19-20)

Mr. Cole and Mr. Simpson also stated that there are shallow wetlands on Mr. Simpson's property, that it is historically significant land, and that there are bald eagles in the area of his land. Rock Island responds that while USFWS National Wetland Inventory data do not show shallow wetlands on the property near the Preferred Route, it is possible that some wetlands nevertheless exist. Rock Island states that Mr. Simpson has denied Rock Island survey access to his property, and that prior to commencing construction, when it has survey access authority -- which the issuance of a CPCN will provide, pursuant to PUA §8-510 -- Rock Island will conduct an assessment of potential wetlands located along the approved route and obtain any required permits, and will also survey for evidence of eagle nests in the area. Rock Island also states that it will conduct any required archeological, historical, and environmental surveys and obtain any required permits or approvals. (*Id.* at 159, citing RI Ex. 8.3 Rev. at 23-25)

Mr. Curtis Jacobs' Property-Specific Concerns

Mr. Jacobs stated a concern that because the Preferred Route runs north/south and bisects one of his farms, he would no longer be able to use aerial applications to treat that farm, and that the inability to aerially spray will impact his ability to grow non-genetically modified ("non-GMO") crops, which are not as resilient as other crops. (ILA Ex. 2.0 at 2-4) Rock Island responds that it is prepared to 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, and that any crop damage compensation paid to Mr. Jacobs for his non-GMO crops will take into account the higher net return that his non-GMO crops yield. (RI IB at 159 RI Ex. 7.30 at 26)

Mr. Jacobs also stated that the Project may cause him to forfeit payments he receives through conservation programs in which he participates. (ILA Ex. 2.0 at 5-6) Rock Island does not expect that the Project will cause Mr. Jacobs to forfeit conservation

payments because, among other things, it may be possible for Rock Island to make minor adjustments to the Preferred Route so as to avoid impacts to any Conservation Reserve Program ("CRP") filter strips on Mr. Jacobs' property. Rock Island also states that Mr. Jacobs has asked Rock Island not to communicate with him and has denied Rock Island physical access to his land; accordingly, Rock Island is limited in determining the impacts the Project may potentially have on his CRP land. However, Rock Island will compensate Mr. Jacobs for any such forfeited payments as allowed by law. (*Id.* at 159-160 and RB at 149, citing RI Exs. 7.30 at 19, 27 and 8.3 Rev. at 8-9)

Mr. Jacobs also stated a concern that the Project will impede access to his property because there is only one access point and alternate access points may cause damage to drainage structures. (ILA Ex. 2.0 at 6) Rock Island responds that since Mr. Jacobs has asked Rock Island to not communicate with him, Rock Island is precluded from discussing potential solutions to this concern. Rock Island states that if it is determined that placement of Project structures will impede access to the property, it will discuss alternatives with Mr. Jacobs to mitigate any potential impacts. (RI IB at 160, citing RI Ex. 8.3 Rev. at 9)

Mr. Jacobs also stated that the Project may cause damage to the Penny Slough Drainage District levee by removing trees that protect the levee against flood waters and ice flows, and because the Project structures near the base of the levee would be susceptible to severe erosion and toppling. (ILA Ex. 2.0 at 7-8) Rock Island disagrees that the transmission structures at the base of the levee are susceptible to severe erosion or toppling because, among other things, the foundations will be designed to account for the specific soil characteristics at this location to ensure stability. Further, if the Penny Slough Levee District and the USACE determine that removal of trees is a threat to the protection of the levied area, Rock Island will determine ways to mitigate such impacts, which may include use of other types of barriers to prevent erosion. (RI IB at 160, citing RI Ex. 8.3 Rev. at 12-13)

Mr. Jacobs also stated a concern that the Project may impact wildlife in the area, including bald eagles, otters and Indiana bats, and that the area near his property is historically significant because camp sites from the Black Hawk Indian wars are in the area. (ILA Ex. 2.0 at 9-10) Rock Island states that the USFWS National Bald Eagle Management Guidelines recommend that any disturbances maintain a buffer of at least 660 feet, and the eagle nest sighting area on Mr. Jacobs' property is more than 2,640 feet from the Preferred Route. (RI IB at 160-161, citing RI Ex. 8.3 Rev. at 14)

Rock Island states that the only known occurrences of the Indiana bat in the Project area are in LaSalle County and there are no records of the Indiana bat within one mile of the Preferred Route. (*Id.* at 161, citing RI Ex. 8.3 Rev. at 14-15) Rock Island states that the river otter is not a protected species in Illinois, and that Rock Island's routing team did not observe any river otters during field reconnaissance. (*Id.*, citing RI Ex. 8.3 Rev. at 15) Rock Island also asserts that minimizing impacts to threatened, endangered and special status species, designated critical habitats and eagle nesting locations were Routing Criteria for the Project, and that that it will work with all relevant wildlife, historical and

archeological agencies, prepare necessary field surveys and comply with all applicable such statutes and regulations to avoid any such impacts. (*Id.*, citing RI Ex. 8.3 Rev. at 13-18)

Mr. Randy Rosengren's Concerns

Rock Island states, "Mr. Rosengren expressed a concern that construction and placement of the Project will cause his property lot to not be isolated enough for the seed company with which he contracts to allow him to grow parent seed, which nets a higher return than non-parent seed crops." (*Id.*, citing ILA Ex. 3.0 at 4-5) Rock Island asserts that the presence of the Project should not inhibit Mr. Rosengren's ability to grow the parent seed crop on his land because the centerline of the route is more than 600 feet from the edge of Mr. Rosengren's parent seed plot; the easement area of the Project does not intersect the parent seed plot but rather traverses adjacent plots; and the easement has no impact on the isolation distance required between the parent seed plot and other crops noted by Mr. Rosengren. (*Id.*, citing RI Exs. 8.3 Rev. at 26-27 and 8.5) Rock Island also states that in the "unlikely event" there were any damages to the parent seed crop, any compensation made to Mr. Rosengren for crop loss or damages will take into account the higher return he obtains for parent seed. (*Id.*, citing RI Ex. 7.30 at 29)

d. Responses to Other Concerns in ILA Brief

In its reply brief, Rock Island responds to what it calls "specific issues that the ILA raised in its initial brief." (RI RB at 147)

In response to the ILA's assertion that Rock Island failed to coordinate with any United States Department of Agriculture Farm Service Agency ("UDSA FSA") offices regarding impacts to CRP land (ILA IB at 50), Rock Island states that contacting such offices before Rock Island determines the specific potential impacts of the Project to CRP land would be premature. Rock Island intends to coordinate with the USDA FSA once Rock Island has identified whether any conservation areas are actually impacted by the Project. (RI RB at 149, citing RI Ex. 8.3 Rev. at 8) Rock Island states that although the ILA claimed its membership includes a significant portion of landowners whose property will be crossed or impacted by the Project (ILA IB at 1), ILA has only identified a single landowner – Mr. Jacobs -- with CRP land that may be impacted by the Project. (*Id.*)

In response to the ILA criticism that Rock Island's agreement to compensate landowners for reduced crop yields for a "reasonable time period" is inadequate because Rock Island has provided "no standard or method for determining what the time period is" and because yield reductions may "not be known for some time" (ILA IB at 47), Rock Island asserts that the ILA does not suggest an appropriate or "fair" alternative to Rock Island's commitment to compensate landowners for reduced crop yields for a "reasonable time period." (RI RB at 150)

In response to the ILA's assertion that KPC may not be the EPC contractor constructing the Project, and therefore that the steps and procedures KPC plans to use

to prevent or mitigate soil compaction, damage to drainage tiles and other potential impacts might not be used by the eventual contractor (ILA IB at 47), Rock Island states that it does intend to use KPC as the EPC contractor for the Project, and that Rock Island and KPC have a signed development agreement which sets forth key, material terms to be included in the EPC contract. (RI IB at 95-96, 98 and RB at 150, citing RI Ex. 1.4 at 12-15) RICL represents that even if Rock Island were to use a different EPC contractor to construct the Project, the contractor would be expected to use the same construction methods and procedures that Mr. Adam described will be employed by KPC, because such methods and procedures are standard industry practices. (RI RB at 150-151, citing RI Ex. 9.4 Rev. at 14)

In response to the ILA's assertion that Mr. Adam of KPC lacks sufficient experience managing construction projects in agricultural areas (ILA IB at 47), Rock Island states that Mr. Adam testified at length regarding the large transmission and other infrastructure projects he has managed and which crossed agricultural lands. He also presented information on KPC's other experience with these types of projects. (RI RB at 151, citing RI Exs. 9.0 at 4-5; 9.2 at 1; 9.3; 9.4 Rev. at 2-6, 7-8; 9.5) With respect to ILA's reliance on the fact that the overall length of previous projects that Mr. Adam managed were shorter than the Rock Island Project (ILA IB at 47-48), Mr. Adam testified that the same activities needed to prepare access roads, prevent and remediate soil compaction, prevent damage to drain tiles, and prevent erosion are performed on both shorter and longer projects, and the only difference between a shorter project and a longer projects is that these same activities are repeated a greater number of times on a longer project. (RI RB at 151, citing RI Ex. 9.4 Rev. at 6 and Tr. 862-863)

Rock Island also maintains that the relevant prior experience is not just Mr. Adam's personal experience, but rather the prior experience and capabilities of the entire KPC organization. (*Id.* at 151, citing RI Ex. 9.4 Rev. at 7-8) Rock Island states that KPC is one of North America's largest construction, mining, and engineering organizations, with a workforce of about 10,400 salaried and hourly staff and more than 15,600 craft workers. (*Id.* at 152, citing RI Ex. 9.0 at 3) Rock Island also cites Staff testimony that "it appears that KPC is capable of handling EPC for the proposed project." (*Id.*, citing Staff Ex. 1.0 at 15)

Rock Island states, "In response to ILA's assertion that the 'Utah-Idaho' project (or 'Populus Project') that Mr. Adam managed, which was a 135-mile 345 kV transmission line project (120 miles of which crossed agricultural lands), crossed land used to grow hay, cereal grain, grazing ground, and fruit orchards, but not corn-soybean rotated land (ILA IB at 48), Rock Island notes that Mr. Adam testified that the Populus Project does cross land used principally for growing corn." (RI RB at 152, citing RI Ex. 9.4 Rev. at 4) Rock Island also suggests that the ILA fails to explain why this purported distinction is meaningful. (*Id.*)

In response to ILA's assertion that the project in Lake Zurich, Illinois that Mr. Adam managed is not relevant because "Lake Zurich is not rural" (ILA IB at 48), Rock Island suggests ILA ignores evidence that in the Lake Zurich project, KPC performed work on

agricultural land that was located approximately two and a half miles north of State Route 22 (which runs through Lake Zurich itself); that KPC was required to construct an access road and to transport heavy construction equipment across agricultural land; and that KPC was required to follow methods and procedures to prevent soil compaction to the property. (RI RB at 152; citing RI Ex. 9.4 Rev. at 5 and Tr. 867-869)

2. Positions of ILA, other Intervenors and Staff

ILA Position

ILA witness Dr. Paul Marshall concluded, based upon his studies and personal experiences, that the proposed Project would result in compaction that may not be able to be remediated. According to ILA, the witness is "uncontrovertibly qualified and credible on the subjects on which he testified," and his conclusion was supported by his review of many studies relating to compaction. Additionally, in ILA's view, the Agricultural Impact Mitigation Agreement provides no assurance to ILA that Rock Island will engage in adequate compaction remediation. (ILA IB at 45-46, citing ILA Exs. 1.0 REV at lines198-211 and1.2 REV at lines 70-76, 93-95, 118-121, 261-274)

In response to concerns about compaction, ILA states that Rock Island offered the opinions and conclusions of an "unqualified" Mr. Detweiler, who has no experience or education in agricultural compaction issues, having an undergraduate degree in political science. (*Id.* at 46, citing Tr. 413) Mr. Detweiler reviewed studies regarding compaction, summarized them, and drew the conclusion that long-term impacts from compaction would be rather small. (*Id.*, citing Tr. 439) Mr. Detweiler summarily dismissed studies cited by Dr. Paul Marshall, who has advanced degrees encompassing compaction issues and decades of agricultural experience, because Mr. Detweiler "found those studies … to be not applicable to the situation." (Tr. 440-441) ILA argues, "The Commission should dismiss Mr. Detweiler's unqualified opinions regarding compaction and instead adopt the well-researched and studied conclusions of Dr. Marshall." (ILA IB at 46)

ILA next states that Rock Island has suggested it will compensate landowners for reduced crop yields, "yet refuses to provide any standards for the length of time it will do so." (*Id.*) According to ILA, "Rock Island has suggested that it will compensate for such damages for a 'reasonable time period.' RI Ex. 7.3, ll. 542. However, there is no standard or method for determining what that time period is." (ILA IB at 47)

Rock Island also suggests that it will mitigate compaction. Rock Island witness Pierre Adam, the lead for Kiewit Power Constructors ("Kiewit") on this Project, attempted to explain how Kiewit will mitigate compaction. (ILA IB at 47)

ILA states that as a threshold matter, Kiewit may not even be constructing this Project. No construction contract is expected to be signed for at least another year and a half. (*Id*. at 47-48 (citing Tr. 857))

ILA asserts that the majority of Mr. Adam's construction experience concerns urban, not rural, areas, and transportation, not transmission, infrastructure. For the three transmission projects on which Mr. Adam has worked, none had a length of more than 25 percent the length of the Rock Island Project. Additionally, none of Mr. Adam's projects involved direct current transmission. (*Id.* (citing Tr. 860-861, 863, 865-866))

According to ILA, the projects on which Mr. Adams's experience is based are not comparable to the Rock Island Project. The Utah-Idaho project which he cited did not cross agricultural lands anything like, or as extensive as, the farmland that Rock Island proposes crossing and disturbing. (*Id.* (citing ILA Ex. 1.2 Rev. at lines 33-35)) For the portions of the Utah-Idaho project that did cross agricultural land, the majority of that land was used for growing hay, cereal grain, grazing ground, and fruit orchards, not corn-soybean rotated land. Similarly, the Canada Detour project he cited did not involve crossing agricultural lands. (*Id.* (citing Tr. 863-866)) The New Jersey project which Mr. Adam described involved land already impacted; and did not include land in a corn-soybean rotation. (*Id*. (citing Tr. 866)) Mr. Adam's only rural experience concerning land devoted to either corn or soybeans, was a transportation project in Lake Zurich, Illinois, outside Chicago. However, Lake Zurich is not rural. (*Id.* (citing Tr. 568)) The affected landowner was not at the work site; but rather, merely wanted Kiewit to dispose of dirt and stone on his property just outside of suburban Lake Zurich. (*Id.* (citing Tr. 860, 868))

ILA argues that "further indications of Kiewit's inability to sufficiently appreciate or mitigate soil compaction were deduced from Mr. Adam's inconsistent testimony as to the ranges of pressure, in pounds per square inch, that his company's tracked equipment will exert upon land." ILA states that even the low-impact tracked equipment will exert at least 17 pounds per square inch of ground pressure; that its non-tracked equipment will exert as much as 100 pounds per square inch of ground pressure; and that equipment used by landowners in harvests is generally designed for the purposes of spreading such pressures. (ILA IB at 49-50 (citing Tr. 871-872, 874))

ILA also argues that much of the land impacted by the proposed Project makes use of drainage tile, some of which was installed in the 1930's; that the same kind of construction traffic that causes compaction can lead to tile being crushed and broken; that those same pressures that lead to irreversible compaction can create drainage tile issues, which may not be revealed for several years; and that compounding the issue is the fact that lands which are compacted actually require more functional drainage tile. (ILA IB at 49-50 (citing ILA Ex. 1.0 Rev. at lines 212-216, 226-228, 237-240; Tr. 876)). ILA also submits Rock Island has also refused to agree unconditionally to move transmission line structures when they are known prior to construction to interfere with drainage tile. (*Id.* (citing Tr. 877, 881, 883))

According to ILA, Rock Island's proposed Project will also impact Conservation Reserve Program ("CRP") property. Differing Farm Service Administration ("FSA") offices have different policies regarding these impacts. (ILA IB at 50 (citing Tr. 401)) At least one landowner has testified that he believes that there have been no provisions for transmission structures or utilities on CRP land in his area. (*Id.* (citing ILA Ex. 2.0 at lines

83-86)) ILA asserts that Rock Island failed to contact any FSA offices to determine their policies on impacts to CRP land that may be impacted, and that constructing the proposed project across CRP land not only necessarily affects the environmental purposes of the CRP land, but also could result in the forfeiture of payments for land enrolled in the CRP program. (*Id.* (citing Tr. 401 and ILA Ex. 2.0 at lines 76-81 and 87-91))

In its reply brief, ILA states that in Rock Island's initial brief relies extensively on the assumption that KPC is its EPC contractor, and what KPC will or will not do. ILA responds, "As demonstrated above, there is nothing on the record that makes it clear that KPC will be the EPC contractor." (ILA RB at 14-15)

In its RBOE, ILA takes issue with suggestions in Rock Island's BOE which would "water down" the "relatively modest conditions on Rock Island's activities" that were set forth in the Proposed Order. (ILA RBOE at 8-14)

IAA Position

The Farm Bureau "takes no direct position" regarding landowner concerns about impacts of construction of the Project , but IAA states that if Rock Island's Petition is approved in any respect, the proposed line will cause soil compaction, impact drainage tiles, aerial application, irrigation systems, GPS and precision data systems in farm equipment and hinder the ability to farm efficiently. IAA argues, "Rock Island should be directed to conduct its business in a fashion that produces minimal impact on farm operations, does not negatively impact the land, and does not interfere with planting or harvest. In short, Rock Island should be held to the terms of its Agricultural Impact Mitigation Agreement with the Illinois Department of Agriculture." (IAA IB at 18)

Staff Position

In its initial brief, under "Land Owner Interests Position," Staff summarizes the concerns expressed by ILA witnesses – and responses thereto by RICL witnesses -- regarding "Potential damage to farmland, disruption to farming operations, and devaluation of property," "Potential interference with aerial application of farm chemicals" and "Potential damage to existing wetlands, forests, historical sites, and other conservation areas." (Staff IB at 33-40)

3. Public Comments

Over 400 public comments were filed on e-Docket in this proceeding. In addition, over 200 comments were filed in Docket No. 10-0579. Some of the comments were filed by affected landowners. Most of the comments that were filed expressed strong opposition to the Project, as did those made at the two public forums by landowners, representatives of the Farm Bureau and others. Among other things, those opposing the transmission line state concerns over adverse impacts on their property and the environment, and the amount of compensation being offered to them. Many of the

concerns are similar to those expressed by ILA witnesses and some other Intervenor witnesses, and by ILA and IAA in their briefs, as summarized above.

The Commission wishes to emphasize that it appreciates the comments presented at the public forums and filed on the e-Docket system, as well as the time and effort expended by those who prepared and provided them. These comments have been considered by the Commission in reaching its decisions in this Order to the extent permitted by law.

4. Commission Conclusion

First, with regard to specific landowner concerns the Commission directs Rock Island to take the following actions:

(1) Avoid placing a structure in the area irrigated by Mr. James Bedeker's center pivot irrigators and to span the center pivot irrigator in a manner that avoids any permanent impacts to the irrigator, to the extent possible, and if the structure placement creates any permanent limitation on Mr. Bedeker's use of his existing irrigation system, Rock Island is directed to compensate Mr. Bedeker for any additional irrigation equipment that may be required;

(2) Employ appropriate construction methods to limit and mitigate soil compaction under wet-ground conditions on Mr. Bedeker's property that are appropriate when considering his property's historic flooding problems;

(3) 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 U.S. Army Corps of Engineers prior to construction;

(4) Avoid or minimize the tree clearing on Mr. Ed Simpson's timber land to the extent practicable;

(5) With regard to Ms. Simpson's land use erosion control measures, follow the IEPA's best management practices for erosion control;

(6) Conduct the assessment of potential wetlands on Mr. Simpson's property; survey for eagle nests in the area of Mr. Simpson's property; conduct any required archeological, historical, and environmental surveys; and obtain any required permits or approvals;

(7) Use reasonable efforts to try to reach agreementwork with Mr. Curtis Jacobs to negotiate specific regarding placement of the line and structures on his property so as to reasonably attempt to minimize impacts to aerial spraying activities for his operations;

(8) [I]f it is determined that the placement of Project structures will impede access to Mr. Jacob's property, offer and attempt to discuss alternatives with Mr. Jacobs to remove or mitigate such impacts;

(9) [I]f the Penny Slough Drainage and Levee District and the U.S. Army Corps of Engineers determine that removal of trees on is a threat to the protection of the levied area, determine ways to eliminate or mitigate such impacts, which may include use of other types of barriers to prevent erosion;

(10) Make such adjustments as are practicable in order to avoid impacts on Mr. Jacobs' CRP [Conservation Reserve Program] land.

ILA cites concerns about soil compaction. ILA states that its witness, Dr. Paul Marshall, concluded that based upon his studies and personal experiences, the proposed Project would result in compaction that may not be able to be remediated.

The steps that will be taken by Rock Island and its contractor to avoid or minimize soil compaction are described in some detail above.

Rock Island states that the AIMA requires Rock Island to discuss the mitigation measures it intends to employ with the landowner before implementing them. Rock Island represents that if a landowner objects to any of the compaction avoidance measures Rock Island plans to use, Rock Island will not use them and will negotiate alternative methods or measures with the landowner to prevent soil compaction.

With respect to remediating soil compaction, Rock Island has committed to decompact cropland where necessary to a depth of 18 inches, and pasture to a depth of 12 inches, as specified in the AIMA, and if landowners wish, Rock Island will apply fertilizer to disturbed soils. Rock Island also submits that landowners will be permitted to self-perform decompaction activities on their land or retain a contractor of their choice to do this work, the reasonable cost of which will be paid by Rock Island; or can elect to not have any chiseling performed on their property. Rock Island further represents that if the landowner believes some depth other than 18 inches is appropriate, Rock Island will work with the landowner to effectuate the landowner's recommendation.

The Commission finds that the measures described by Rock Island to avoid or minimize soil compaction, and to remediate soil compaction, are reasonable. In addition to these measures, Rock Island and its contractors are directed to adhere to the following additional guidelines:

(1) With regard to remediation of soil compaction, Rock Island shall decompact cropland where necessary to a depth of 18 inches and pasture to a depth of 12 inches, as specified in the AIMA and if landowners wish, Rock Island shall apply fertilizer to disturbed soils. Rock Island shall permit landowners to sel-perform decompation activities on their land or retain a contractor of their choice to do this work, the reasonable cost of which will be paid by Rock Island. Landowners also can elect to not have any chiseling performed on their property. If the landowner believes some depth other than 18 inches is appropriate, Rock Island is directed to work with the landowner to effectuate the landowner's recommendation.

(2) Rock Island shall reasonably attempt to discuss the mitigation measures for soil compaction, set forth in the AIMA, that it intends to employ with the landowner before implementing them; and if the landowner objects to any of those measures, Rock Island shall not use them and shall instead offer to negotiate alternativemethods or measures with the landowner to prevent soil compaction.

(3) 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.

(4) Further, with respect to compaction issues, if the landowner wants to communicate directly with Rock Island instead of with contractors, Rock Island shall do so.

ILA also cites concerns with respect to damage to drainage tiles. ILA argues that much of the land impacted by the proposed Project makes use of drainage tile; and that the same kind of construction traffic that causes compaction can lead to tile being crushed and broken.

Rock Island is directed to adhere to the measures described below to identify the locations of drainage tiles and avoid damage to them during construction, and or shall take such other measures as are reasonably necessary and equally or more effective to locate the tiles and avoid damaging them. To identify the locations of drainage tile, Rock Island shall (i) visit local soil and water conservation districts and consult other available documents that describe the location of drainage tiles, (ii) consult with any contractors that installed drainage tiles, and (iii) meet with landowners and walk their fields. Once drainage tiles are located, Rock Island may reduce possible tile damage by using a steel plate or other matting to spread the loads of construction equipment.

If drainage tiles are damaged by construction or maintenance of the Project, Rock Island represents that it will repair them, or replace them with equal or better quality, or will compensate landowners to make such repairs; and that it will do so for a reasonable period of time after construction is completed. Rock Island states that these commitments

are specified in the AIMA. The Commission finds that Rock Island shall comply with these commitments, and shall do so for a reasonable period of time, and shall comply with the terms of the AIMA.

ILA also complains that Rock Island has refused to agree unconditionally to move transmission line structures when they are known prior to construction to interfere with drainage tile.

Rock Island responds that the AIMA specifies that Rock Island must avoid such interferences "to the extent reasonably possible." Rock Island also states that relocating a transmission structure in each instance where there is an interference, rather than simply relocating the drain tile, may result in other impacts to the landowner. The Commission directs Rock Island to avoid such interferences with the drainage tile 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.

Subject to these requirements, the Commission finds that the processes to be used by Rock Island to identify the locations of drainage tiles, to avoid damaging them during construction, and to repair them or replace them if they are damaged, are reasonable.

As noted elsewhere in this order, another concern expressed by ILA, mainly in other sections of its initial brief, is that the line would have adverse impacts on aerial applications of fertilizer, insecticides and pesticides. For example, under "easement width," ILA submits that "production will be decreased insofar as the important tool of aerial application is rendered no longer usable for some landowners," and that Rock Island failed to provide any witness that is qualified to speak to the such applications. (ILA IB at 42)

In response, Rock Island described the measures that it took, when evaluating routing and placement of structures, to avoid or reduce impacts to aerial applications. With regard to concerns of ILA witness Mr. Nelson that guy wires will require more clearance than Rock Island has suggested, Rock Island notes that the AIMA provides that the "use of guy wires will be avoided to the extent feasible." As a requirement of its CPCN, Rock Island is directed to comply with the provision of the AIMA that the use of guy wires be avoided to the extent feasible and that if guy wires are required, they will be marked with highly visible guards.

The Commission also directs Rock Island to make a good faith effort to negotiate with landowners regarding specific placement of the line and structures on their property as appropriate, considering impacts of any placement changes on neighboring parcels and considering other routing criteria so as to minimize the overall impacts to aerial spraying activities along the Preferred Route.

The Commission finds, subject to the items noted above, that Rock Island has taken reasonable measures to avoid or reduce impacts to aerial applications.

The Commission observes that in this Order, in response to the landowner impact concerns expressed by ILA and landowners, the Commission has imposed a number of requirements as described above.

Subject to these requirements, the Commission finds that to date, Rock Island has undertaken or developed reasonable measures and procedures to avoid or reduce impacts on affected properties.

XI. SECTION 8-503

A. Positions of Rock Island and Supporting Intervenors

Rock Island

In addition to requesting a CPCN for the Rock Island Project, Rock Island requests an order from the Commission, pursuant to §8-503 of the PUA, authorizing Rock Island to construct the Project. According to Rock Island, "the evidence in this case that supports granting Rock Island a CPCN to construct the Project also supports a finding that the requirements for an order under §8-503 are met." (RI IB at 162 (citing RI Ex. 10.14 Rev. at 66-67); see also RI BOE at 6-9)

Rock Island states that the specific criterion in §8-503, "to promote the development of an effectively competitive electricity market," is the same as the §8-406(b)(1) criterion "that the proposed construction will promote the development of an effectively competitive electricity market." Rock Island contends that it has demonstrated that construction of the Project will promote the development of an effectively competitive electricity market. Dr. McDermott's analysis addressed both the statutory criterion of §8-406 that the Project will "promote the development of an effectively competitive electricity market" and the statutory criterion of §8-503 that the Project will "promote the development of an effectively competitive electricity market," and he concluded that the Project satisfies the provision of §8-503 that the Project will "promote the development of an effectively competitive electricity market" as well as the criterion set forth in §8-406 that the Project will "promote the development of an effectively competitive electricity market." (*Id.* (citing RI Ex. 4.0 Rev. at 2, 4); see also RI BOE at 8)

RI argues that the record also shows construction and operation of the Project will "promote the security or convenience of … the public" and "secure adequate service or facilities" and therefore the Project can also be authorized pursuant to those criteria of §8-503. According to Rock Island, the evidence which shows the Project will "promote the public convenience and necessity" for purposes of §8-406(b), as summarized above, also shows that that the Project will "promote the security and convenience of the public" and serve to "secure adequate service and facilities" within the meaning of Section 8-503. In support of its conclusion, RICL lists several purported benefits from the Project. (*Id.* at 163; see also RI BOE at 8)

Rock Island notes that questions arose during the course of this proceeding as to why Rock Island has requested authority to construct the Project under §8-503 in the

same proceeding in which it has requested a CPCN for the Project under §8-406(b). In response, RICL states that in negotiating with potential transmission customers of the Project for capacity and service contracts, it is important that Rock Island be able to show the customers that it has obtained the major regulatory approvals for the Project. Rock Island explains that this is true as well with respect to negotiating with potential lenders and investors in the Project. Rock Island states that potential lenders and investors will not provide binding financial commitments for the capital needed to construct a project until the project sponsor has obtained the major regulatory approvals for the project. (RI IB at 164, citing RI Ex. 10.14 Rev. at 22-23; Tr. 1051)

Rock Island states that in this context, an order under §8-503, in addition to a CPCN order, is a major regulatory approval from the perspective of potential transmissions customers, lenders and investors. By the express terms of §8-509 of the PUA, an order under §8-503 is a prerequisite to being able to obtain an order under §8-509 authorizing the use of eminent domain to acquire easements. Given that the Preferred Route traverses approximately 121 miles in Illinois, potential transmission customers, lenders and investors are likely to anticipate that Rock Island will need to acquire some easements through the use of eminent domain, and they will understand that the use of eminent domain will require authority from the Commission. Rock Island states that potential transmission customers, lenders and investors will want to know that Rock Island has obtained at least the predicate regulatory approval – i.e. an §8-503 Order -- to being able to exercise eminent domain to acquire the easements needed to complete the route of the transmission line. (RI IB at 164-166 (citing RI Exs. 10.14 Rev. at 21-23; 10.26 at 2-4; Tr. 991-993))

RI also argues that consideration of both requests in the same proceeding, rather than in separate proceedings, is more convenient and efficient for Rock Island, the Commission and its Staff, and intervenors. Rock Island asserts that if it were required instead to request a §8-503 order in a separate proceeding, it would be presenting essentially the same evidence and seeking the same determination as in the §8-406 proceeding, resulting in duplicative expenditures of resources by Rock Island, the Commission, and other interested parties. (RI IB at 165; BOE at 9-10)

Rock Island submits that if it were required to file a separate petition, at a later date, for authority under §8-503, this could delay the completion of activities that need to be concluded in order to construct the Project, including completion of easement acquisition, negotiating and signing contracts with transmission customers, and raising the capital to finance construction of the Project, thereby delaying the Project. (RI IB at 166)

According to Rock Island, the fact that an applicant requests, and the Commission grants in the same order, both a CPCN for a project pursuant to §8-406 and authority to construct the project pursuant to §8-503, is by no means unusual. Rock Island cites Orders in Docket 10-0079; *Central Illinois Public Service Co. d/b/a AmerenCIPS* , Docket 07-0532 (Order dated May 6, 2009); Docket 06-0706; and Docket 06-0179 as recent

cases in which both authorizations were granted in the same docket. (RI IB at 166; RI BOE at 3-4)

Rock Island argues that the various contingencies cited by ComEd and Staff are unremarkable and do support a finding that it would be premature to grant Section 8-503 relief in this Proceeding. (RI BOE at 4-6)

Rock Island states that it has been suggested by other parties that an order under §8-503 "directing" Rock Island to construct the Project is inappropriate because such an order would be an unconditional mandate to construct the Project. Rock Island states that it is sufficient if the Commission's order in this proceeding simply "authorizes" Rock Island to construct the Project pursuant to §8-503. Rock Island asserts that in many previous orders, the Commission has "authorized" the applicant to construct a proposed project but has not "directed" the applicant to do so, and cites as examples the four orders cited in the immediately preceding paragraph. (RI IB at 166-167)

In its reply brief, in response to IAA's argument that Rock Island is not capable of complying with a "legal compulsion" to construct the Project (IAA IB at 19-20), Rock Island asserts that while it is capable of constructing the Project subject to the conditions to be imposed in the order, Rock Island is only seeking an order under §8-503 "authorizing" it to construct the Project. (RI RB at 159-160)

Rock Island states that IAA's assertion that "it is virtually impossible for Rock Island to utilize any Commission certificates within 2 years as required" (IAA IB at 19-20) relates to §8-406(f), not §8-503, "and in any event has no basis in the record." (RI RB at 160) Rock Island states that the schedule provides for Rock Island to accomplish milestones leading up to closing on the construction financing in the fourth quarter of 2014, and that construction would start in 2015. Rock Island further states that "the fact that it must complete other tasks before commencing construction of the Project and placing it into operation is unremarkable; this is true for any transmission line project." (RI RB at 160)

In response to IAA's argument that Rock Island's request for a §8-503 order is "simply a prerequisite for obtaining eminent domain authority" (IAA IB at 20) Rock Island states that even if it were requesting a §8-503 order solely as a prerequisite for requesting eminent domain authority for certain parcels on which it had been unable to acquire easements through voluntary negotiations, such a request and approval are permissible and commonplace. (RI RB at 160-161)

In response to arguments in ILA's initial brief, Rock Island reiterates that it is only requesting an order under §8-503 "authorizing" construction of the Project, and that such relief has been granted in prior Orders. (RI RB at 162-163, citing ILA IB at 50-51 and Docket 06-0179, Order at 40)

In response to arguments in ComEd's initial brief, Rock Island states that ComEd's arguments on pages 38-40 and 41 are premised on the assumption that Rock Island is requesting an order under §8-503 "directing" the construction of the Rock Island Project.

Rock Island asserts that it is seeking an order "authorizing" construction of the Project. Rock Island argues that the "contingencies" that ComEd cites in this portion of its Initial Brief do not warrant declining to issue an order under §8-503 authorizing construction of the Project. Rock Island states that the fact that "the Project has not been fully vetted under the PJM RTEP process as one that is justified by a public need, be it reliability or market efficiency" (ComEd IB at 38), is irrelevant, as the Project is not going to be vetted under the PJM RTEP process for this purpose, because PJM does not review merchant transmission projects for this purpose. (RI RB at 164, citing RI Ex. 10.14 Rev. at 57-58; ComEd Ex. 1.0 2d Rev. at 15; Tr. 649, 655, 953) Rock Island asserts that it is asking the Commission to grant a CPCN and an order authorizing construction of the Project based on meeting the criteria specified in §8-406 and §8-503 of the PUA, which do not include any requirement for review and approval under the PJM RTEP. Rock Island states that the PJM interconnection process will determine what is required to allow the Project to reliably interconnect to the PJM grid, but the PJM interconnection process operates independently from this Commission proceeding. (RI RB at 164)

Rock Island responds to ComEd's statement that "also incomplete, and lagging several months behind the instant proceeding, is the regulatory review proceeding in Iowa, where the proposed Project originates and traverses some 379 miles across that state." (ComEd IB at 38-39) RICL contends that ComEd's argument "does not warrant declining to issue an order under §8-503 authorizing construction of the Project." (RI RB at 164-165; see also RI BOE at 5) Rock Island states that all parties understand that construction of the Project from northwest Iowa to northern Illinois requires the approval of two state commissions. Rock Island also asserts that the Staff financing condition effectively requires Rock Island to obtain the necessary authorizations from both commissions before it can begin to construct the transmission line. (RI RB at 164-165)

In its BOE, Rock Island represents that it "elected to devote its attention and resources to obtaining a CPCN and §8-503 authority from this Commission before turning its attention to the [Iowa Utility Board] proceedings." (RI BOE at 5) The Commission observes that in testimony given on December 5, 2013, Rock Island's President was asked, "Isn't it correct that in Iowa that Rock Island Clean Line has not filed a franchise petition yet?" He answered, "We have not yet filed the petition. We are preparing to do so in the next several weeks." (Tr. 234-235) Rock Island does not indicate, in its briefs or BOE, that this petition has been filed.

Rock Island next asserts that "§8-406(b)(1) and §8-503 require that the Commission determine that a proposed project will "promote the development of an effectively competitive electricity market" or, alternatively, that the proposed project is 'necessary to provide adequate, reliable, and efficient service" (§8-406(b)(1)) or will "promote the security or convenience of its employees or the public . . . or in any other way to secure adequate service or facilities' (§8-503)." (*Id.* at 165) Rock Island submits that ComEd's arguments on pages 38-39 and 41 of its Initial Brief regarding §8-503 are the same arguments it has advanced as to why the Project has not been shown to meet the criteria of §8-406(b)(1). Rock Island states that ComEd's arguments provide "no basis

unique to §8-503" as to why an order under that section authorizing construction of the Project should not be granted. (RI RB at 165; see also RI BOE at 6-7)

In response to ComEd's argument that Rock Island's "primary motivation" in requesting an order under §8-503 is to facilitate its ability to acquire eminent domain authority and to "initiate condemnation lawsuits" (ComEd IB at 40), Rock Island asserts that even if its "primary motivation" were to facilitate its ability to obtain eminent domain authority, a request for authority under §8-503 would be entirely permissible; that granting the request in the same order as the CPCN would be consistent with the Commission's practice; and that this "motivation" would not be grounds to deny an order under §8-503 authorizing construction of the Project. (RI RB at 166) Rock Island contends that the Commission commonly issues a CPCN under §8-406 and an order authorizing construction of a project under §8-503, but not an order authorizing eminent domain under §8-509) in the same proceeding, and that such an order in this case would not be "precedent-setting" as argued by ComEd. (RI RB at 165-166)

In its BOE, Rock Island suggests language for use in the Order in the event that the Commission does not grant Section 8-503 relief at this time. (RI BOE at 12; Exceptions at 49)

In its RBOE, Rock Island expresses disagreement with arguments and suggested language in the BOEs filed by ComEd and ILA. (RI RBOE at V)

WOW, IBEW and Environmental Intervenors

In its BOE, WOW argues that Rock Island should be granted Section 8-503 approval. (WOW BOE at 5-7) In their BOE, Environmental Intervenors argue that Rock Island should be granted Section 8-503 authority in this case. (EI BOE at 1-6) IBEW argues that the requirements for an order pursuant to Section 8-503 have been met. (IBEW BOE at 4-8) These Parties did not provide suggested replacement language in or with their BOEs. IBEW states that it supports Rock Island's suggested replacement language. WOW states that it defers to Rock Island's replacement language.

B. Position of ComEd

Section V.A of ComEd's initial brief is titled, "Because the evidentiary record shows that the Project does not satisfy the requirements of Section 8-406(a)-(b), there certainly is no basis for the Commission to take the extraordinary step of ordering the project's construction under Section 8-503." (ComEd IB at 38)

ComEd's arguments that the Project does not satisfy the requirements of Section 8-406(a)-(b) are summarized above. ComEd argues that RI's request for an order under Section 8-503 is both premature and inconsistent with RI's own testimony and the contingent nature of RI's commitment to build the Project. (*Id.*)

ComEd maintains that the FERC-jurisdictional interconnection planning process has not been completed (Tr. 154-155, McDermott); that the Project has not been fully vetted under the PJM RTEP process as one that is justified by a public need, be it reliability or market efficiency; and that the studies that will determine how RI will interconnect with PJM, how it will interact with MISO, and how it will have to limit its operations to make that interconnection functionally possible are uncertain and incomplete. (ComEd IB at 38)

ComEd states, "Also incomplete, and lagging several months behind the instant proceeding, is the regulatory review proceeding in Iowa, where the proposed Project originates and traverses some 379 miles across that state. Indeed, RI President, Michael Skelly, acknowledged that the Iowa proceeding likely will not be concluded until early-2015." (*Id.* at 38-39, citing Tr. 235, Skelly) ComEd states that the most recent information of record indicates that the related formal franchise petition had not even been filed. (*Id.* at 24) ComEd further asserts, "Depending on the outcome of the Illinois and Iowa regulatory proceedings, Clean Line may decide to abandon or postpone the Project and focus its limited financial resources on one of the four other transmission projects currently under development. Skelly, Tr. 269:12-23." (*Id.*)

In its RBOE, ComEd states that RI made clear that the Illinois portion of the line will not be constructed if the Iowa portion is not constructed. (ComEd RBOE at 4, citing Tr. 269, Skelly)

In ComEd's view, the evidence "contradicts RI's claims that the Project is a transmission addition essential to meet a public need that the Commission should unconditionally order RI to construct," and "the Commission should not set a new and dangerous precedent by approving this incomplete, speculative, private venture and directing its construction." (*Id.* at 39-40)

Section V.B of ComEd's initial brief is titled, "RI's primary objective in seeking an order under Section 8-503 is to facilitate its ability to acquire eminent domain authority and initiate condemnation lawsuits to obtain the property interests it requires." (ComEd IB at 40)

According to ComEd, the fact that RI admits it will not construct the line in Illinois until it obtains regulatory approval in Iowa, raises hundreds of millions of dollars, and subscribes at least 60% of the capacity, suggests that its primary motivation in obtaining a Commission order under Section 8-503 is to use it as leverage in negotiations with private landowners whose land RI will need to build upon. Failing those voluntary negotiations, RI will have in hand a Section 8-503 order to use as the legal basis for pursuing condemnation actions against unwilling landowners, which will strengthen its negotiating position with landowners and add credibility to RI's claim that it can acquire the necessary property one way or the other. (*Id.*(citing Tr. 152-143, Skelly)) In light of the record in this case, filled with various contingencies that will delay or even prevent construction of the Project, the Commission should not, in ComEd's view, take the "extraordinary, precedent-setting step" of arming RI with an order that will permanently

impact private property rights, whether used as leverage in easement negotiations or as the legal predicate to allowing RI to take private property in condemnation proceedings. (*Id.*; see also ComEd RB at 32)

In Section V.C of its initial brief, ComEd argues, "The Commission should deny RI's premature request for an order under Section 8-503, particularly when such an order would have such a permanent and potentially damaging impact on ComEd, Illinois transmission customers, and private landowners." (*Id.* at 41) In ComEd's view, RI has no reasonable basis to expect the Commission to set new precedent and issue an order "unconditionally directing that the Project be built." (*Id.*)

In its reply brief, ComEd states that RI contends a Section 8-503 order can authorize or provide permission to construct a project, but not to direct construction. (RI IB at 166-167). ComEd argues, "This interpretation is wrong." (ComEd RB at 28)

ComEd argues that if Section 8-503 is not intended to direct construction, it would duplicate Section 8-406. (*Id.* (citing *A.P. Properties, Inc. v. Goshinsky*, 186 Ill. 2d 524, 532-33 (1999) (rejecting construction of a statute that rendered the statutory phrase meaningless or superfluous)). ComEd argues, "Such a construction should be rejected. RI's position also fails to consider the language in Section 8-503 requiring the Commission to find that approved 'additions…ought reasonably to be made' and 'structure … should be erected,' indicative of the legislature's intent that this Section apply to projects that are more than just optional. 220 ILCS 5/8-503." (ComEd RB at 28) In ComEd's view, the interpretation that Section 8-503 requires RI to construct the Project is further supported by the exception in Section 8-503 for electric generating plants that states that the Commission shall have no authority to "order the construction … of any electric generating plant." If RI's assertion was correct, and a Section 8-503 order was not compulsory and did not require an attempt to construct, this exception would not be necessary. (ComEd RB at 28 (citing *A.P. Properties*, 186 Ill. 2d 524, 532-533))

ComEd further argues, "Also, unlike Section 8-406, Section 8-503 should not be permissive, because this Section serves as the prerequisite before an applicant such as RI can obtain eminent domain authority under Section 8-509 of the PUA…. A Commission finding that a project must be built to support the public interest goes hand-in-hand with the added powers of condemnation made available under Section 8-509." (ComEd RB at 28, 32)

ComEd cites "unrebutted facts" showing RI's "unwillingness to commit to constructing the project now and the array of uncertainties surrounding the Project" including that "RI may abandon or delay the Project if it does not obtain approval from the Iowa Commission for the 379 mile segment of the line proposed to traverse Iowa." (*Id.* at 28-29 (citing Tr. 235, Skelly; see also ComEd RBOE at 3-4))

In response to RI's argument that it needs to show "potential" customers, lenders and investors that RI has obtained a "major" regulatory approval, ComEd contends that obtaining authority to construct a project under Section 8-503 was never contemplated

to, nor should it be, used as a marketing tool to attract potential customers, lenders or investors. (*Id.* at 29-30, citing RI IB at 164-165) In its RBOE, ComEd asserts that RI has not explained how a Section 8-503 authorization is somehow more urgent to reassure lenders compared with the proceeding in Iowa. (ComEd RBOE at 3-4)

In response to RI's argument that requesting Section 8-503 authority in a separate proceeding would be duplicative, ComEd asserts that by RI's own agreement, it must come before the Commission again in a separate proceeding to obtain final eminent domain authority. (*Id.* (citing RI IB at 164-165; see also ComEd RBOE at 10-11))

In response to RI's argument that failure to obtain Section 8-503 authority now would create "regulatory uncertainty" for "potential" customers, lenders and investors," ComEd contends that this argument ignores "the complete lack of certainty surrounding all aspects of the Project, including whether RI will even construct the Project." (*Id.* at 30-31 (citing RI IB at 166)) ComEd also argues, RI also cannot explain how a Section 8-503 order is more certain from a regulatory standpoint than a CPCN alone. (*Id.* at 30) ComEd also asserts that with respect to the four Ameren orders cited by RI where both CPCNs and Section 8-503 relief were granted, "there was no question that Ameren would build the Projects." (*Id.* (citing RI IB at 166))

In its RBOE, ComEd argues that RI's arguments are improperly premised on the erroneous proposition that satisfaction of Section 8-406(b) automatically satisfies Section 8-503. (ComEd RBOE at 6-9)

C. ILA and IAA Positions

In ILA's view, "Rock Island does not qualify for an Order from the Commission "authorizing and directing" Rock Island to construct the Project under Section 8-503 of the PUA because Rock Island admits that the Project is viable, and will be constructed, only if certain contingencies are met (e.g., project financing obtained, wind projects are developed, adequate capacity on the line is purchased); without an Order under 8-503, Rock Island will not have a right to seek eminent domain authority under Section 8-509, as an 8-503 order is a prerequisite." (ILA IB at 50-51)

In its Petition initiating this proceeding, Rock Island applied for an Order "authorizing and directing" Rock Island, pursuant to PUA Section 8-503, to construct the transmission line. ILA argues, "Especially given all of the myriad conditions, contingencies, further government and regulatory approvals, Rock Island, as it has admitted, cannot commit to construct the Project even if it receives a CPCN. Consequently, Rock Island is petitioning this Commission for something that it cannot utilize." (*Id.* at 51)

In its RBOE, in response to Rock Island's BOE, ILA argues that Rock Island may not, and should not, be granted authority under Section 8-503 as part of the order in this proceeding. (ILA RBOE at 1-3)

According to the Illinois Agricultural Association, or IAA, the requirements of § 8-503 are similar to those of § 8-406(b) in that its relief is conditioned upon a finding that the Project will "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…." 220 ILCS 5/8-503. IAA argues, "As the same criteria apply in § 8-503 as in § 8-406(b), if the Commission finds that Rock Island failed to meet its burden related to § 8-406(b), which it should, then its relief requested under § 8-503 must also be denied." (IAA IB at 19)

IAA states that if the Commission grants § 8-503 relief to Rock Island, it is "authorizing" and "directing" it to commence construction of the Project. IAA asserts that Rock Island is "seeking direction, or better put, a legal compulsion," to build the Project, but is not capable of complying with the legal compulsion. (*Id.*) IAA states that RICL does not own, control, operate, or manage any plants, equipment, or property used for or in connection with the transmission, delivery, or furnishing of electricity in Illinois (Tr. 231-233, 1116-1120), and it does not have the basic infrastructure to start doing anything. (IAA IB at 19) Also, since Rock Island has identified that construction of the Project may never occur, stating that "permanent installation of facilities cannot and will not commence unless and until the need for the Project is actually established through the market test of transmission customers contracting for sufficient service on the transmission line to support and justify financings that raise sufficient capital to cover the total Project cost" (RI Ex. 10.13 at 4), it can give no assurance to the Commission that it will ever comply with the legal compulsion it is requesting. (IAA IB at 19)

IAA argues that even assuming construction does commence at some point, Rock Island must wait on other initial milestones to be completed first, including obtaining relief from the Iowa Public Utilities Board, and that it is virtually impossible for Rock Island to utilize any Commission certificates within 2 years as required. (*Id.* at 19-20, citing Tr. at 287, 1123)

According to IAA, Rock Island's request for an order under § 8-503, by its own admission (Tr. 143), is simply a prerequisite to obtaining eminent domain authority, and if granted §8-503 relief, what Rock Island characterizes as "voluntary" easement negotiations with farmers will actually sound something like "Rock Island has been directed by the Commission to construct a transmission line on an approved route, which crosses your land." (IAA IB at 20; RB at 5)

In its RBOE, in response to Rock Island's BOE, IAA argues, "Rock Island's attempt to acquire a Section 8-503 order is a thinly veiled effort to obtain a better negotiating position for easements with landowners, and it should not be tolerated by the Commission." (IAA RBOE at 5)

D. Staff Position

In its initial brief, Staff did not address Rock Island's request for Section 8-503 relief. In its reply brief, Staff states that "RICL claims the evidence that supports granting

a CPCN to construct the project also supports a finding that the requirements for an order under Section 8-503 are met because the criterion of Section 8-503 'to promote the development of an effectively competitive electricity market' is the same as the Section 8-406(b)(1) criterion." Staff "disagrees." (Staff RB at 17)

Staff argues, in part, "Given all the contingencies, conditions, and government and regulatory approval still needed, RICL is petitioning the Commission for authority that cannot be utilized. The request for an order pursuant to Section 8-503 is premature and should therefore denied." (Staff RB at 18)

Staff also cites the Commission Order in Docket No. 06-0706 where the Commission stated in part, "A utility may obtain a certificate under Section 8-406 in one docket. If it later desires eminent domain authority under Section 8-509, it may initiate a new docket in which it seeks relief under Sections 8-503 and 8-509." (Docket 06-0706. Order, March 11, 2009 at 88-89) Staff asserts that a utility must also demonstrate that it has negotiated in good faith with landowners and has nonetheless failed to obtain all of the necessary parcels before eminent domain relief under Section 8-509 is granted. (*Id.* at 19)

E. Commission Conclusion

In addition to requesting a Certificate of Public Convenience and Necessity for the Project pursuant to Section 8-406 of the Act, Rock Island requests an order from the Commission authorizing the Project pursuant to Section 8-503 of the Act. Rock Island's request is opposed by Staff, ComEd, ILA and IAA.

Section 8-503 provides, in part:

> Whenever the Commission, after a hearing, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility 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; ….

Authorization under Section 8-503 is a condition to obtaining relief under Section 8-509 of the Act. Section 8-509 provides, in part, "When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under Section 8-406.1, 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."

Rock Island is not seeking relief under Section 8-509 in this proceeding, but it could do so in the future if the easements are not obtained through the negotiation process.

According to Rock Island, "the evidence in this case that supports granting Rock Island a CPCN to construct the Project also supports a finding that the requirements for an order under §8-503 are met."

Rock Island argues that the criteria in Section 8-503 are the same as criteria contained in Section 8-406(b)(1), and that the evidence showing Rock Island has met the criteria in Section 8-406(b)(1) also shows it has met the criteria in Section 8-503.

ComEd and Staff disagree with Rock Island's argument. They argue that Rock Island's request for Section 8-503 relief is premature.

The Commission has reviewed the evidence and arguments. First of all, to the extent Rock Island is asserting that the criteria in Sections 8-406(b) and 8-503 are identical, and that a finding the Section 8-406(b) criteria have been met would automatically mean the Commission is required to grant the relief sought under Section 8-503, the Commission disagrees. Such an interpretation would render Section 8-503 superfluous.

ComEd and Staff argue that Rock Island's request for Section 8-503 relief is premature, in that Rock Island is seeking authority that cannot be utilized given the contingencies, conditions and regulatory approvals still needed.

While the Commission is by no means suggesting that RI would have to satisfy every contingency or uncertainty before Section 8-503 authorization may be granted, the Commission does agree with Staff and ComEd that under the circumstances, it would be premature to grant Section 8-503 relief to Rock Island in this proceeding.

Rock Island claims Section 8-503 approval is needed now because it is one of the "major regulatory approvals" needed to satisfy potential lenders and investors; however, Rock Island does not explain how a Section 8-503 authorization is somehow more urgent or important in that regard than is the proceeding in Iowa, where the Project originates and the first 379 miles of the 500-mile line would be built. Even Rock Island does not estimate a decision being reached in Iowa until 2015, and there is no indication from Rock Island that a franchise petition has even been filed there, even though a Rock Island witness testified on December 5, 2013 that "[we] are preparing to do so in the next several weeks." (Tr. 234-235)

The Commission wishes to emphasize that the Certificate of Public Convenience being granted in this Order, which expressly authorizes construction of the transmission line project pursuant to Section 8-406(a) and (b), is not conditioned on the issuance of an order authorizing the Project under Section 8-503. That is, Rock Island does not need

authority under Section 8-503 to build the line, unless it decides to seek relief under Section 8-509 because it wants to pursue eminent domain.

The Commission also observes that the approval of a line route as part of this Certificate Order should facilitate negotiations with landowners, and that the issuance of the Certificate will enable Rock Island to gain access to the property to conduct surveys and related activities, which are steps characterized by Rock Island as important ones in which to engage in the near future.

Rock Island also argues that granting Section 8-503 authority now rather than in a later proceeding would be more efficient for Rock Island, Staff and Intervenors. As noted by ComEd, however, granting Section 8-503 authority now will not avoid a later proceeding. If Rock Island needs eminent domain, it will need to file a petition under Section 8-509. If Rock Island does not need eminent domain, there will not need to be a later proceeding under either section. Also, while Rock Island asserts that granting Section 8-503 authority now rather than in a later proceeding would be more convenient and efficient for Staff and Intervenors, Staff and Intervenors ComEd, ILA and IAA do not agree that it would.

As also noted by Staff, the Commission has previously indicated that a utility may obtain a certificate under Section 8-406 in one docket, and later initiate a new docket in which it seeks relief under Sections 8-503 and 8-509.

In conclusion, the Commission finds that it would be premature to grant authority under Section 8-509 at this time. If Rock Island needs authorization under Section 8-503 in order to seek relief under Section 8-509, it can request such authorization at a later time.

XII. OTHER ISSUES

A. System of Accounts; Maintaining Records; Confidential Information

Rock Island seeks permission to maintain its books and records at its principal office and that of its ultimate parent company, Clean Line Energy Partners, in Houston, Texas. Staff has no objection, subject to the condition that that RI shall reimburse any Staff travel costs and expenses incurred in order to review these books and records.

The Commission finds that Rock Island's request should be granted, subject to the condition proposed by Staff.

Regarding "System of Accounts," Staff explains that Rock Island agreed 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. (Staff IB at 70) Staff does not object to Rock Island's proposed accounting treatment; nor did any other Party. (*Id*.; see also RI BOE at 58)

The Commission finds that Rock Island's request -- that the applicability of 83 Ill. Adm. Code 415 be waived so long as Rock Island maintains its books and records in accordance with the FERC Uniform System of Accounts, and that Rock Island be allowed 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 -- should be granted.

Rock Island also requests that all confidential information placed into the record of this proceeding be treated as proprietary and confidential for a period of two years from the date of this Order is granted. There were no objections to this request

The Commission finds that all information treated as confidential in this proceeding pursuant to rulings shall continue to be treated as proprietary and confidential for a period of two years from the date of this Order.

It is also noted that in its BOE and Exceptions, Rock Island proposes revisions to various findings and ordering paragraphs. Rock Island also proposes that certain appendices be added to the order.

B. Motion to Compel Consultation

ILA filed a "Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources ['IDNR']" ("Motion").

ILA argued, in part, that the Illinois Endangered Species Act ("IESA") and Illinois Natural Areas Preservation Act ("INAPA") mandate that agency consultation regarding anything affecting Natural Areas "shall be conducted early in the planning of the proposed action." 525 ILCS 30/17. According to ILA, "Such action is not discretionary with the agency. Based on the applicable statutes, regulations and case law, it is evident that the Commission should carry out its duty to officially consult with the Illinois Department of Natural Resources regarding the issues identified herein …." (Motion at 6)

The Staff of the Commission, functioning as a party to the proceeding, and Rock Island, filed responses to the Motion in which they recommend that the Motion be denied. ILA filed a reply to the responses.

Staff raised a threshold issue, arguing that ILA's renewed "Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources" is not an appropriate procedural mechanism and is prohibited by law. Under the IESA, the structured consultation process policy is "enforceable only by writ of mandamus". 520 ILCS 10/11(b). The Illinois Supreme Court spoke to this when it stated that section11(b) "does not contain any language that expressly grants a private cause of action for a violation of the [IESA], with the exception of allowing the enforcement of the consultation process by a writ of mandamus." *Glisson v. City of Marion*, 188 Ill.2d 211, 242 (1991). Staff further asserts that the enforcement mechanism in the INAPA is also a writ of mandamus, rather than a motion to compel the Commission as ILA filed. Section 30/17

of the INAPA provides, in part, "The Department, Commission, or any affected person may seek a writ of mandamus to compel an agency of State or local government to engage in the evaluation and study required by this Section." 525 ILCS 30/17. (Staff 10/15/13 response at 5)

According to Staff, a writ of mandamus is both extraordinary in nature and procedurally premature. Staff argues that the Commission is a creature of statute and only possesses those rights which have been granted to it from the General Assembly, and that the Commission does not possess equitable powers.

Staff also notes that it is functioning a party to the proceeding, not as advisors to the Commission.

In its reply, ILA argued in part that it is illogical and a waste of resources to force the ILA down the route of mandamus. ILA contends that its motion should be granted. (ILA 11/5/13 reply at 3-4)

A ruling was issued on December 4, 2013. It stated, in part, "Upon consideration of the Parties' filings, it is hereby determined that Staff's position is correct. For those reasons argued by Staff as are summarized above, a motion by ILA to 'compel the Commission to consult with the Illinois Department of Natural Resources,' whereby the Commission would be compelled to engage in an official and structured consultation with IDNR, is not an appropriate procedural vehicle under the statutes in question."

The ruling concluded, "Accordingly, ILA's Renewed Motion to Compel the Commission to Consult with the Illinois Department of Natural Resources is denied."

In its post-hearing briefs, ILA again argues that its Motion should be granted.

In the instant Order, the Commission concurs in the rationale and determination contained in the ruling of December 4, 2013 which denied the Motion. ILA's Motion is not an appropriate procedural vehicle under the statutes in question.

Other Arguments

Staff and Rock Island also observe that even if the motion to consult were an appropriate procedural mechanism -- which, as indicated above, it is not -- the statutes cited by ILA require an agency to consult with IDNR only when it "authorizes, funds or carries out" the project. Staff and Rock Island argue that under Illinois caselaw, the Commission is not "authorizing" Rock Island's proposed project within the meaning of those statutes. (Staff response at 6)

Staff and RICL rely on the decision of the Illinois Appellate Court in *Pierce Downer's Heritage Alliance v. Village of Downers Grove*, 302 Ill.App.3d 286, 297 (2nd Dist. 1998) (*Pierce Downer's*). There the Court held that a consultation with IDNR was not required under the statute. The Court held that the actions of the Village Board and

the Illinois Health Facilities Planning Board ("HFPB") were not "authorizations" under Section 17 of the Natural Areas Preservation Act. *Id.,* 302 Ill.App.3d at 300.

The Court determined that because of the legislature's use of the word "planning" in the preface of Section 17, the broad dictionary definition of "authorize" was insufficient. *Pierce Downer's,* at 286, 297. The term "planning" requires that the public agency or municipality had a role in forming the scheme or the program.

The Court stated that "such a role clearly requires more active participation than that which would satisfy the traditional dictionary definition of 'authorize.'" *Id.* at 297. The Court further explained, "[W]e believe that the Act was meant to apply only to an action in which the state agency or local government is a more active participant in the process. We believe that such active participation requires that the state agency or local government have a direct role in either the planning, design, funding, construction, or carrying out of the action." *Id.* at 297.

The Court found that neither the Village Board's approval of Advocate's amended site development plan, nor the HFPB's issuance of a certificate of need for the new facility, was an "authorization" under Section 17. *Id.* at 296, 297. The Court noted that issuance of a certificate of need by the HFPB for a new health facility represents a determination that there is an identifiable need for the health facility based on the community's population, the number of existing medical facilities, the extent to which the existing facilities are used, the availability of medical personnel, and other factors. *Id.* at 296 (citing Section 12 of the Illinois Health Facilities Planning Act, 20 ILCS 3960/12).

In its reply, ILA relies on *McHenry County Defenders, Inc. v. The City of Harvard*, 384 Ill. App. 3d 265, 891 N.E.2d 1017 (2d Dist. 2008) ("*McHenry*") in support of its position that "the [Illinois Commerce] Commission is involved to a degree that includes planning and involvement to the level of an 'authorization.'" (ILA reply at 10) In that case, the Second District held that the level of involvement amounted to authorization.

In *McHenry*, the Court noted that the authorization in that case contained the recitation that the "Corporate Authorities …have concluded that the annexation of the property to the City, under the terms and conditions hereinafter set forth, would enable the City to control the development of the area and serve the best interest of the City." *Id.* at 1027-1028. ILA asserts that the issues in *McHenry* were complex, like those before the Commission in this proceeding. According to ILA, "just as the Commission has its own engineering staff to review plans for building this particular line, the Village in that case had engineers on staff as well." (ILA reply at 10, citing *McHenry* at 1027)

ILA argues, "Again, just as happens in some Commission proceedings, those plans, after review by the village (rather than Staff) engineer, were revised. (*Id.*) This result is something that even Rock Island has recognized in the past, noting that if the Commission may 'conclude[] that' another route is 'superior' they will proceed with the Proposed Alternative Routes." (ILA reply at 10) ILA asserts that conditions may be

imposed upon the project by the Commission as well which ILA regards as part of planning. (*Id.*)

ILA argues that by contrast, the case relied upon by Staff and RICL, *Pierce Downer's*, involved an "insignificant amendment to a single development unit plan, to a small piece of land, with no real review of the plans in the single meeting that took place." *Pierce Downer's* involved what amounted to a" rubber-stamping." (ILA reply at 11)

ILA claims the *McHenry* case involves facts that more closely resemble those in the present case than do the facts of *Pierce Downer's*. According to ILA, "This Commission has been actively and intensively reviewing the plans - economic, engineering, and otherwise - of Rock Island." (*Id.* at 11)

Having reviewed the arguments of the Parties, the Commission first observes that in ILA's arguments that "the Commission is involved to a degree that includes planning and involvement to the level of an 'authorization'" similar to *McHenry*, ILA relies extensively on the actions of Commission Staff members who are witnesses in the proceeding.

For example, ILA states that "[t]his Commission has been actively and intensively reviewing the plans - economic, engineering, and otherwise - of Rock Island." ILA also states that "the Commission has its own engineering staff to review plans for building the particular line."

ILA's comments misunderstand, and blur, an important line between the role of the Commission Staff witnesses and that of the Commission in contested proceedings such as the instant one. The current case, initiated pursuant to Sections 8-406 and 8-503 of the PUA, is a contested docketed proceeding. There are numerous parties who are participating pursuant to a schedule. Among other things, the schedule includes dates for the filing by parties of several rounds of proposed witness testimony and exhibits. In this context, the Staff is clearly functioning as a party to the proceeding. The Staff witnesses do not serve as advisors to the Commission; in fact, they are not allowed to do so by virtue of ex parte restrictions.

As a participant, like other parties, Staff conducts discovery and files testimony, through witnesses, including testimony in response to other parties. At the hearings, parties have the opportunity to cross-examine the witnesses of other parties, including Staff witnesses. The Commission will ultimately render a decision based on the entire evidentiary record presented by the parties, including Staff. For that matter, the Commission's decisions must be made based on the evidence of record. The input from "its own engineering staff" relied upon by the Commission is that which is put into the evidentiary record.

Under these circumstances, any review of the proposed project by Staff witnesses and other parties during or prior to the course of the proceeding does not constitute an active and direct role on the part of the Commission in the "planning, design, funding,

construction or carrying out" of the of the project. Given these considerations, and upon reviewing the other arguments and information presented by the parties as summarized above, the Commission agrees with Staff and Rock Island that the Commission's level of involvement does not reach that of "authorizing" the project as that term has been interpreted by the Appellate Court in the *Pierce Downers* case.

Evidence in this Proceeding Regarding Input from IDNR

The Commission also observes, as pointed out by Staff and Rock Island, that Rock Island has consulted with and obtained considerable input from the IDNR concerning the Preferred Route and the Proposed Alternative Route of the Project with respect to both potential impacts on threatened and endangered species and potential impacts to Illinois Natural Areas Inventory sites, as well as on other topics relating to impacts on habitat and natural features. Through witnesses and documentation, Rock Island has placed information concerning its consultation into the record of this proceeding, thereby providing the Commission Staff and other parties with a full opportunity to review it, conduct discovery, respond to it and cross-examine Rock Island witnesses.

The information includes the IDNR's initial and final consultation letters to Rock Island concerning the Preferred Route and the Proposed Alternative Route. According to Rock Island, the IDNR stated in its final consultation letter that "it is unlikely that the project will result in any adverse impacts to state-listed species or their habitats." (RI RB at 31-33, citing RI Exs. 8.12 at 1, 8.8 and 8.12)

Other Considerations

As also noted by Rock Island, ILA does not identify any certificate orders in which the Commission engaged in a consultation process with the IDNR pursuant to either statute cited by ILA. As explained by Staff, the "consultation" advocated by ILA is a lengthy, multi-stage process which would not be very compatible with the process involved in a Commission Section 8-406 proceeding. (Staff RB at 5-6) Furthermore, it appears that the consultation process urged by ILA, if found to be required here, would then be required in every transmission line case before the Commission.

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 determinations made in this order, the Commission finds, pursuant to Section 8-406 of the Act, that the proposed line as described in this Order 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 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; that Rock Island is capable of financing the proposed construction without significant adverse financial consequences for the utility or its customers; and that the construction of the proposed transmission line Project will promote the public convenience and necessity;

(4) pursuant to Section 8-406 of the Act, a Certificate of Public Convenience and Necessity should 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 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 line Project over the Preferred Routes found appropriate above and as described in legal descriptions filed on e-Docket as Rock Island Exhibits 7.2 and 7.4 on October 10, 2012, and depicted and identified as the Preferred Routes on route location maps filed on e-Docket on October 10, 2012 as Rock Island Exhibit 8.1; 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 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, 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 that the applicability of 83 Ill. Adm. Code 415 be waived so long as Rock Island maintains its books and records in accordance with the FERC Uniform System of Accounts, and that Rock Island be allowed 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.

By order of the Commission this 25th day of November, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman