STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

LAKEHEAD PIPE LINE COMPANY,
LIMITED PARTNERSHIP

Application for a Certificate of
Public Convenience and Necessity
to construct and operate a
pipeline for the transportation of
crude petroleum and other liquid
hydrocarbons.

ORDER

By the Commission:

On March 25, 1996, Lakehead Pipe Line Company, Limited Partnership
("Lakehead" or "Applicant") filed with the Illinois Commerce Commission ("Commission")
its verified Application for a certificate in good standing to construct and operate a pipeline
for the transportation of crude petroleum and other liquid hydrocarbons. Appendix C of
the Application gave the legal description of the proposed pipeline route in Illinois. On
July 12, 1996, Lakehead amended Appendix C to reflect changes in the proposed route.

Pursuant to notice as required by law and the rules and regulations of the
Commission, prehearing or status hearings were held before a duly authorized Hearing
Examiner at the offices of the Commission in Chicago, Illinois, on April 17, May 29, and
July 31, 1996. On August 22 and August 23, 1996, public evidentiary hearings were held
in Hampshire and Plano, Illinois, respectively. Public forums were held on August 27,
August 28, September 3, and September 4, 1996, in Woodstock, Hampshire, Plano and
Joliet, Illinois, respectively. Evidentiary hearings were held November 6-8, 1996. At the
conclusion of the hearing on November 8, 1996, the record was marked "Heard and
Taken."

Appearances or Petitions to Intervene were filed by the following: the Staff of the
Commission ("Staff"); Communities Against the Pipeline ("CAP"); the Illinois Department
of Agriculture ("DOA"); the Illinois Department of Natural Resources ("DNR"); the Illinois
Environmental Protection Agency ("IEPA"); the Illinois Department of Transportation
("IDOT"); McHenry, Kane and Kendall Counties; the Township of Hampshire; the Cities of
Plano and Woodstock; the Village of Mokena; the McHenry County Defenders; various
landowners along the proposed pipeline route and ad hoc landowner committees. In
addition, ANR Pipeline Company ("ANR") filed a Petition to Intervene. All of the foregoing
petitions to intervene either were granted by the Hearing Examiner, or are granted by this
Order.
At the evidentiary hearings, Lakehead, Staff, DOA, DNR, the Counties of McHenry, Kane, and Kendall, and CAP were represented by counsel and participated in the proceedings. Lakehead presented the testimony of its employees, Jon E. Staudohar and James Crawford; also testifying were Roy O. Ball; Joseph M. Ryan; Kenneth M. Theisen; Timothy J. Partridge; Thomas E. Barnes; Mark B. Turri; and Nancy M. Carter. Staff presented the testimony of William K. Gould, Rob Plaza and Jack McDonald. DOA presented the testimony of James Hartwig. DNR presented the testimony of Deanna Glosser and Richard C. Berg. CAP presented the testimony of James McDonald, Professor Merton H. Miller, Lois N. Epstein, Roberta Jennings, Stephen Sartell and David M. Hughes. McHenry County presented the testimony of J. Maichle Bacon, Barry L. Valentine and James A. Anklam. Kane County presented the testimony of Sam Sartell, Kenneth N. Anderson and Tom Cieslka. Kendall County presented the testimony of Steve Manning. Ms. Cynthia Skrukrud presented testimony on behalf of the McHenry County Defenders.

Briefs were submitted by the Applicant, Staff, CAP, DNR, Kane County, Kendall County, and the McHenry County Board. Reply briefs were submitted by the same parties, except Kane County. Lakehead and CAP submitted proposed orders.

A copy of the Hearing Examiner's Proposed Order was duly served on the parties. Briefs and reply briefs on exceptions were filed by Lakehead, Staff, and jointly by Kane County and CAP. DNR filed a brief on exceptions. On April 18, 1997, the Commission heard the oral arguments of the parties. All exceptions to the Hearing Examiner's proposed order have been taken into account by the Commission. This order revises the Post Exceptions Proposed Order.

I. BACKGROUND

Lakehead is a publicly traded, limited partnership organized under Delaware law that owns the United States portion of the world's longest liquid petroleum pipeline. It is qualified to do business in Illinois. Its principal office is located in Duluth, Minnesota. Interests in the partnership, called Preference Units, are traded on the New York Stock Exchange. Over 20 million Units are owned by approximately 35,000 registered owners, including some 1,800 Illinois residents who hold 1.5 million partnership units.

Together with its affiliate, Interprovincial Pipe Line, Inc. ("IPL"), a Canadian corporation headquartered in Edmonton, Alberta, Lakehead transports crude petroleum ("crude") and other liquid hydrocarbons as a common carrier by pipeline in interstate and international commerce by means of an operationally integrated pipeline system (the "System") spanning approximately 3,200 miles across North America. The System transports crude and other liquid hydrocarbons originating principally in oil fields in the Northwest Territories of Canada and the Province of Alberta to refineries and other pipelines in the Great Lakes and Midwestern areas of the United States and in the
Canadian Provinces of Ontario and Quebec. The System's main pipelines are routed across the Canadian prairies to a point on the international border near Neche, North Dakota, from which pipelines are routed through Minnesota, Wisconsin, Illinois, Indiana, and upper and lower Michigan, to reenter Canada near Samia, Ontario. The System proceeds from Neche to Lakehead's terminal at Superior, Wisconsin, where it divides into Lines 5 and 6, the latter of which is a 758-mile long pipeline routed from Superior to Griffith, Indiana (Line 6A), and from Griffith to Samia (Line 6B).

Lakehead owns, and through its General Partner, Lakehead Pipe Line Company, Inc., operates that portion of the System located within the United States. Within Illinois, Lakehead operates a 115.64-mile portion of Line 6A running from the Illinois-Wisconsin border near Harvard, Illinois via a route through McHenry, Kane, Cook, DuPage, and Will Counties to the Illinois-Indiana border near Griffith, Indiana, with associated electric pump stations at or near Crystal Lake, Dundee, Lockport, Mokena, Naperville, and Park Forest. The Illinois portion of Line 6A was constructed and placed in service in 1968-1969 as part of an expansion of the System's capacity. Within Illinois, Line 6A was constructed almost entirely in rights-of-way ("ROWs") acquired by Lakehead from other public utilities, such as Commonwealth Edison Company ("Edison"), or from private landowners through voluntary purchases of fee or easement interests.

Lakehead's pipelines deliver crude to numerous refineries that convert it into refined products and consumer goods, and to other pipelines that can carry crude to other refineries. Within the United States, deliveries are made, either directly or by connecting pipelines, to refineries and users in the Minnesota-Wisconsin region, in the Chicago Metropolitan region, in southern Illinois and Indiana, in the eastern Michigan region, in northern Ohio, and in the Buffalo region. Canadian deliveries are principally to refineries in eastern Ontario and southern Quebec. Lakehead delivers crude to refineries in Illinois and elsewhere for conversion to gasoline, home heating oil, asphalt, aviation fuels, and other refined petroleum products used by industry and the consuming public; crude also serves as feedstock for petrochemicals that are further processed into a great variety of consumer products, such as skis, golf balls, and heart valves.

As part of a program called System Expansion Program I ("SEP I"), Lakehead is adding new pumping stations to Line 6A. Applicant contends that this line, with such additions, has reached its practical operating capacity. It further argues that the increasing demand for transport of Western Canadian crude and the physical limitations of the System, including Lakehead's Line 6A, have forced IPL and Lakehead to apportion.
i.e., ration, shipping capacity to shippers and refiners. Thus, Applicant contends that this apportionment situation has existed for some time and has contributed to its decision to construct the proposed new line.

Lakehead seeks the issuance under the Common Carrier by Pipeline Law of a certificate in good standing in connection with its plan to construct within Illinois a portion of a new 24-inch diameter pipeline, to be known as Line 14, to run from Superior into Illinois delivery facilities and to interconnect with its existing Line 6A near Mokena, Illinois. Lakehead seeks certification; it is not currently seeking eminent domain authority. Lakehead prefers to acquire the necessary easements and other rights through mutual negotiations with landowners along the route of Line 14, but may need condemnation authority in order to construct its pipeline. The ROWs for Lakehead’s existing Line 6A through Illinois were acquired entirely by negotiation with the landowners involved.

Lakehead contends that the construction of the Illinois portion of Line 14 is an integral part of an overall program by Lakehead and IPL – known as SEP II – allegedly to meet the increasing demand by shippers and refiners for the transportation of crude by the System. Various expansion projects within Canada and the United States are encompassed by SEP-II, all of which involve and require the ability to transport additional quantities of crude to and through Illinois.

The total cost of constructing Line 14 through Wisconsin and Illinois, building the new pumping stations (five in Wisconsin and one in Illinois), and installing the needed equipment and connections is estimated at $300 million. Lakehead proposes to commence construction of the Illinois segment of Line 14 in the latter half of 1997 and to complete construction in time for testing and commissioning by late 1998.

II. STATUTORY REQUIREMENTS

The Common Carrier by Pipeline Law provides that the Commission shall grant an application for a certificate in good standing to the extent it finds after a hearing that: the application was properly filed; a public need for the service exists; the applicant is fit, willing, and able to provide the service in compliance with the Act and Commission regulations and orders; and that the public convenience and necessity requires issuance of the requested certificate. Additionally the Commission must consider in its determination of public convenience and necessity evidence provided by State or local governmental agencies or property owners affected by the proposed pipeline. This order must consider all evidence addressed by those parties. If the Commission’s order is contrary to that evidence, the Commission must state the reasons for its determination with regard to that evidence. See 220 ILCS 5/15-401(b).
A. **Filing of Application**

Lakehead notes that it gave due notice to the various railroads, pipelines, public utilities, telecommunications carriers, county boards, municipalities, and agencies required to be notified. A list of potentially affected landowners was provided. Also, prior to filing the application, an informational packet was mailed to landowners.

No one has disputed Staff's conclusion that Lakehead made a reasonable attempt to notify landowners based upon appropriate county tax collector records. We agree with Staff's conclusion that Lakehead made a good faith attempt to notify landowners along the proposed pipeline route and so has complied with this statutory requirement.

B. **Fit, Willing and Able**

Staff witnesses Gould and Plaza reviewed the statutory requirements regarding whether Lakehead was fit, willing, and able to construct, operate and maintain the pipeline. The entire pipeline project is estimated to cost $300 million. Lakehead has many years of experience in building and operating crude oil pipelines. Staff found that Lakehead was fit from a managerial and technical perspective as it has the requisite knowledge of applicable federal and state regulations and has the equipment, facilities, knowledge, and experience necessary to complete the pipeline. Staff also evaluated the financial fitness of Lakehead to undertake the proposed pipeline project. Staff found that Lakehead possesses an adequate level of financial fitness to undertake the proposed pipeline project. Staff found that Lakehead was willing, due to Lakehead's filing of its application with the Commission, hiring Willbros Engineering Company to perform pre-engineering work on the project, and filing an application for the Canadian portion of the pipeline project before Canada's National Energy Board. Staff also found that Lakehead was able, because Lakehead was a legitimate business concern in good standing, according to records obtained from the Secretary of State’s office, with authority to operate in Illinois and had obtained some, but not all, of the international, federal, state and/or local permits, licenses or other similar type documents it must obtain in order to construct and operate its proposed pipeline project. No one has contested this issue. We agree with Staff's assessments.

C. **Public Need**

This is the most contested issue in this proceeding. It is of overreaching importance that there be a showing of public need because it forms a condition precedent for any determination of necessity and, therefore, convenience.
1. Lakehead Position

Lakehead contends that since it began to deliver crude and other liquid hydrocarbons into Illinois and the Chicago area after the completion of Line 6A, the volume of transport service demanded of it has increased substantially. In 1970, the first year of commercial operation, about 5.4 million barrels were delivered. (Lakehead Ex. 1 at 12.) By 1995, the Lakehead System was delivering almost 150 million barrels to refineries in the Chicago Metropolitan area and transporting another 78 million barrels through Illinois to other delivery points and interconnections. (Id. at 11, 13.) Lakehead’s 1995 deliveries of crude in the Chicago area included approximately 58 million barrels to the Mobil refinery in Joliet, 55 million barrels to the Amoco refinery in Whiting and 14 million barrels to the Clark refinery in Blue Island. Approximately 40% of total refinery needs for crude in this area are supplied by Lakehead.

The Lakehead-IPL System is the major carrier of crude produced in western Canada, with 1995 shipments representing approximately 70% of the region’s production. During 1995, the Lakehead System transported over 500 million barrels of crude and other liquid hydrocarbons, making average daily deliveries of over 1,400,000 barrels. About 62% of 1995 Lakehead System deliveries were made in the U.S., an average of 876,000 barrels-per-day ("b/d"). (Lakehead Ex. 1 at 10-11). The 1995 Lakehead System delivery volume was the highest ever reached and represents a 6.25% increase over the 1994 delivery volume. Similarly, the 1995 volume of deliveries in the U.S. is an increase over the 1994 level and also represents a 10% increase in deliveries to the Midwestern United States.

Lakehead contends that, due to the increased demand for transportation of western Canadian crude, the ability of the Lakehead’s System facilities to meet the requirements of producers and refiners has been exceeded, despite efforts by Lakehead and IPL to optimize the ability of their pipelines to carry safely as much petroleum as possible. At the levels experienced in 1995 of over 400,000 b/d delivered into the Chicago area and over 300,000 b/d transported through to other markets, Lakehead System capacity is inadequate, especially when substantial quantities of heavy crude are demanded to be transported, as is the case on the Lakehead System. Lakehead and IPL have undertaken a number of efforts to maximize Lakehead System capacity. As part of SEP I, Lakehead is adding new pumping stations to Line 6A. It contends that Line 6A, however, with such additions, will reach its practical operating capacity. The increasing demands on and the physical limitations of the Lakehead’s System, including Lakehead’s Line 6A, have forced IPL and Lakehead to apportion shipping capacity to shippers and refiners.

Lakehead witness Barnes testified that public demand for refined products produced from crude has been steadily growing and is forecast to continue to grow steadily in the future. (Tr. 1119-1120). The American public is constantly increasing its
use of petroleum products by driving more often, farther, and faster in less fuel-efficient vehicles and by increasingly dispersing residential, commercial, and industrial areas, thus requiring ever more petroleum for transportation as well as for other purposes. (Lakehead Ex. 1A at 6; Tr. 1120). The growth and development in coming decades projected by representatives of McHenry, Kane, and Kendall Counties demonstrate that the growth in demand for supplies of crude petroleum and its refined products will continue. [id.

Lakehead contends that domestic crude production is declining steadily and will continue to do so. Within the U.S., production in the areas that are the relevant domestic sources of supply for Illinois area refiners has steadily declined. As domestic production has decreased, refiners, including those in Illinois, have increasingly turned to Canadian producers for significant portions of their crude supplies. This trend will continue into the future as refiners increase their ability to utilize so-called heavy crude, which is abundantly available in the Canadian fields. However, Canadian oil production is projected to peak in 2002 (Lakehead Exhibit 6, Fig. 2)

Lakehead contends that Illinois and Midwestern area refiners want and demand Canadian crude for numerous reasons. For example, they find it economically attractive as they are frequently able to obtain discounts from Canadian producers over prices from other supply sources and as heavy crude, which is increasingly available from Canadian sources and can be used effectively by many of the refineries, is priced considerably less per barrel than light crude. (Lakehead Ex. 6 at 13; Lakehead Ex. 7 at 5). As well, refiners find Canadian crude attractive as it historically has been available, through Lakehead’s System’s pipelines, at comparatively lower transportation costs and with substantially better delivery times than alternative sources of crude supply. (Lakehead Ex. 6 at 24; Lakehead Ex. 7 at 9; Lakehead Ex. 8 at 7). Canadian suppliers also are considered to offer advantages over others in the areas of dependability, logistical costs, length of supply routes, security of supply, timeliness of delivery (an important factor in light of price risk and the time value of money in making multi-million dollar crude purchases), quality and integrity of transported batches, and ratability of supply (daily batches being more desirable than large cargoes). Canadian crude producers also want to increase their deliveries to the PADD II markets, including to the Chicago area and Illinois refiners. (Lakehead Ex. 1 at 14; Lakehead Ex. 6 at 4, 14.) Western Canadian production, particularly heavy crude, has been steadily increasing and is projected to increase well into the next century. (Lakehead Ex. 6 at 8-10). This Canadian supply has been and will be available to offset the declining domestic production in PADDs I-IV and refineries, such as Amoco and BP, expect to rely upon it for much of their future needs. (Lakehead Ex. 6 at 7; Lakehead Ex. 7 at 6; Lakehead Ex. 9 at 3). The Canadian producers want to move crude into the PADD II market areas, particularly the Chicago market area, because these markets are economically most attractive to them. (Lakehead Ex. 6 at 26.) Canadian producers are less able than many other producers to move their output to alternative markets and thus, as so-called “price takers,” find the Chicago and Midwestern
markets attractive as areas where demand characteristics and transport costs afford them the best returns.

Lakehead acknowledges that other pipeline systems serve many of the refiners and processors that receive Canadian crude petroleum over the IPL and Lakehead pipelines. However, Applicant contends that refineries, even those with their own production and pipeline affiliates, such as Amoco, prefer to have a portfolio of suppliers and pipelines to whom they can look to meet their needs, that allows them to benefit from competition among the various sources of supply, and reduces their dependence on any given source of supply, particularly less reliable foreign sources. Thus, some large capacity pipelines bring crude into the Chicago and Midwestern market areas in competition with Canadian crude. However, Applicant contends that such lines are frequently capacity constrained during the peak seasons of refinery operations when gasoline and asphalt demand is greatest (May - August) and the supply thereof must be maximized and when heating oil stocks are built to meet winter (August - December) demands. These lines also are used to supply numerous refineries outside the Chicago area, frequently have longer delivery times and higher transportation costs than the Lakehead/IPL lines, lack operational efficiency and attractiveness due to low throughput (Seaway), and may lack ready access to dependable sources of incremental supplies compared to the Lakehead/IPL System.

Lakehead further acknowledges that a new pipeline under construction from Canada, known as Express Pipeline, could by connection with an existing pipeline (Platte) transport Canadian crude to Chicago area refineries and the other Midwest refineries. However, Applicant contends that this alternative will not be economic for Chicago refineries, as both its transport cost and time are too great in comparison to the Lakehead/IPL alternative. Thus major refineries such as Amoco, BP, and Mobil are not interested in utilizing this route and its necessary connections, and are not seeking deliveries over it.

Lakehead contends that the supply of western Canadian crude currently is adequate to meet demand by U.S. and Canadian refineries and is projected to increase sufficiently to meet the projected increase in demand which underlies Lakehead’s plans to expand its capacity. The Canadian National Energy Board (“NEB”), in authorizing the Canadian portions of the SEP II expansion, concluded that supplies would be adequate to meet demands for shipments over both the expanded Lakehead/IPL System and Express Pipeline. Thus, Lakehead and American refineries such as Amoco, Mobil, and BP are also confident that their needs can be met by the Canadian suppliers inasmuch as they are planning increasingly to meet their needs from Canadian sources. For example, Amoco projects substantially increased reliance on Canadian crude by its Whiting refinery by the year 2010 and is equipping its refineries to utilize increased quantities of Canadian
crude, particularly heavy crude. Also, BP is preparing to expend up to $200 million at its Toledo refinery to process heavy crude delivered by Lakehead, a project that may be canceled if Line 14 is not available to transport BP’s desired quantities.

2. **Staff and Intervenors’ Positions**

Staff disagrees with Lakehead’s standard for public need. Staff contended Lakehead’s standard was skewed and too narrowly focused upon its own individual need. Staff is of the opinion that Lakehead did not recognize the existence of any crude oil and refined petroleum product pipeline systems other than its own in arriving at the conclusion that a public need for its proposed pipeline project exists. Staff insisted that the existence, and ability of other pipeline systems to deliver crude oil, and refined petroleum products to Illinois, and PADD II must be considered in determining whether or not a public need exists for Lakehead’s proposed pipeline project.

The Staff position with respect to public need is premised upon the concept that public need is based upon the demand for refined petroleum products, and not crude oil per se. Staff’s analysis looked at consumers’ needs then proceeded to examine the needs of refiners, producers and Lakehead. It is the Staff position that in order to show a public need for Line 14, Lakehead should have shown that the public in Illinois and PADD II would not have an adequate supply of refined petroleum products at reasonable prices unless Line 14 was built. To demonstrate this, it was imperative for Lakehead to show that the combined capacity of all the crude oil pipelines in the area and the refineries they serve plus the capacity of the refined petroleum product pipelines serving Illinois and PADD II was not sufficient to supply the demand for refined petroleum products in Illinois and PADD II. Lakehead did not do that. Further, Lakehead did not show that existing crude oil pipelines could not deliver all the crude oil that the refineries in Illinois, and PADD II need to meet the demand they serve. Lakehead also provided no evidence showing the capabilities of refined petroleum product pipelines, and the role they play in meeting demand for refined products in Illinois, and PADD II. In Staff’s opinion, Lakehead failed to provide sufficient evidence to prove that there was a public need for its proposed pipeline project.

It is the position of Staff that the evidence presented by Lakehead does not demonstrate public need. Due to capacity constraints on its system, Lakehead could not deliver all the additional crude that its wants to Illinois/PADD II, producers could not ship all the additional crude over Lakehead’s system they want to Illinois/PADD II, and refineries could not receive all the additional crude they want via Lakehead’s system. It is the position of Staff that these concerns are private business interests/desires which, by themselves, do not show public need. Staff did not dispute the existence of a capacity shortfall on Lakehead’s system. However, Staff concluded that the existence of this
particular circumstance did not constitute a showing of public need; it was not sufficient to establish that the public in Lakehead's market area actually needed the crude oil producers wished to transport.

While Staff did concede that the existence of producers wanting to move oil on Lakehead's system meant that there were refineries who also desired receipt of that oil, Staff contended that Lakehead had not shown that those refineries have no other source of suitable, reasonably priced crude oil available to them. In fact, refineries in the Chicago Metropolitan area only receive approximately forty percent of their total crude oil needs from Lakehead according to Lakehead's own testimony. Staff pointed out that other entities are supplying that market with the remaining sixty percent and identified at least eight other pipeline systems serving the Chicago area alone. Staff criticized Lakehead for failing to provide any information regarding those other pipeline systems. It is the Staff position that Lakehead should have shown that the current pipeline infrastructure was insufficient to provide all the crude oil that the Chicago area needs. Further, Lakehead did not provide any information regarding other market areas it served. Lakehead did not show that its existing facilities along with other pipelines' facilities could not supply all the crude oil needed in other parts of Lakehead's market area. Staff testified that such information was necessary to show public need.

Staff also criticized Lakehead for not providing information to the Commission related to comments it made about future pipeline capacity needs. Lakehead cautioned that people should not be too short sighted, and should consider additional pipeline capacity needs far enough into the future to allow time to build the needed capacity. However, as Staff testified, Lakehead failed to provide any information in the record of this case that would allow the Commission to consider the future need for additional pipeline capacity in Lakehead's market area. Lakehead did not show that refineries in its market area would need more pipeline capacity in the future. Staff attempted to find information on its own to show that additional pipeline capacity would be required in Lakehead's market area in the foreseeable future but, found nothing to suggest a coming pipeline capacity shortfall.

Staff also analyzed the claims made by three Lakehead witnesses representing oil companies which own refineries along the Lakehead system. Staff determined that none of these witnesses provided the type of support that was necessary to prove that there was a public need for Lakehead's proposed pipeline. None of Lakehead's oil company witnesses testified that they could not get crude oil for use at their refinery from some source other than the Lakehead system; none of the refineries is currently 100% dependent on Lakehead for their crude oil needs. Further, those same witnesses were unable to identify any sort of current or future capacity shortfall on pipeline systems other than Lakehead's system. Staff concluded that the current pipeline infrastructure is sufficient to do the job of transporting crude oil to Illinois, and PADD II, as there is no crude oil crisis or shortage, nor are refineries on the verge of shutting down due to lack of
a crude oil supply. While refineries might be able to increase their profits and margins if they can obtain additional crude oil via the Lakehead system, it is not necessary for those refineries to obtain additional crude from western Canada when other means of obtaining suitable, reasonably priced crude oil are available.

After reviewing the claims made by Lakehead's oil company witnesses, Staff concluded that the refineries only have their own business interests in mind when articulating their support for Lakehead's proposal. It is the Staff opinion that none of these oil company witnesses has shown that their refineries need to obtain additional Canadian crude oil via the Lakehead system. These witnesses merely reinforce the fact that Canadian crude oil transported over Lakehead's system is desirable to them because certain refineries desire to enhance their own individual profits.

CAP contends that Lakehead is obliged to establish that the existing facilities are inadequate to the public, not to an individual or group of individuals. Roy v. Commerce Comm'n., 322 Ill. 452, 458 (1928). Because Lakehead has not presented any evidence that existing pipelines do not and cannot provide adequate service, CAP asserts that no public need has been established. Based upon Lakehead Exhibit 6 and CAP Exhibit 1 (C-1), CAP contends that existing pipeline capacity to the Midwest exceeds current refining capacity by 757,000 b/d or 20%. By mid-1997, with the expansion of Lakehead's Line 6A and the completion of the Express Pipeline project, excess pipeline capacity will be 827,000 b/d, or 30%. Lakehead witness Partridge confirmed an underutilization of the existing pipelines to Chicago. (Lakehead Ex. 6 at 20). Refineries have sufficient access to crude oil supplies, as shown by IPL joining with Mobil Pipeline Company, to create the Mustang Pipeline reversing a line from Patoka to Chicago, thus flowing oil away from Chicago.

CAP points to the testimony of its witness, Professor Merton Miller, who testified that one barrel of oil coming from Canada via Line 14 would displace a barrel of oil from the Gulf, thus not affecting the aggregate oil supply. He also testified that, due to the abundant capacity of Gulf oil through the various pipelines versus the capacity-constrained Lakehead Canadian crude oil, they would be priced the same.

CAP also contends that there is no evidence of any plans for refinery expansion. While Lakehead witness Carter testified that BP plans to expand its Toledo refinery capacity, those plans have not been finalized.

CAP further points to Lakehead witness Partridge's Figure 3, Exhibit 6, which indicates Canadian crude oil production capabilities declining after 2002. Also, the Canadian Association of Petroleum Producers projects that there would be insufficient Western Canadian crude oil supply to fill Line 14.

CAP witness McDonald testified on the availability of various crude oil supplies
available to the Midwest market from all sources. Both McDonald and the Applicant agree that the pipeline capacities available to supply crude oil to the refineries in the Midwest are currently underutilized and substantially exceed the capacity of the refineries to take crude oil. (CAP Ex. C-1, Lakehead Ex 6, p. 20).

CAP witness Miller testified that any additional supply brought in via Lakehead's proposed Line 14 will have no impact on the price of crude oil available to the refineries. (CAP Ex. 2 pp.8-13). CAP concludes that there being no benefit in terms of need or price, there is no public need for the proposed pipeline, nor would the public convenience and necessity be served by the proposed pipeline.

In summary, CAP contends that currently there is excess capacity. The Express pipeline under construction will provide additional capacity. In addition, Lakehead is expanding the capacity of its Line 6A. Furthermore the Mustang line has been reversed. Line 14 would have an insufficient supply of crude oil available in the future. Because the supply exceeds refinery capacity, CAP maintains there is no public need for Line 14 and Lakehead's certificate should be denied.

Like Staff and Intervenors, DNR asserts that Lakehead's application should be denied because Applicant failed to establish public need for proposed Line 14. DNR argued that neither Lakehead's Direct nor Rebuttal Testimony provided relevant evidence to support a finding of public need. It argued further that the Lakehead witnesses, who purported to testify in support of this issue, all admitted under cross-examination the absence of any crude oil pipeline capacity shortfall which would give rise to a public need for an additional pipeline. DNR asserted that the PUA's public need requirement must be considered in terms of whether there is a public need for additional crude oil pipeline capacity to PADD II refineries and not in terms of whether Lakehead has need of additional pipeline capacity merely to transport and sell more oil to PADD II refineries.

Kane County also contends that Lakehead has failed to show public need. Kane County contends that Lakehead must prove: 1) the public does not have an adequate supply of crude oil at a reasonable price if the pipeline is not built; and 2) the pipeline would not result in detrimental impacts to the public which would undermine public convenience and necessity. Kane County and CAP cite the Roy case, supra., for the contention that Lakehead would have to show that refineries could not get oil from other sources. Kane County points out that 60% of Chicago area refineries' needs are met by other pipelines and that excess capacity exists on the other pipelines, particularly with the planned expansions. Also, it is asserted that the public is not an individual or group.

3. Applicant's Reply to Staff and Intervenors

Lakehead contends that the crude market displays none of the characteristics of traditional monopoly-utility situations, such as those cited by Staff and Intervenors.
Applicant cited the California Public Service Commission Opinion in the Application of Pacific Pipeline System, Inc., issued April 10, 1996, which found that marketplace competition controls rates, and that classic utility-type regulation is unnecessary and inappropriate. (Opinion at 41, 45). Applicant contends that captive ratepayers do not pay for the facilities and the rates of common carriers by pipeline are determined by the competitive pipeline market. Thus, need is to be assessed in terms of the market to be served and not in terms of utility ratepayers.

Applicant points out that no producer, shipper, refiner, processor, or user of crude opposed the construction of Line 14. Applicant also acknowledges that none of the refineries in the Southern PADD II testified in support of the proposed pipeline. In fact, three Midwestern refineries supported construction. Two from the Chicago area and one from Toledo, Ohio. Further, Applicant maintains that refineries in Illinois and PADD II want and need more Canadian crude to replace the declining domestic supply available to them and to meet the increasing public demand for refined products. Lakehead further points out that Canadian heavy crude costs to refineries are less than from other sources depending on the time of year. (Tr. 1149, 1153-54, 1173). Applicant also maintains that other crude and refined product pipelines are capacity constrained during peak demand periods.

In reply to Staff's assertion that there are eight other lines delivering crude into the Chicago area, Lakehead points out that six of the eight are not even relevant: the Chicap line is merely a transfer line; the Mobil line does not serve Chicago; the Citgo, Texaco, Williams and Tecumseh lines are not crude supply lines to Chicago. (Citations omitted). (Lakehead Reply Brief at 13). Applicant contends that Staff has focused merely on the supply level in the market for refined petroleum products rather than on the transport market for the refineries' entire competitive concerns.

Lakehead criticizes CAP's gross-capacity argument. Applicant contends that you cannot merely total capacity figures in evaluating supply options. Further, Applicant points out that the Express line is intended to serve PADD IV rather than PADD II, that it is not capable of transporting large amounts of crude past Casper (Tr. 1114-15), and that it represents a higher cost of crude to Chicago refineries. (Lakehead Ex. 6 at 28).

In conclusion, Lakehead contends that this is not a matter of controlling market entry and exit to protect ratepayers. The application is merely a prudent first step toward the grant of eminent domain power. Applicant asks that the Commission not frustrate or burden interstate commerce, citing Service Pipe Line Co. v. Ruder, 19 Ill. 2d 332 (1960). Applicant sees the Commission's role in this proceeding as ensuring that eminent domain power is used prudently.
4. **Commission Conclusions**

The Commission has reviewed past pipeline decisions under the Illinois Commercial Transportation Law (Section 18c-8201). The Commission decided each of those cases on the merits of the testimony provided in each docket. In several of the recent dockets the Commission was provided only testimony of the Company (See e.g., Mid-American Pipeline Company Docket No. P94-0001, Nov. 22, 1994, Quantum Pipeline Company and Seagull Products Pipeline Corporation Docket No. P95-0001, Sept. 13, 1995 or Phillips Pipe Line Company Docket No. P91-0003, July 10, 1991) and based on the evidence presented, at that time, found a public need for each project. However, no alternative testimony was provided to the Commission for consideration. An uncontested case should not be considered as precedence to judge the instant proceeding. In Illini Carrier L.P. Docket No. 87-0421, Oct. 28, 1988, the Commission reviewed testimony from several sources and determined that:

The evidence presented indicates both a growing demand and a public need for natural gas transportation services. Mississippi River Transportation Corporation has not transported natural gas for its customers even when faced with numerous requests. Illinois Power and Union Electric are unable to provide transportation for various reasons. Therefore no existing transportation service exists in the Metro-East area.

The Commission is of the opinion that a public need exists for natural gas transportation service. The Commission determined in that case, based an examination of the other potential carriers in the region, that the Metro East region needed this service. This is a reasonable approach and this Commission will continue approaching public need in that manner. While we can distinguish a natural gas pipeline (as in Illini Carrier) from an oil pipeline on the basis of the end-use of the transported product, the general concept of analyzing the appropriate market and other providers in that market, and not just the pipeline itself, should be a guiding principle in determining public need.

The Commission agrees with Staff that the public need, like the public convenience and necessity, "required to support an order of the Commission is that of the public and not of any individual or number of individuals". Roy v. Ill. Commerce Commission, 322 Ill. 452, 458 (1926). The public, as indicated by the court, is greater than a limited number of market players. While it may be in Lakehead's own best interest that the proposed pipeline be built, that does not establish a public need. Illinois statutes have required a finding of public need in pipeline certificate cases since January 1, 1988. The Commission has found a public need in instances: a) where a pipeline would prevent a plant from closing and would thus maintain the benefits to the public of that plant remaining open (Docket No. 0101, Mid-American Pipeline Co.); b) where a gas pipeline would provide unbundled transportation services that were not being provided by
any other pipeline (Docket No. 87-0421, Illini Carrier, P.C. discussed above); c) where a pipeline would help alleviate a nationwide shortage of antifreeze (Docket No. T88-0065, Mid-American Pipeline Co.); and d) where a pipeline would provide a safer mode of transportation that other alternatives (Docket No. P94-0001, Mid-American Pipeline Company). Some pipeline cases mentioned more than one reason for finding a public need. There may be additional indicators of public need, for instance reduced prices or lower increase in prices to the public might be found to be a public need.

Whatever basis a petitioner chooses for demonstrating a public need, the need must be for the public, not for the few. And the Commission must weigh the evidence presented by the petitioner that there exists a public need against the evidence other parties presented that no such public need exists. Lakehead has made no showing of current or future public need for the proposed pipeline in the instant case. The Commission has no alternative but to deny the petition based on the evidence presented by Lakehead.

The granting of a certificate to Lakehead would be the first step in Lakehead's quest for eminent domain authority. The Commission is required by law to limit and regulate the exercise of the power of eminent domain to protect private property against the unjust use of that power. While an affirmative decision would not grant Lakehead eminent domain, the Commission's granting of a certificate in good standing does indicate a public need and as such eminent domain may be appropriate to fill that public need. That is why the Commission's ruling in this proceeding must be based upon a demonstrated public need, rather than private interests.

Lakehead argues that the Commission should not frustrate or burden interstate commerce, citing Service Pipe Line Co. v. Ruder, 19 Ill. 2d 332 (1960). CAP contends that Lakehead's view of the Commission's role in this proceeding is very limited, in effect a ministerial act. (See, e.g., CAP's Reply Brief on Exceptions, at 4-9.) The Commission's authority in this proceeding is not limited to a ministerial act. On the contrary, the Commission has an active role and substantial responsibility in this proceeding, and others like it. The Commission is aware of Ruder and notes that Ruder held that the state has not been preempted by the Federal Government concerning petroleum pipelines. Ruder did not establish the precise scope of authority of the Commission. The Commission must comply with all the requirements of Illinois law, including the requirement of making a finding with regard to a public need.

Lakehead failed to consider the relevance of any crude oil and refined petroleum product pipeline systems other than its own in arriving at its conclusion that a public need for its proposed pipeline project existed. We agree with Staff's analysis, in this case, that public need is based upon the demand for refined petroleum products and not only crude oil per se. Lakehead was unable to show positive price effects on the market for petroleum products, nor future public demand that would indicate the need for this
proposed pipeline. Lakehead has failed to meet its burden of proof under Article 15 of the Act. The Commission's denial of Lakehead's application is consistent with the scope of authority exercised by the Commission in previous matters like this.

D. Public Convenience and Necessity

A second major issue in this proceeding is the public convenience and necessity. Public convenience and necessity and public need are not mutually exclusive. If a showing of public need cannot be made for a proposed pipeline project such as Lakehead's, the public convenience and necessity is not being served. The benefits and burdens to the public resulting from the proposed project are relevant when addressing the public convenience and necessity. Of critical importance is the proposed route of the pipeline, the impact of the route upon the environment, and how that impact may be mitigated. This section of the Order discusses these elements.

1. Lakehead's Position

Lakehead presented testimony with respect to the reasons why the public convenience and necessity requires issuance of a certificate for its proposed pipeline project. Lakehead generally discusses those reasons, claiming that construction of its proposed pipeline will serve the public convenience and necessity by facilitating the continued availability of an adequate supply of crude petroleum, and other liquid hydrocarbons to refineries in Illinois, and elsewhere; enhancing the overall benefits of supply competition in the market by increasing access for Canadian producers of crude petroleum to the Illinois and Midwestern markets, thus allowing those producers to compete more effectively with alternate sources of supply; stabilizing the price of refined products for consumers through increased petroleum supply; enhancing access for United States refiners and their customers to stable and secure, North American sources of crude petroleum; and reducing reliance on less efficient and safe methods of transporting petroleum, such as railroad tank cars and highway tanker trucks.

Lakehead contends that in late 1995 it identified and examined three potential routes for the new line through Illinois: 1) the existing Line 6A corridor; 2) ANR natural gas pipeline corridors in McHenry, Kane, Kendall, and Will Counties located in generally open and agricultural land; and 3) going further west into DeKalb County. Relying on a ROW consulting firm with expertise in the field, Willbros Engineering, Lakehead evaluated the possible routes and determined that the route now proposed is the most appropriate. The analysis confirmed that the existing Line 6A corridor is not a feasible route because congestion along it, including other underground utilities and overhead electric transmission lines as well as residential and commercial expansion occurring since the mid-1980s in the southern part of McHenry County and in DuPage and Cook Counties, (where most of Line 6A's route is located), preclude conventional construction methods.
and do not allow appropriate safety buffers between other facilities. The more westerly route through western McHenry County and into DeKalb County was found to be inappropriate because it would not align with the existing Lakehead ROW in Wisconsin, would require additional miles of ROW and construction both in Wisconsin and Illinois, would not utilize any existing pipeline corridor, and would not significantly change the number of landowners affected.

Lakehead revised that route as survey work progressed and discussions continued with representatives of Mobil Oil about how to bypass congested areas. Subsequently, the contemplated lateral lines off the main route to the Joliet refinery were eliminated, and an agreement was reached with Mobil to allow Lakehead to place its pipeline within an existing Mobil ROW from the so-called Mobil Junction to Mokena, thus eliminating the need to acquire new pipeline easements in some 65 parcels of land along the route, although temporary working space is still required. These changes have reduced the number of potentially affected Illinois landowners along the Line 14 route from approximately 650 to 440.

Over 95% of Line 14's proposed route in Illinois is located in rural or agricultural areas away from commercial, industrial, and residential developments. Lakehead contends that rural and agricultural areas are generally the most desirable areas for pipeline routes for safety and impact reasons. Most of the proposed route is in areas in which future residential, commercial, and industrial development is restricted or restrained by various land use plans and policies, which will help prevent encroachments on and risks to the pipeline. The permanent ROW easement width along the route generally would be 60 feet, although Lakehead may find it necessary in specific instances to narrow the width to accommodate particular aspects of individual properties. An additional 15 feet of temporary working space would be required for use only during construction (additional temporary working space would be required at road and river crossings). After installation of the line, the permanent easement is needed for possible future maintenance and repair activities and to buffer the route against encroachments that could damage the pipeline. The easement can be used by the landowner for agricultural and other purposes that will not endanger the pipeline (permanent structures that could affect the line are not permitted). Landowners would be compensated fully for any construction-related damages and/or crop losses. No other feasible route was specifically identified or suggested in this proceeding by Staff or any intervenor.

Lakehead would construct the pipeline in compliance with all the requirements of the Office of Pipeline Safety ("OPS") of the U.S. Department of Transportation, as set out in the Code of Federal Regulations (49 CFR 195), as well as any other applicable regulations and industry codes and standards. Before beginning construction, Lakehead would secure the necessary permits and licenses from the numerous regulatory agencies and bodies having authority over various matters such as river crossings, highway crossings, wetlands, and historic sites. During construction, Lakehead would schedule its
activities by means of "construction windows" designed to avoid impacting wildlife habitats. Various environmentally sensitive areas were identified in the testimony of DNR witness Glosser; Lakehead is both aware of such areas and working with the DNR and other agencies to protect them. To mitigate the impact of the pipeline's construction on farmland, Lakehead has entered into an Agricultural Impact Mitigation Agreement ("AIMA") with the DOA that provides for farmland protection measures that address concerns related to land restoration and establishes standards and procedures consistent with State law (the Farmland Preservation Act) and Commission policy. DOA has requested that this Agreement be made a part of any Commission order certificating Lakehead, and Lakehead has agreed to this request. The AIMA provides that landowners can negotiate different or additional procedures with Lakehead if so desired, which Lakehead is willing to do via good-faith discussions with individual landowners.

In recognition of concerns of residents and others along the pipeline's route about the potential effect of a petroleum release on various areas of shallow aquifers, Lakehead intends to increase the reliability margin of its new pipeline by taking a number of measures not required by applicable regulations or codes. In areas where the pipeline crosses shallow aquifers, Lakehead will increase the wall thickness of the pipe itself by approximately one-third; will increase the number of sectionalizing (shut-off) valves and install remotely operated valves as much as possible, approximately doubling the number of valves in such areas above the norm; will install additional data sensing and transmitting devices as part of a state-of-the-art leak detection subsystem being deployed on the System's pipelines and control systems; will place additional warning signs along the route even beyond its normal practice; will hydrostatically test the line to 125% of maximum operating pressure; will perform a special post-construction survey (a "Pearson Survey") within one year of the line's entry into service in order to confirm the integrity of the pipe's anticorrosive coating; will install additional facilities for the utilization of internal inspection devices ("smart pigs"); will perform close-interval (30-inch+) inspections of the effectiveness of the line's anticorrosion cathodic protection system; will conduct aerial patrols of the route on a weekly basis, weather and equipment permitting; and will utilize the most advanced aerial leak-detection equipment determined to be practical.

2. **Staff and Intervenors' Positions**

Staff testified that public need was an important factor in looking at public convenience and necessity; public need and public convenience and necessity are not mutually exclusive. Staff contends that the public convenience and necessity does not necessarily require the movement and refining of crude oil from a particular location. Rather, the public convenience and necessity is served when the public has an adequate supply of refined petroleum products at reasonable prices. Staff points out that Lakehead provided no evidence to show that its proposed pipeline was needed to accomplish that goal. The record in this case provides nothing which shows that adequate supplies of reasonably priced refined petroleum products will be unavailable to Illinois, or the PADD II
area without the construction of Line 14. As Staff testified under cross examination, Lakehead could have accomplished this if it were able to show that the combined capacity of all the pipelines in the Illinois and PADD II areas, and the refineries that they serve plus the capacity of all the refined petroleum product pipelines serving Illinois and PADD II was insufficient to supply the demand for refined petroleum products in Illinois and PADD II. However, Lakehead certainly did not do that.

Staff presented responsive testimony regarding the issue of public convenience and necessity. Staff points out that Lakehead did not provide any specific evidence in support of its contentions regarding the reasons why the public convenience and necessity requires issuance of a certificate for its proposed pipeline project. Staff examined each of the reasons presented by Lakehead and generally found a lack of support for the statements made.

Staff agreed that, theoretically, Lakehead's proposed pipeline project could provide increased competition and stabilize the price of refined products. However, Lakehead failed to show that the increase in its system capacity due to the construction of the proposed pipeline would affect the price of refined products in Illinois or anywhere else. Staff was unable to find any information through its own research to suggest that prices for refined products would rise in Lakehead's market area if its proposed pipeline was not built.

Staff contended that Lakehead failed to provide information to suggest that the public in Lakehead's market area needs enhanced access to stable, secure, North American sources of crude oil. Once again, Staff was unable to find any information through its own research that would support Lakehead's contention. On the contrary, Staff identified at least eight other pipeline systems serving the Chicago area. Lakehead provided no information showing that these other pipelines, along with Lakehead's current pipeline system, could not provide all the crude oil that the Chicago area needs.

Finally, Staff found Lakehead's claims that its proposed pipeline project would reduce reliance on less efficient, and less safe methods of transporting petroleum to be irrelevant. As Staff testified, there is no information in this case to indicate that less efficient, and less safe methods of transporting petroleum into Lakehead's market area are actually used to any significant degree. Further, Staff was unable to find any information through its own research to suggest that the transportation of significant quantities of crude oil to Illinois is not accomplished primarily by pipeline.

Staff also examined the proposed route of Line 14 and had no objection to its siting. Staff's recommendation concerning the route has always been conditioned upon Lakehead receiving the necessary permits, licenses, and/or certificates from the appropriate agencies. Staff disagrees with DNR witness Glosser's testimony that additional assessments such as wetland delineations and an endangered species survey
must be done prior to Commission approval of Lakehead's request. Staff contends that a Certificate should be conditioned upon DNR approval. Staff contends that, if a Certificate is granted, any attempt to impose more stringent standards than the federal standards might cause federal preemption, although notes that the Commission could apply for a pre-emption waiver.

CAP is concerned that there are 54 homes located within 200 feet of the proposed pipeline (Tr. 949) and that Lakehead reported 63 spills of a barrel or more between 1986 and 1995. CAP concludes that the proposed pipeline will leak at some time and well contamination is possible. David Hughes and a number of other farmers testified that the proposed pipeline will impact their farm yields. Once the soil is disturbed, it can never be restored. Although farmers may receive compensation, this valuable resource should be saved for future generations and not be disturbed unless it is absolutely necessary. (CAP Ex. 6).

CAP contends that the AIMA places the responsibility for inspecting and ensuring Lakehead's compliance with the Agreement on the landowner. CAP suggests that both the AIMA and the proposed easement agreement should have been amended to require that property owners be named additional insureds on Applicant’s liability policy, and that property owners be held harmless from even their own negligent acts.

CAP contends that the proposed pipeline is not in the public interest because it benefits only Lakehead and the producers which are also refiners. Again, citing the Roy case, supra., CAP contends that the relevant public convenience and necessity is that of the public and not that of any individual or individuals; thus, as long as the public has an adequate supply of refined products at reasonable prices, the public convenience and necessity is being served. (See Gould Cross at Tr. 1346). CAP’s position related not to the supply of refined products, but the supply of crude oil to the refineries. It maintains that there is an abundant supply of crude available to serve Midwest refineries at market prices. The proposed pipeline will have no impact on the ability of these Midwest refineries to process and refine crude. As such, the public convenience and necessity does not require the issuance of the certificate.

Kane County stresses that all parts of the general public must be benefited. (See Gulf Transport Co. v. Illinois Commerce Commission, 402 Ill. 11 (1948). It raises two concerns regarding its agricultural lands. First, agricultural productivity would be detrimentally affected by the pipeline. Second, since some of the drain tiles may have to be cut during pipeline trenching, the established drainage pattern could be detrimentally affected impacting farming operations. It notes that there are eight natural areas in close proximity to the proposed pipeline (Kane County Ex. A at 6) and these areas need protection. Based upon the testimony of various Intervenor witnesses, heavy reliance on
shallow aquifers for potable water requires special precaution to protect the aquifers. (Kane County Ex. B at 6-7). Finally, it is concerned about locating a crude oil pipeline in such close proximity to the ANR natural gas pipeline.

McHenry County suggested that there is a better, less environmentally sensitive route located west of the proposed route. However, the County failed to identify any specific route. It also is concerned about pipeline leaks and potential groundwater contamination. Its witness Anklam testified that approximately 68% of the area along the proposed pipeline route ranked as either "high potential for aquifer contamination" or "moderately high potential for aquifer contamination." (McHenry County Ex. 3 at 6). It proposed that, if the Commission grants certification, Lakehead be required to comply with federal LPL standards and provide special training for fire and rescue personnel and meet annually with the Director of McHenry County Emergency Services. In its reply brief, Applicant agreed to the foregoing conditions not only in McHenry County but also for the entire pipeline route.

The Kendall County Board expressed concerns similar to those of Kane and McHenry Counties. The Board notes that the pipeline route does not conform with its existing Land Use Management Plan and that there is the danger of being too close to the existing ANR pipeline.

As previously alluded to, DOA entered into the AIMA with Lakehead. DOA witness Hartwig pointed out that the Agreement can be amended by the landowners and provides a "basic level of protection to the agricultural land...." (DOA Ex. 1 at 3). He requested that the AIMA be incorporated into the Commission's Order so that the Order would be consistent with the Farmland Preservation Act and Commission policy.

3. Lakehead's Reply to Staff and Certain Intervenors

Lakehead notes that McHenry County's route proposal not only would require more mileage and disturbance of agricultural properties and woodlands in both Wisconsin and Illinois, but also would affect even more geologically sensitive and more densely populated areas. (Lakehead Ex. 3 at 16).

Lakehead also disputed the claim of the Counties and CAP that the pipeline is a threat to drinking water. It notes that very few wells take water from the shallow aquifers, and that petroleum being less dense than water would float atop shallow aquifer. Also, aquitards protect deeper wells from the effects of petroleum leaks. Moreover, as previously mentioned, Lakehead is willing to take the additional steps proposed by McHenry County to further protect the shallow aquifers.

With respect to DNR's claims, Lakehead contends that it is willing to work with DNR on the natural resource issues raised by Ms. Glosser. Lakehead further claims that
her testimony provides no basis for a conclusion that the proposed pipeline poses an undue risk to the environment.

Lakehead contends that there will be no destruction of prime farmland. It points to the AIMA, its experience in North Dakota, Minnesota, and the modern techniques for land restoration.

Lakehead also disputes the claims of danger to public and private safety. Lakehead notes that the proposed pipeline will be separated adequately from the ANR pipeline and would pose no threat in the event of an ANR natural gas pipeline explosion.

On the issue of the pipeline creating an unjust economic burden to landowners, Lakehead contends that the landowners are going to be compensated fully for the value of the easements and Lakehead will bear the full costs of emergency response and remediation for any pipeline spill cleanup. In response to Kendall County’s assertion that the Line 14 construction runs contra to its Land Use Plan, Lakehead notes that Kendall County did not raise this issue in its testimony, the pipeline route through the County is almost entirely agricultural, and there are no restrictions on underground pipelines in the County Zoning Code. (Lakehead Ex. 4, Report 101).

4. **Commission Conclusions**

This Commission believes that there is a natural nexus between public need, and public convenience and necessity. Public convenience and necessity and public need are not mutually exclusive. If a showing of public need cannot be made for a proposed pipeline project such as Lakehead’s, the public convenience and necessity is not being served. We have already found that Lakehead has not shown the existence of a public need for its proposed pipeline project. Thus, we are unable to conclude that the public convenience and necessity requires issuance of a certificate for Lakehead’s proposed pipeline project. While route consideration is an integral part of an analysis of public convenience and necessity, no conclusion regarding the location of the proposed pipeline need be addressed since we find that no public need exists for the proposed pipeline.

III. **ADDITIONAL COMMISSION SUMMARY, DISCUSSION AND CONCLUSIONS**

The Commission has carefully reviewed the record in this case and has determined that Lakehead has not shown a public need for this proposed pipeline. The Commission is charged with protecting the interests of the public and must always weigh the interests of private companies with the public’s interest. In this case a private company has asked the Commission to determine that its needs and the needs of three of its customers constitute a public need. It is difficult to reconcile that definition of public with the court’s statement that “the convenience and necessity required to support an order of the commission is that of the public and not of any individual or number of
individuals."

Roy v. Ill. Commerce Commission, 322 Ill. 452, 458 (1926). We believe that the public is not and cannot be defined as a limited number of private interests. If we were to accept this definition, the role of the Commission under Article 15 would be merely to recognize that a private interest is fit, willing and able to build a pipeline and its customers want the product of that pipeline. This would require virtually no judgment on the part of the Commission and would relinquish the Commission's prudent control over the pipelines that wish to enter this state.

Some parties have argued that Rudor precludes denial of this petition because the Commission has no authority to exclude or control interstate pipelines entry into the interstate market. We fail to see Rudor in such a light. Rudor does not establish precise scope of the authority of the Commission concerning petroleum pipelines. The Commission therefore has the obligation to follow the law under Article 15 of the Act. In fact, the Commission has previously denied the application of an interstate common carrier in LAKEHEAD PIPELINE CO., ICC Dkt. 58162.

We also cannot accept the argument that Lakehead's system is the only relevant system to address in determining public need. The Company did not do an analysis, economic or engineering, of the relevant supply sources of the market. The Company simply stated that demand is growing and it wanted to supply that demand. The Company failed to show any evidence that relevant supply sources (not just Lakehead's system) could not meet current and foreseeable future demand in this region. There is no evidence that future demand in the region dictates the necessity of a new pipeline other than speculative statements from the Company. Staff even attempted to do this analysis, in a more rigorous manner, and could not support the contention that a new pipeline was needed in this market to meet any alleged future capacity shortfalls. In fact, Lakehead's own witnesses from the refineries could not identify any sort of current or future capacity shortfall on any system except Lakehead's. Knowing this, one may ask why a company would invest such a sum of money to put in a pipeline. One possible explanation is the conquest of market share. While obtaining market share may be beneficial to the Company, it is not a public need, it is a private goal.

Last, while Lakehead has not asked for eminent domain in this case, the Commission is well aware that this is "a prudent first step" in obtaining that power. The landowners in the affected area have a right to know that the power of taking was not given for merely private gain, but to fulfill a public need. By sparingly using the power of eminent domain, the Commission balances the needs of landowners and those of the public that will benefit from the product transported over their land. We cannot state in good faith that a public need has been shown in this case and start the process by which land could be taken.
IV. COMMISSION FINDINGS AND CONCLUSIONS

The Commission having considered all of the evidence of record and being fully advised in the premises, is of the opinion and finds that:

(1) Applicant, Lakehead Pipe Line Company, is a limited partnership organized under Delaware law, having its principal office in Duluth, Minnesota, and is engaged in the business of transporting crude petroleum and other liquid hydrocarbons in interstate and international commerce as a common carrier by pipeline, and, as such, is a common carrier by pipeline under Article 15 of the Public Utilities Act;

(2) the Commission has jurisdiction of the Applicant and of the subject matter herein;

(3) the statements of fact and law and the conclusions thereon set forth in the prefatory part of this Order are supported by the evidence in the record and are adopted as findings of fact and law;

(4) Applicant seeks the issuance of a certificate in good standing in connection with its proposal to construct a new 24-inch pipeline through McHenry, Kane, Kendall and Will Counties, Illinois to be known as Line 14, for interstate and international transportation of crude and other liquid hydrocarbons; Applicant seeks certification should an application for eminent domain authority become necessary in connection with the acquisition of the right-of-way for its new pipeline;

(5) Applicant has properly filed the application herein;

(6) Applicant is fit, willing and able and has the financial resources to construct, operate, and maintain Line 14;

(7) Applicant has not shown that a public need for the proposed pipeline exists. Therefore the proposal will not promote the public convenience and necessity.

(8) any objections, petitions and motions which remain undisposed of should be considered disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS THEREFORE ORDERED that a Certificate in Good Standing should not be granted to Lakehead Pipe Line Company, Limited Partnership, to construct, operate, and
maintain the proposed pipeline for the transportation of crude petroleum and other liquid hydrocarbons pursuant to the Common Carrier by Pipe Line Law.

IT IS FURTHER ORDERED that any objections, petitions and motions which remain undisposed of shall be considered disposed of consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.888, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission, this 7th day of May, 1997.

Chairman