

12-0560  
Proposed Order

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 (2<sup>nd</sup> 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) ~~then~~ 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.

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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.”

~~Having reviewed the record, the Commission finds, with regard to the first alternative showing in Section 8-406(b)(1), 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).~~

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) ~~As a condition of~~ To address this Order, the Commission directs Rock Island ~~shall not attempt to effect the interconnection until it has~~ fully ~~complied~~ comply with the applicable interconnection requirements of PJM and the other conditions in this Order relating thereto, and ~~has signed 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 [assumeassumed](#) 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)

~~Having reviewed the record regarding the studies provided by Rock Island and Staff, the Commission finds, for the reasons explained by Staff and as summarized above, that the analysis presented by Mr. Zuraski is the more reliable and provides a better~~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.

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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 ~~arguably~~ 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 ~~condition which is~~ requirement imposed below ~~in order~~ to satisfy Section 406(b)(3).

~~Under that condition,~~ "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 ~~condition also~~ 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 findings on Section 8-406(b)(1) are subject to fulfillment by terms of its CPCN, RI of them must satisfy this financing ~~condition~~ 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 ~~RI~~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 ~~condition~~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 through 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.

~~As a condition of this Order, the Commission finds that Rock Island shall abide by the terms of the condition set forth above. Prior~~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 conditions 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;