

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

**FILED WITH
Executive Secretary
November 30, 2015
IOWA UTILITIES BOARD**

IN RE:	:	:
ROCK ISLAND CLEAN LINE LLC	:	DOCKET NO. E-22123, E-22124,
	:	E-22125, E-22126, E-22127, E-22128,
	:	E-22129, E-22130, E-22131,
	:	E-22132, E-22133, E-22134, E-22135,
	:	E-22136, E-22137, and E-22138
	:	:
	:	MOTION TO ESTABLISH
	:	PROCEDURAL SCHEDULE
	:	:

Rock Island Clean Line LLC (“Clean Line”), by and through the undersigned counsel, hereby requests that the Iowa Utilities Board (the “Board”) establish a procedural schedule for addressing the Petitions for Electric Transmission Line Franchise (“Franchise Petitions”) that Clean Line has filed in these Dockets.

I. Introduction.

Clean Line sets forth in this Motion a proposed outline of a procedural schedule to advance the Board’s consideration of the Franchise Petitions that Clean Line filed in these Dockets on November 6, 2014. This procedural schedule, or a schedule substantially similar to it, will allow Clean Line to advance the Rock Island Clean Line Project (the “Project”) in Iowa. If approved, the Project will benefit the State of Iowa, the surrounding states, and the nation at large by enabling a large amount of new, low-cost wind generation to efficiently reach the customers that need it. This new wind generation, which cannot proceed without new transmission infrastructure, will lower power prices, reduce exposure to volatile fuel prices, boost economic development, and meet important public policy goals.

Clean Line’s proposed schedule contemplates a single proceeding in two phases. The first phase, as described in detail below, considers issues related to the Project as a whole, including the

necessity of the Project to serve a public use, the relationship of the Project to an overall plan of transmitting electricity in the public interest, the appropriate route for the Project, and whether Clean Line is eligible to utilize the right of eminent domain generally (not an actual *grant* of eminent domain rights, but rather a legal determination of its *eligibility* to utilize the same if necessary). The second phase, as further described below, considers parcel-specific eminent domain issues only with respect to those parcels on which Clean Line has not yet, at that time, successfully negotiated a voluntary easement.

While this Motion is similar in some respects to Clean Line's prior motions in these Dockets,¹ this Motion and the proposed schedule include important changes to Clean Line's previous proposals that address procedural issues and previous concerns expressed by the Board. These changes (1) provide clarity to all parties about which issues will be addressed in which phase of the proceeding, (2) promote administrative efficiency and the convenience of both the public and the parties to these Dockets, and (3) assure that affected landowners receive fair compensation, even if in the first phase of the proceeding the Board finds that Clean Line is eligible to utilize the right of eminent domain generally. In addition, Clean Line's procedural schedule is essential to allow the Project to proceed, and it will increase voluntary easement acquisition and reduce condemnation rates. These considerations are further detailed below.

Clean Line's proposed procedural schedule is set forth in Section II below. Thereafter, in Section III of this Motion, Clean Line offers legal and factual support for its proposed procedural schedule. In that Section, Clean Line draws upon the Board's current experience with the handling of the Dakota Access Pipeline proceedings (Docket HLP-2014-0001, the "Dakota Access case") to craft a workable schedule and address previously expressed concerns. Section IV sets forth the conclusion.

¹ Motion to Bifurcate filed October 15, 2013, and Motion to Consider Eminent Domain in a Separate Hearing and Supporting Documents and Application for Confidential Treatment filed December 8, 2014.

II. Procedural Schedule Proposed by Clean Line

Clean Line filed the Franchise Petitions in these Dockets on November 6, 2014. Following the filing of Franchise Petitions, it is customary for the Board staff to conduct an internal review and then to issue review letters to the petitioner. The procedural schedule approved by the Board will need to include sufficient time for the Board staff to complete its review. For purposes of the procedural schedule outlined below, Clean Line is assuming that the Board staff will be able to complete its initial review on or before May 2, 2016. However, Clean Line is willing to consider adjustments in the dates set forth below if the Board deems different dates to be more reasonable.

	Description of Item	Date or Date Range
1	Board Staff reviews Franchise Petitions and issues review letters; Staff will send each county review letter individually as each is ready, to allow concurrent review and response by Clean Line	Initial review letter for all counties provided to Clean Line no later than May 2, 2016
2	Board staff issues subsequent review letters and Clean Line files responses until Board Staff is comfortable with completeness of Franchise Petitions, <u>except</u> the Exhibit E eminent domain documents	June 30, 2016
3	Clean Line provides, on a county-by-county basis, a list of parcels impacted by the proposed route and from which easements will need to be obtained or have been obtained, together with overview maps showing the location of the parcels	On or before June 30, 2016
4	Clean Line files a sample Exhibit E with statement of easement rights to be sought (final Exhibit E documents will be submitted later in the second phase of the proceeding—after the recess and conclusion of voluntary easement negotiations—in the event Clean Line determines that it must request that the Board grant it eminent domain rights with regard to any specific parcel)	On or before June 30, 2016
5	Official Notice issued with proposed hearing date and explanation of intended issues to be covered in each phase of the proceeding. The notice will include an explanation of the intention to recess the hearing after the first phase and issue an Order concerning the request for a Franchise.	On or before July 15, 2016
6	Objection deadline	20 days after last date of publication of the Official Notice, which should be completed

		within 3 weeks of issuance of Official Notice, so deadline would be approximately August 25, 2016.
7	Intervention deadline	August 25, 2016
8	Clean Line files prepared direct testimony	September 12, 2016
9	Board Staff report and intervenor testimony	October 12, 2016
10	Office of Consumer Advocate ("OCA") testimony	November 1, 2016
11	Clean Line's reply testimony	November 15, 2016
12	<p>Hearing for the purpose of cross-examination of prepared testimony, with the phase one hearing issues to be determined as follows:</p> <ul style="list-style-type: none"> a. Is the line necessary to serve a public use; b. Does the line represent a reasonable relationship to an overall plan of transmitting electricity in the public interest; <ul style="list-style-type: none"> A showing of: <ul style="list-style-type: none"> i. the relationship of the proposed project to present and future economic development of the area; ii. the relationship of the proposed project to comprehensive electric utility planning; iii. the relationship of the proposed project to the needs of the public presently served and future projections based on population trends; iv. the relationship of the proposed project to the existing electric utility system and parallel existing utility routes; v. the relationship of the proposed project to any other power system planned for the future; vi. the possible use of alternative routes and methods of supply; vii. the relationship of the proposed project to the present and future land use and zoning ordinances; and viii. the inconvenience or undue injury which may result to property owners as a result 	December 5, 2016

	<p>of the proposed project.</p> <p>c. Based on the foregoing, a determination of the appropriate route for the Project; and</p> <p>d. Clean Line’s eligibility to utilize the right of eminent domain generally (not an actual <i>grant</i> of eminent domain rights, but rather a legal determination of its <i>eligibility</i> to utilize the same if necessary).</p>	
13	Hearing is recessed pending outcome of Order	TBD
14	Post-hearing briefing schedule	TBD
15	Board issues Order on the issues described in Item 12 above	TBD
16	<p>If the issues described in Item 12 are decided in favor of Clean Line, then Clean Line will proceed to complete voluntary right-of-way acquisition.</p> <p>If the Board finds against Clean Line on the issues described in Item 12, then the proceeding would be concluded without further evidence being submitted.</p>	Clean Line given latitude to determine length of time necessary to complete right-of-way acquisition with goal of obtaining as many easements as possible through voluntary negotiations
17	[Phase two, if necessary] Clean Line files report on right-of-way acquisition and complete Exhibit E documents for parcels over which eminent domain is to be requested.	TBD
18	Clean Line files testimony on Exhibit E parcels	15 days after filing of report
19	Landowner and OCA testimony is filed	30 days after Clean Line Testimony is filed
20	Clean Line reply testimony is filed	20 days after Landowner and OCA testimony
21	<p>The hearing is resumed to consider parcel-specific eminent domain requests and determination of the following issues (including whether to actually <i>grant</i> eminent domain rights with respect to specific parcels):</p> <p>a. Has Clean Line made a good faith effort to negotiate for the acquisition of the required easements;</p> <p>b. Are the easement rights requested by Clean Line necessary and reasonable, consistent with the purpose and requirements of the Project;</p> <p>c. Is the easement area itself necessary for public use (i.e. is it consistent with the route previously approved in the first phase and therefore necessary</p>	Commence hearing approximately 2 weeks following the filing of the reply testimony

	<p>for the Project);</p> <p>d. Has Clean Line properly identified all the parties who have an interest in the eminent domain parcel and provided the required notice;</p> <p>e. Is the eminent domain parcel and the easement properly described; and</p> <p>f. Are there any parcel-specific siting concerns or parcel-specific construction related issues that need to be addressed.</p>	
22	Post-hearing briefing, if required	TBD
23	Board issues Order on the issues described in Item 21 above	TBD

III. Legal and Factual Support for Proposed Procedural Schedule

The Board has the power to adopt the procedural schedule proposed herein by Clean Line. The schedule described above contemplates consideration of the franchise-related issues (as set forth in Iowa Code §478.3 and §478.4) prior to consideration of the parcel-specific eminent domain issues (as set forth in Iowa Code §478.6 and §478.15). The Board has broad discretion to implement its authority and determine the manner in which it is going to carry out its duties. Iowa Code 476.2 (2015). Further, the Board has the authority to adopt all needful, just and reasonable rules to govern the exercise of its powers, its duties, and the practice and procedure before it. *Id.* The Board has previously concluded that it has the legal authority to sever the issues in a proceeding for good cause shown.²

In this Motion, Clean Line asks the Board to freshly consider whether the proposed procedural schedule—which splits a single proceeding into two distinct phases—brings benefits to the parties

² Order Denying Motion to Bifurcate issued November 26, 2013 at page 11 and Order Denying Motion to Consider Eminent Domain Issue in a Separate Hearing issued February 13, 2015 at page 11. Further, Clean Line notes that the Board has statutory authority to separate the issues pursuant to Iowa Code 474.3 under the heading “Proceedings” and 199 I.A.C. 7.14(2) under the heading “Severance”. Specifically, the Board has broad discretion to separate the issues as “[t]he utilities board may in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice.” Iowa Code 474.3; and [t]he board or presiding officer may order any contested case or portions thereof severed for *good cause*.” (Emphasis added). Further, General Counsel for the Board has previously opined that he has “found no statute or other provision of law that prohibits the agency from dividing the issues in an electric transmission line franchise proceeding into separate hearings when it is just and reasonable to do so.” A copy of said letter was attached as Exhibit A to Clean Line’s original Motion to Bifurcate filed October 15, 2013, and is therefore on file in each of these Dockets.

in the case, to the landowners affected by the proposed Project, and to the public generally. Clean Line's proposed procedural schedule conveys these benefits for the reasons described below.

A. The proposed procedural schedule benefits all parties by providing clarity about which issues will be addressed in which phase of the proceeding.

Clean Line understands that a procedural schedule must provide clarity to all affected parties about which issues will be addressed at which time in the case.³ Clean Line's proposed procedural schedule provides this clarity. If the Board approves this schedule, Clean Line will send a copy of the Order setting forth the procedural schedule to all landowners on the proposed route and any other individual or entity the Board deems appropriate or advisable. Clean Line's proposed schedule includes a further Official Notice to all parties, as referenced in Item 5 of the schedule in Section II, above. The Official Notice will include a proposed hearing date and explanation of intended issues to be covered during each phase of the proceeding. It will also make clear that the Board will first rule on the Franchise-related issues, then, if necessary, recess the hearing until Clean Line makes its final, parcel-specific eminent domain requests. The Official Notice will state that the Board will rule on these parcel-specific requests in a second phase of the proceeding.⁴ As noted in Section II above, the issues to be determined in each phase of the proceeding are as follows:

1. First Phase of the Proceeding:

³ The Board has expressed concern that Clean Line's previous procedural proposals did not make clear to landowners how eminent domain would be considered in a "bifurcated" proceeding. Order Denying Motion to Consider Eminent Domain Issue in a Separate Hearing issued February 13, 2015 at pages 13-14. The present Motion clarifies that the determination as to Clean Line's eligibility to utilize the right of eminent domain generally would be decided in the first phase, while the second phase would decide the parcel-specific issues about whether Clean Line has met the necessary elements to use eminent domain on a specific parcel.

⁴ Clean Line acknowledges that Board Rule 199 IAC 11.2(1)"e" provides that the Exhibit E documents shall be in final form prior to issuance of this Official Notice. In the contemplated two phase proceeding, the Exhibit E documents will not be in final form prior to the first phase, but will be finalized prior to the second phase. It is certainly contemplated that a subsequent notice to landowners and affected parties will precede the second phase. The Board has the authority to waive any provision of its rules in response to a request or on its own motion. 199 IAC 1.3. To the extent a waiver of the provisions of 199 IAC 11.2(1)"e" is deemed necessary prior to issuance of the Official Notice, Clean Line will submit such a request following the ruling on this Motion to Establish Procedural Schedule. In the alternative, the Board may issue a waiver as part of its Order on this Motion. The requirement of the rule is not statutory and therefore may be waived by the Board.

- a. Is the line necessary to serve a public use;
- b. Does the line represent a reasonable relationship to an overall plan of transmitting electricity in the public interest;
A showing of:
 - i. the relationship of the proposed project to present and future economic development of the area;
 - ii. the relationship of the proposed project to comprehensive electric utility planning;
 - iii. the relationship of the proposed project to the needs of the public presently served and future projections based on population trends;
 - iv. the relationship of the proposed project to the existing electric utility system and parallel existing utility routes;
 - v. the relationship of the proposed project to any other power system planned for the future;
 - vi. the possible use of alternative routes and methods of supply;
 - vii. the relationship of the proposed project to the present and future land use and zoning ordinances; and
 - viii. the inconvenience or undue injury which may result to property owners as a result of the proposed project.
- c. Based on the foregoing, a determination of the appropriate route for the proposed Project; and
- d. Clean Line's eligibility to utilize the right of eminent domain generally (not an actual *grant* of eminent domain rights, but rather a legal determination of Clean Line's *eligibility* to utilize the same if necessary).

2. Second Phase of the Proceeding:

- a. Has Clean Line made a good faith effort to negotiate for the acquisition of the required easements;
- b. Are the easement rights requested by Clean Line necessary and reasonable, consistent with the purpose and requirements of the Project;
- c. Is the easement area itself necessary for public use (i.e. is it consistent with the route previously approved in the first phase and therefore necessary for the Project);
- d. Has Clean Line properly identified all the parties who have an interest in the eminent domain parcel and provided the required notice;
- e. Is the eminent domain parcel and the easement properly described; and
- f. Are there any parcel-specific siting or parcel-specific construction issues that need to be addressed.

In the first phase of the proceeding, the Board will make a determination of the "public use" of the line, as referenced in subsection 1(a) above. Further, the Board will determine whether the proposed line meets the "public interest" criterion referenced in subsection 1(b) above. The Board will also determine the appropriate route of the Project, as referenced in subsection 1(c) above. The route that is approved will (1) include the beginning and ending points, (2) define which sections of

the route are located on public right-of-way and which sections are located on private right-of-way, and (3) indicate which side of existing infrastructure the line will be located in those instances where the Project parallels a road or railroad. (See, 199 IAC 11.2(1)a and 11.2(1)b(1)). Finally, as set forth in subsection 1(d) above, the Board will determine Clean Line's eligibility to utilize the right of eminent domain generally (not an actual *grant* of eminent domain rights, but rather a legal determination of Clean Line's *eligibility* to utilize the same if necessary). Because these matters concern the Project as a whole and its basic viability, the issues described above for the first phase of the proceeding will be of interest to a large number of parties to the proceeding.

In the first phase, however, the Board will not make any precise determinations regarding parcel-specific siting concerns, parcel-specific construction issues, or easement rights. These determinations will be reserved for the second phase of the proceeding, if necessary. Even in the second phase of the proceeding, the Board would only need to address these issues where Clean Line and the landowner cannot reach voluntary agreement. The second phase, if necessary, will only concern parcel-specific issues; therefore, the second phase will involve a much smaller number of interested parties.

In the second phase, Clean Line will present the evidence necessary for the Board to decide parcel-specific eminent domain issues, as described in the Board rules. For each parcel over which Clean Line is ultimately required to request eminent domain, Clean Line will present a legal description of the landowner's property, a legal description of the desired easement area and a specific description of the easement rights being sought under the proposed easement, as referenced in subsection 2(e) above. (199 IAC 11.2(1)e). Clean Line will also present to the Board the names and addresses of all persons who have an ownership interest in the applicable eminent domain parcel (including tenants) and present evidence that these parties have received the required notice from Clean Line, as referenced in subsection 2(d) above. The Board will review the adequacy of

Clean Line's efforts to acquire each parcel through voluntary negotiations, as referenced in subsection 2(a) above. Further, the Board will review whether the easement rights requested by Clean Line are consistent with (1) the purpose and requirements of the Project, and (2) the route approved in the first phase of the proceeding, as referenced in subsections 2(b) and 2(c), respectively. Clean Line will also provide a map showing the boundaries of the eminent domain parcel, the location of all electric supply lines and supports within the parcel, the location of and distance to any building within 100 feet of the proposed electric line, and any other features pertinent to the location of the line and its supports or to the rights being sought. (199 IAC 11.2(1)e(5)). The exact support or pole locations would not need to be identified in the first phase of the proceeding, leaving flexibility for individual negotiations on these and other parcel-specific issues between the first and second phases of the proceeding. Other examples of items that could be negotiated and only determined in the second phase, if necessary, would include parcel-specific siting concerns such as which side of a fence line a support structure is to be located, as well as parcel-specific construction related issues, such as construction access rights and special construction techniques that might apply to a specific parcel, as referenced in subsection 2(f) above. Clean Line would endeavor to address all of these issues with individual landowners in voluntary negotiations between the first phase and the second phase of the proceeding, and thereby save the Board from having to address as many of these issues as possible.

As evident from the descriptions above, the legal and factual issues to be determined in each phase of the proceeding are fundamentally distinct. In the first phase, the Board will review the proposed Project as a whole, determine whether the Project serves a public use and is in the public interest, determine the general route for the Project, and determine the eligibility of Clean Line to utilize the right of eminent domain generally (not an actual *grant* of eminent domain rights, but rather a legal determination of its *eligibility* to utilize the same if necessary). All parties will be able

to present evidence related to the need for the line and the proposed routing of the line. Following the first phase, Clean Line would set out to acquire the remaining easements needed on the route that was approved in the first phase. If any easements are unable to be acquired voluntarily, then in the second phase the Board will decide a much narrower set of issues around easements on individual parcels. The parties in this second phase will likely be limited to Clean Line and the owners of the specific parcels for which Clean Line is requesting eminent domain.

While many parties will have no need to participate in the second phase of the proceeding, nothing precludes a landowner from participating in both phases. A landowner may participate in the first phase to suggest alternative routing that does not impact his or her property or to dispute the necessity of the Project to serve a public use. If unsuccessful in the first phase in changing the general route for the line, the same landowner will retain a full and fair opportunity in the second phase of the proceeding to litigate parcel-specific siting concerns, such as the exact width of the right-of-way necessary, the location of the supports or poles, the tree trimming rights of the easement holder, and the restrictions on the landowners' use of the easement right-of-way area. Clean Line's proposed procedural schedule makes it very clear to such a landowner when he or she may participate in the two phases of the proceeding.

B. The proposed procedural schedule promotes administrative efficiency and the convenience the public and the parties in these Dockets.

As described above, the first phase of the proceeding will address the findings the Board must make about the Project as a whole in order for the Project to proceed. A large majority of the intervenors will likely wish to participate solely in the first phase of the proceeding. The second phase of the proceeding will only concern parcel-specific issues and therefore will likely include a much smaller number of intervenors. While not all individuals or entities that have filed an objection or letter of support will apply to formally intervene in the proceeding, Clean Line notes

that a majority of the filings that have been made to date have been made by individuals or entities that are not landowners along Clean Line's proposed route for the Project. Thus, a majority of interested participants will likely only be interested in the outcome of the first phase of the proceeding, and they will not need to participate in the testimony and hearings concerning the issues to be decided in the second phase of the proceeding. For the reasons previously noted by the Board, it will promote administrative efficiency to allow this larger number of interested participants to participate only in the first phase of the proceeding. The separation of the proceeding into two phases, however, would not preclude any landowner from participating in both phases of the proceeding if he or she wishes to do so.

Clean Line anticipates that the number of potential landowners that would attend the hearings for both phases is very small compared to the number of interested participants with an interest only in the first phase of the proceeding, which includes those who are not landowners along the route (including both supporters and those who have filed an objection registering some concern about the Project as a whole). Therefore, the procedural schedule recommended by Clean Line will convenience many more participants than it might potentially inconvenience.

Further, a number landowners wish to have clarity on the Board's decision about the Project in general before negotiating a parcel-specific easement. Specifically, from and after the first phase of the proceeding, landowners would have the benefit of the Board's decision on whether: (1) the proposed line is necessary to serve a public use; (2) the proposed line meets the public interest criterion referenced in Item 12(b) in the procedural schedule, (3) the general route has been approved; and (4) Clean Line is eligible to utilize the right of eminent domain generally. During Clean Line's initial right-of-way acquisition efforts, numerous landowners along the Project's proposed route indicated to Clean Line that they do not wish to negotiate easements until the Board

has decided on the need for the Project and the Project's route. This is not an uncommon landowner response when a project of this magnitude is proposed.

In this regard, the Board's recent experience with the Dakota Access case is relevant and instructive. Like these Dockets, the Dakota Access case is a complex case involving a long-distance infrastructure project requiring easements from many landowners, some of whom have questioned whether the project is in the public interest and some of whom have questioned the eligibility of the petitioner to utilize the right of eminent domain generally. The Dakota Access case demonstrates that a procedural schedule that simultaneously considers the general questions of public interest and need, in addition to parcel-specific issues, leads to difficulties for affected landowners, administrative inefficiency and increased litigation.

A group of landowners along the Dakota Access route felt so strongly about wanting to have more information before negotiating an easement that they commenced an action in District Court. The group sought clarity from the Court as to whether the pipeline developer was eligible to request eminent domain prior to the Board's decision related to other issues in the Dakota Access case. (See, Richard R. Lamb Rev. Trust, et al. v. Iowa Utilities Board, Iowa District Court for Cherokee County, Case No. CVCV024420 (Ruling on Respondent and Intervener's Joint Motion to Dismiss issued October 20, 2015)). Though the landowner group was not ultimately successful in their suit, their request for Declaratory Judgment demonstrates that some landowners would prefer the Board decide certain threshold issues about a project as whole (such as the Petitioner's legal right to request eminent domain) earlier in the Board's process before more time and resources are invested in easement negotiation and litigating more parcel-specific issues.

The Iowa State University of Science and Technology also owns land that is proposed to be traversed by the Dakota Access pipeline's proposed route. On November 5, 2015, the University filed a Response in the Dakota Access case after it had received the Notices of Eminent Domain

Proceedings. This Response indicated that the University is willing to defer to the Board to determine whether a permit should be granted for the proposed pipeline since the Iowa General Assembly authorized the Board to make such determinations and the Board will have more information about the pipeline through the petition, objections, and any testimony at hearing. (University Response at paragraph 4). The University indicated that it was willing to negotiate a voluntary easement, but only after the Board made the preliminary determination on whether or not a permit should be issued. (University Response at paragraph 4).

In the pleadings described above, Iowa State University and the Richard R. Lamb trust presented similar concerns as have been expressed by a number of landowners along Clean Line's route. These landowners prefer that the Board decide on the route, the franchise and the eligibility of Clean Line to utilize the right of eminent domain generally before beginning easement negotiations with Clean Line. Clean Line's proposed procedural schedule provides this opportunity and clarity. Further, Clean Line's proposed procedural schedule promotes administrative efficiency by reducing litigation and filings, such as the ones Iowa State University and Richard R. Lamb trust made in the Dakota Access case, and reducing the Board's need to respond to such litigation and filings.

C. The proposed procedural schedule assures that landowners involved in the Project receive fair compensation.

Clean Line remains committed to compensating landowners fairly throughout its proposed procedural schedule. Clean Line has put forward a market-leading and equitable landowner compensation package consisting of (1) an easement payment equal to 90% of the fair market, fee value of the land (in return for a limited easement that allows the continued use of the underlying land), (2) an upfront or annual payment, at the landowner's election, for each structure located on the landowner's property and (3) crop and other damages. Clean Line will not decrease this offer if

the Board decides favorably for the Project in the first phase of the proceeding.⁵ To formalize this commitment, Clean Line recommends that the Board impose a condition in its order to Clean Line at the conclusion of the first phase of the proposed procedural schedule. The condition will require Clean Line to maintain the same voluntary right-of-way offer structure to all landowners who at that point had not yet signed an easement. Such a condition assures that Clean Line will honor its commitment to pay landowners fairly, regardless of whether the Board determines Clean Line is eligible to utilize the right of eminent domain generally.

D. The proposed procedural schedule would reduce the need to use eminent domain authority in connection with the Project.

Clean Line's proposed procedural schedule will reduce the number of Exhibit E filings in these Dockets and the number of condemnation disputes that the Board would need to adjudicate. Splitting the franchise-related issues from parcel-specific issues will allow Clean Line and landowners more time to negotiate voluntarily before any eminent domain proceedings are initiated. This additional time can be used to address landowner concerns about compensation, parcel-specific siting, and easement terms, thereby increasing the likelihood of voluntary acquisition.

Further, as described above, clarity from the Board about issues concerning the Project as a whole, including the route, will provide both Clean Line and landowners with more information to negotiate easements. Knowing the route in particular will facilitate voluntary easement acquisition. For example, if a landowner is focused on suggesting an alternative route in a Board proceeding, he or she would naturally be less inclined to negotiate an easement voluntarily on Clean Line's proposed route. However, if the route is already decided by the

⁵ The condition described in this paragraph is offered in response to the Board's previously stated concern that the grant of the franchise could grant Clean Line "an improved negotiating position with respect to landowners." Order Denying Motion to Consider Eminent Domain Issue in a Separate Hearing issued February 13, 2015 at page 11.

Board in the first phase of Clean Line's proposed schedule, then Clean Line and the landowner can focus on negotiating an acceptable easement along the Board-approved route, rather than advocating for different and conflicting routes. Similarly, if a landowner wishes to oppose the Project on the basis of public use or public interest, he or she may be less likely to sign an easement voluntarily for fear it would undermine his or her opposition to the Project as a whole. If, however, the necessity of the Project to serve a public use is decided in the first phase of Clean Line's proposed schedule, the same landowner would likely be more willing to evaluate Clean Line's right-of-way offer on a financial basis rather than as a matter of public policy. Finally, some landowners, like the previously cited example of Iowa State University in the Dakota Access case, do not oppose granting an easement to an infrastructure project that the Board has determined to be necessary to serve a public use and in the public interest, but they do not wish to invest time and resources negotiating an easement for a project prior to the approval of the same. If the Dakota Access case had adopted a procedural schedule similar to the one described in this Motion, then Dakota Access would never have needed to file an eminent domain exhibit with respect to Iowa State University's property. Instead, Dakota Access and Iowa State University could have negotiated a mutually acceptable, voluntary easement. As compared to a single proceeding with no separation of issues, Clean Line's proposed procedural schedule provides more time for, and more information to inform, voluntary easement acquisition. More time and more information will reduce the number of Exhibit E filings and ultimately reduce the use of eminent domain authority, should the Board grant such authority to Clean Line.

E. The proposed procedural schedule is consistent with the transmission line approval processes in other states.

Clean Line's proposed procedural schedule (where the approval of the route and the Project are decided prior to the initiation of parcel-specific eminent domain proceedings) is not unique or new, and is in fact consistent with the process followed in many other states. Specifically, the Project extends from Iowa into Illinois. In Illinois, the Illinois Commerce Commission has already found that the Rock Island project is in the public interest and has approved the route.⁶ Clean Line is now responsible for acquiring right-of-way for the Project in Illinois. If Clean line is unsuccessful in obtaining all required right-of-way voluntarily, it may submit to the Illinois Commerce Commission a separate, joint request under §8-503 of the PUA (220 ILCS 5/8-503), seeking the authority to construct, and §8-509 of the PUA (220 ILCS 5/8-509), seeking condemnation authority. The separation of such proceeding is typical in other states, including other states where Clean Line Energy Partners is currently pursuing (or has received) approval of its transmission line projects, such as Oklahoma, Kansas, Indiana, and Tennessee. In all of these states, the separation of issues has led to efficient proceedings in which the focus could be on the route and the project as a whole. Without the simultaneous need to litigate parcel-specific issues on eminent domain, such as compensation, structure locations and specific easement rights, the parties could focus on the threshold issues regarding whether the proposed transmission line could proceed.

⁶ Order, Docket No. 12-0560, *Petition for an Order granting Rock Island Clean Line LLC a Certificate of Public Convenience and Necessity pursuant to Section 8-406 of the Public Utilities Act as a Transmission Public Utility and to Construct, Operate and Maintain an Electric Transmission Line and Authorizing and Directing Rock Island pursuant to Section 8-503 of the Public Utilities Act to Construct an Electric Transmission Line.*

IV. Conclusion.

Clean Line has shown good cause for establishing a procedural schedule as described herein. The nature and complexity of this Project requires a procedural schedule different from the historic norm in Iowa. This procedural schedule is clearly permissible by law and it serves the public interest. Allowing the parcel-specific eminent domain issues to be addressed after the Board has decided threshold issues related to the Project as a whole affords stakeholders and interested parties greater convenience in their participation and promotes efficient administration of the proceeding.

The Board's approval of this Motion will ensure Iowa has the opportunity to realize the public benefits of expanding Iowa's wind energy generation to meet the country's growing demand for low-cost wind energy. Iowa has a legislated policy goal to "encourage the development of alternate energy production facilities" and to encourage "the development of transmission capacity to export wind power." See Iowa Code Sections 476.41 and 476.53A. Iowa code also provides clear preference to projects benefiting the public that are cost-effective, signaling a concern for impacts to ratepayers. See Iowa Code Section 476.53(2)"a". The Rock Island Clean Line Project is the only significant electric transmission line project proposed to the Board that achieves Iowa's statutory goals with respect to wind energy without imposing any cost to Iowa ratepayers. The procedural schedule proposed in this motion, or something similar to it, is essential for the Project to proceed.

WHEREFORE, Clean Line respectfully moves the Board to enter an order establishing a procedural schedule as proposed by Clean Line, which includes two separate phases - the first addressing whether the line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest, the general route of the line, the issuance of the franchise, and Clean Line's eligibility to utilize the right of eminent

domain generally, and the second, if necessary, addressing the parcel-specific eminent domain issues and parcel-specific siting considerations as described herein.

Respectfully submitted

SULLIVAN & WARD, P.C.

/s/

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ATTORNEYS FOR ROCK ISLAND CLEAN
LINE LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of the rules of the Iowa utilities board.

Dated at West Des Moines, Iowa this 30th day of November, 2015.

By : _____/s/_____
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