

October 15, 2013

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

IOWA UTILITIES BOARD

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IN RE: :  
: DOCKET NOS. E-22123,  
ROCK ISLAND CLEAN LINE LLC : 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 BIFURCATE**

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Rock Island Clean Line LLC (“Clean Line” or “Company”), by and through undersigned counsel, hereby requests that the Board issue an Order directing that the procedure to be followed in these Dockets allow for the issue of the grant of a franchise and the issue of the grant of eminent domain, if requested, to be bifurcated as described herein, and in support of its Motion to Bifurcate states as follows:

**I. Introduction and Background**

1. Iowa, and northwest Iowa in particular, has one of the most abundant wind resources in the United States. This wind resource is capable of providing power to millions of people across Iowa and elsewhere around the country. However, the electric transmission infrastructure does not exist to allow the state to capture the full benefit of its wind resources; there is not enough transmission capacity to transfer the power to the market.

The Iowa Legislature has recognized this need and has adopted Chapter 476.41 of the Iowa Code which provides in part that "it is the policy of the this state to encourage the development of alternate energy production facilities...". In furtherance of this policy, Chapter 476.53A states in part that "it is also the intent of the general assembly to encourage...the development of transmission capacity to export wind power generated in Iowa." The project proposed by Clean Line is certainly consistent with these stated Legislative goals.

2. Exporting Iowa's wind resource will require a multi-billion dollar transmission investment. Clean Line is developing the Rock Island Clean Line, an approximately 500-mile, overhead High Voltage Direct Current ("HVDC") transmission line, to connect the renewable resources in northwest Iowa and the surrounding region with communities in Illinois and in other states to the east (the "Project"). The Project will make possible more than 3,500 megawatts ("MW") of new wind energy projects that could not otherwise be built due to the limitations of the existing electric transmission grid. These new wind energy projects will result in billions of dollars of investment in the state of Iowa, hundreds of permanent high-skilled jobs for Iowans, and cleaner air and water for the region.

3. Pursuant to Iowa Code Chapter 478 and Iowa Administrative Code Chapter 11, Clean Line intends to file with the Iowa Utilities Board ("Board") petitions for franchises that, if granted, will allow Clean Line to construct and operate the Project. Public informational meetings were held in O'Brien, Clay, Palo Alto, Kossuth, Hancock and Wright Counties on August 20-22, 2013 and are scheduled for the weeks of November 18 and December 2, 2013 for ten (10) additional counties (Franklin, Butler, Grundy, Black Hawk, Buchanan, Benton, Linn, Jones, Cedar, and Scott). After each round of informational meetings, the Company will be authorized to commence easement negotiations in the specific counties that were the subject of the informational meetings. The Company will also begin work on the Electric Transmission Line Franchise Petitions.

## **II. Identification of the Issue**

4. Iowa Code 478.4 (2013) provides that a hearing must be held in an electric franchise proceeding if objections are filed or when a petition involves the taking of property by eminent domain.

5. As of the filing of this Motion around 85 objections have been filed, some of which purport to relate to all sixteen (16) counties. It is reasonable to assume that a hearing on the franchise petitions will be required.

6. Pursuant to Iowa Code 478.2(4) (2013) a person seeking a franchise shall not negotiate or purchase any easements or other interests in land prior to the informational meeting required by Iowa Code 478.2(2) (2013).

7. Clean Line will exhaust all reasonable efforts to acquire the easements needed for the Project through voluntary negotiations (preferably after the grant of a franchise). Clean Line will not seek eminent domain unless and until extensive voluntary negotiations have failed. However, due to the scale of the Project, it is reasonable to assume that an easement or easements will need to be acquired through the use of eminent domain.

8. As the Board is aware, all franchise petitions must set forth: (a) the informational details of the proposed project (including among other items the name of the company seeking the franchise, route details and construction materials) and, (b) whether eminent domain will be sought and if so, over which parcels. When eminent domain is requested, the Petitioner is required to include with the franchise petition an Exhibit E. Said Exhibit is to include a map of the route showing the location of each property for which the right of eminent domain is sought. 199 IAC 11.2(1) "e". For each such property, the Petitioner must include: (1) the legal description of the property; (2) the legal description of the desired easement; (3) a specific description of the easement rights being sought; (4) the names and addresses of all persons with an ownership interest in the property and of all tenants; and (5) a map drawn to appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of all electric lines and supports within the proposed easement, 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".

9. Notwithstanding the foregoing detailed filing requirements, before the Board can determine the issue of eminent domain, it must first make a determination on the threshold issue of whether a franchise will be granted in the first place. If the Board does not answer in the affirmative on this issue, then the issue of eminent domain becomes moot.

10. The immense scope and commercial structure of the Project make it unreasonable to expect Clean Line to expend the capital and resources needed to acquire a large percentage of the easements for the Project prior to receiving the pertinent regulatory approvals; specifically the franchise approval. The Project consists of an approximately 500-mile transmission line, about 375 miles of which traverse sixteen (16) counties within the State of Iowa, involving an estimated 1,247 private easements from 2,295 individuals or entities. The required capital would be substantial and unwarranted prior to the grant of a franchise. Clean Line is not recovering its development costs through the rate-base and thus has no guarantee of cost recovery. It is not reasonable to expect private development capital, or any source of funding, to spend tens of millions of dollars of at-risk capital on right-of-way prior to obtaining approval of the franchise. A determination otherwise would greatly discourage investment in needed infrastructure in the State of Iowa, which would be inconsistent with the express intent of the Legislature.

That said, Clean Line has commenced negotiations for easements with some landowners in six counties and will do so with landowners in the remaining ten counties after the informational meetings. With no guarantee of cost recovery, Clean Line is doing this to show good faith, to communicate with impacted landowners, and to demonstrate its commitment to compensating landowners fairly.

Since it is unreasonable to expect Clean Line to exhaust all reasonable efforts at voluntary easement negotiations with all landowners along the proposed route prior to the granting of a franchise, it would also be unreasonable for Clean Line to be able to identify those landowners who were not agreeable to a voluntary easement and thus identify the parcels for which condemnation by eminent domain would be sought. Even if these parcels could be identified with precision, it is unreasonable to expect and require Clean Line to develop the detailed Exhibit E documents for each potential eminent domain parcel prior to learning whether or not the Board is inclined to grant the franchise in the first instance.

11. If, however, the cases are bifurcated so that the franchise issue is decided first, and assuming that the IUB decides to grant the franchises, Clean Line would be in a better position to expend the human resources and capital to negotiate as many voluntary easements as it is able, which would, in theory, significantly reduce, or perhaps eliminate altogether, the need for eminent domain. In the absence of bifurcation, Clean Line would likely be forced to seek eminent domain authority with regard to many more parcels at the outset of this proceeding than it would if bifurcation of the issues is granted. Identification of potentially unnecessary parcels as eminent domain parcels at the time of filing the Franchise Petition would be inefficient and would certainly result in protracted proceedings and an enormous record to be dealt with by the Board. As such, bifurcation is the most practical and efficient option.

### **III. Request for Bifurcation of the Franchise Process**

12. Given the scope and economics of the Project, Clean Line requests that the Board bifurcate the Chapter 478 proceeding into two discrete phases. The first phase would resolve the issue of whether the requested franchises should be granted to Clean Line and if so, the terms, conditions, and restrictions as the Board deems just and proper. Iowa Code 478.4 (2013) also permits the Board to order modifications as to location and route as it deems just and proper. The

second phase would resolve any requests for eminent domain necessitated by the status of negotiations following the first phase.

**IV. Given the Scope and Economics of the Project, the Utilities Board Should Allow for the Bifurcation of the Franchise Process**

13. Neither Iowa Code Chapter 478 nor any of the provisions of the Board rules specifically preclude bifurcation as requested by Clean Line. In fact, 199 IAC 7.14(2), specifically allows bifurcation in contested case proceedings. It provides that “[t]he board or presiding officer may order any contested case or portions thereof severed for good cause.”<sup>1</sup> Bifurcation will allow for the most efficient administration of the cases, without resulting in any prejudice to anyone who might become a party to the cases.

14. Clean Line is not aware of any instance where the Board has granted bifurcation of the grant of a franchise and the grant of eminent domain prior to a franchise petition being filed; however, the Board has had occasion to consider these issues separately after a franchise petition was filed. The Board has considered the grant of a franchise and then in a subsequent proceeding adjudicated the issue of eminent domain. See, In Re: Ames Municipal Electric System, Docket Nos. E-21988 and E-21989 (Order Granting Franchises, issued March 27, 2012 and Order Granting Request for Eminent Domain Authority, issued August 14, 2013).<sup>2</sup> This case demonstrates that the

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<sup>1</sup> While 199 IAC 7.14 (2) and the bulk of the Board's Practice and Procedure Rules set forth in 199 IAC Chapter 7 do not apply to electric transmission line hearings under Chapter 478 and 199 IAC Chapter 11, the rule is demonstrative of the Board's ability to sever cases and issues when it deems appropriate.

<sup>2</sup> The grant of Eminent Domain Authority in the Ames case followed a ruling on Judicial review of the Order Granting the Franchise where the District Court said the Board committed no error in granting the franchise to Ames or in the Board's consideration of the record; however, the District Court remanded the case to the Board only for the Board "to consider and provide the extent to which Ames is vested with the power of condemnation to procure property rights sufficient to construct the transmission line in Polk County" See, Ruling on Petition for Judicial Review at p. 17, NDA Farms, LLC and Denise Albaugh v. IUB, Case No. LACV009448, Polk

issues to be determined in granting a franchise and granting eminent domain are discrete and may be bifurcated.<sup>3</sup>

15. For further guidance on this issue, the Board may look to the Courts. Federal courts have addressed the issue of bifurcation regularly and emphasize that the primary consideration is the interest in the efficient administration of justice. For example, in O'Dell v. Hercules Inc., 904 F.2d 1194 (8th Cir. 1990), the Eighth Circuit United States Court of Appeals affirmed a district court decision to bifurcate issues of liability and damages in a suit alleging injury from exposure to toxic chemicals. The plaintiffs did not object to bifurcation, but challenged it on appeal from a defendant's verdict on the issue of liability. The Court of Appeals held that the decision to bifurcate was not an abuse of discretion. In so doing, the court summarized the relevant considerations as follows:

District Courts possess broad discretion to bifurcate issues for purposes of trial under Fed. R. Civ. P. 42(b). In exercising discretion, district courts should consider the preservation of constitutional rights, clarity, judicial economy, the likelihood of inconsistent results and possibilities for confusion. Koch Fuels, Inc. v. Cargo of 13,000 Barrels of No. 2 Oil, 704 F.2d 1038, 1042 (8th Cir. 1083). It has long been established that this court should only reverse a district court's decision to bifurcate on a finding of a clear abuse of discretion. Chicago, Rock Island & Pac. R.R. Co. v. Williams, 245 F.2d 397, 404 (8th Cir.), *cert. denied*, 355 U.S. 855, 78 S.Ct. 83, 2. L.Ed.2d 63 (1957).

This court has held that where the issues in a case are clearly separable, bifurcation is not an abuse of discretion. Beeck v. Aquaslide 'N' Dive Corp., 562 F.2d 537 (8th Cir. 1977).

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County District Court, Ruling issued June 24, 2013. This case demonstrates that these issues may be tried separately and are discrete issues for the Board to consider.

<sup>3</sup> This is also consistent with an opinion previously provided by the Board's General Counsel to the Iowa Legislature. Specifically, by letter dated March 2, 2011 concerning HSB 157 and SSB 1143, which proposed to specifically authorize separate hearings and allow for separate decisions on issues that may arise in an electric transmission line franchise proceeding, the General Counsel states that "I have 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 the referenced letter is attached hereto as Exhibit A.

O'Dell, 904 F.2d at 1201-02 (8th Cir. 1990); see also, Gaffney v. Riverboat Services, 451 F.3d 424, 443-44 (7th Cir. 2006) (affirming decision to bifurcate plaintiffs' retaliation claims from co-defendants' contractual cross-claims); Beeck v. Aquaslide 'N' Dive Corp., 562 F.2d 537, 541-42 (8th Cir. 1977) (affirming decision to bifurcate the question whether defendant was the manufacturer of the allegedly defective product from the issue of damages).

16. The fact that the Dockets at issue here concern franchise and eminent domain authority does not preclude bifurcation of those issues. Bifurcation has been permitted in condemnation cases, separating the issue of ownership of the property from the issue of the compensation to be paid. See United States v. 0.166 Acres of Land, 2012 W.L. 3043159 (E.D. La. 2012).

17. In further support of permissible bifurcation, Chapter 474.3 of the Iowa Code, under the heading of "Proceedings", states that "the 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 Chapter 478, which governs these proceedings, does not compel the franchise and eminent domain issues to be tried together, nor is there any reason to require the issues to be tried together. If Chapter 478 intended to require a single trial for both the franchise and eminent domain issues under all circumstances, there would be no reason for Chapter 478 to provide for separate notices for the franchise request and the eminent domain requests. Compare Iowa Code § 478.5 with § 478.6 (2013)

Further, the findings required to be made by the Board with respect to the franchise are discrete from the finding required to be made by the Board with respect to eminent domain authority. In order to grant a franchise, the Board must find that: (a) the franchise is necessary to serve a public use and (b) that it is reasonably related to an overall plan of transmitting electricity in the public interest. See Iowa Code § 478.4 (2013). In order to grant an entity eminent domain



authority, the Board must find that the specific property over which the entity is seeking eminent domain authority is necessary for the public use for which the franchise was granted.

The Board itself has recognized that the issuance of a franchise and the grant of eminent domain are separate decisions that turn on different findings. In Corn Belt Power Coop, Docket No. E-20972 “Proposed Decision and Order Granting Franchise”, 1992 W.L. 465959 Iowa U.B. Mar. 10, 1992), the Board stated:

Inasmuch as Corn Belt requested to be vested with the power of eminent domain, it carried the burden of persuasion concerning two basic issues in this case. The first and pivotal issue of the case is whether a franchise should be granted to Corn Belt, and if so, whether any kinds of restrictions should be imposed. IOWA CODE §478.4 (1991). Only if Corn Belt has proven that it should receive a franchise would the second issue be reached: whether Corn Belt is entitled to be vested with the right of eminent domain pursuant to IOWA CODE § 478.15 (1991).

....

[Section 478.4] specifies the two conditions that must be met before a franchise can be granted. First, the petitioner must show the proposed transmission line is necessary to service a public use. . . . Second, the petitioner must show that the proposed transmission lines represent a reasonable relationship to an overall plan of transmitting electricity in the public interest.

....

The issue generated by § 478.6 is whether Corn Belt has demonstrated that it should be vested with the power of eminent domain to condemn a right of way easement across Parcels One through Four.

For further evidence of the different issues to be decided, see, Mt. Pleasant Municipal Utilities, 188 P.U.R.4th 357 (Iowa U.B. 1998). In this case, the Board recognized the distinction as follows:

IOWA CODE § 478.4 (1997) provides that before the Board may grant a franchise, it must first make a finding that the proposed transmission lines are necessary to serve a public use. The administrative law judge found Mt. Pleasant satisfied this burden by demonstrating an economic justification for its proposed transmission lines, and that economic justification alone is sufficient to establish the proposed lines are necessary to serve a public use.

....

The Board finds no error in the administrative law judge's conclusion on this issue and affirms the proposed decision.

....

Prior to granting eminent domain, the Board must find that the taking is necessary for public use, it must prescribe the extent of the taking and it must approve the taking. . . .

Mt. Pleasant has secured voluntary easements to construct, erect, maintain, and operate a transmission line over all but four parcels in Henry County. The power of eminent domain may be exercised for the transmission of electric current for distribution to the public inasmuch as this is a public use. . . . *IOWA CODE § 478.15 provides that the public use test [for eminent domain purposes] is met when a taking is necessary to carry out the purpose of the franchise. . . .*

Id. (Emphasis supplied). Mt. Pleasant makes it clear that although “necessity for public use” is a term used in both the franchise and eminent domain portions of Chapter 478, the required findings are totally separate. To grant a franchise, the Board must find that the transmission line is needed to serve the public use in some way; to grant eminent domain, the Board must determine that the precise property in question is necessary to carry out the public use for which the franchise has been granted. As such, it logically follows that the Board cannot consider whether an exercise of eminent domain is necessary to achieve the public use inherent in the franchise unless that franchise is already granted. Therefore, it follows that not only are the franchise and eminent domain issues separate, they must be addressed sequentially with the Board addressing the issue of the franchise before any issue of eminent domain can be addressed. The Iowa Supreme Court in Vittetoe v. Iowa Southern Utilities Co., 255 Iowa 805, 123 N.W.2d 878 (1963) recognized the natural ordering of the franchise and eminent domain process when it stated that "a valid franchise is clearly a prerequisite to any exercise of the right eminent domain" in regard to an electric transmission line. The nature of this sequential process supports Clean Line's request for bifurcation.

**V. The Utility Board Should Allow for the Bifurcation of the Franchise Process, as Separate Hearings will Promote More Efficient Use of the Board's Resources**

18. Not only are the questions of granting a franchise and/or eminent domain separate, they also require separate proof. In Vittetoe v. Iowa Southern Utilities Co., 255 Iowa 805, 123 N.W.2d 878 (1963), decided under Chapter 478's predecessor statute, the Board granted the utility a franchise and eminent domain authority without making a finding concerning the need for the utility to condemn easements across plaintiffs' specific property. On appeal from the Board's decision, the Board argued that a determination of necessity, for the utility, was inherent in its decision to grant the franchise. The Supreme Court, while agreeing that a "necessity for public use" was a determination necessarily made by the Board in deciding to issue the franchise, disagreed that such was the only finding necessary in order to grant the utility the power of eminent domain. The Court stated:

*The disagreement between the parties here is not over the question whether distribution of electric to the public is a public use. Their disagreement relates to whether the particular property sought to be condemned is necessary for the proposed use. "To authorize the condemnation of any particular land by a grantee of the power of eminent domain a necessity must exist for the taking thereof for the proposed use and purposes . . ." 29 C.J.S. Eminent Domain § 90, page 884. See also, Porter v. Iowa State Highway Comm., 241 Iowa 1208, 1216, 44 N.W. 2d 682, 686, and citations.*

Id. 123 N.W.2d at 809-10 (emphasis supplied).

Because the franchise issue and the eminent domain issue in the Chapter 478 proceeding to be filed by Clean Line involve substantially different questions and will not involve overlapping proof, bifurcation of these questions is thus appropriate.

19. Also supporting the ordering of bifurcation of the proceedings, on efficiency grounds, is the fact that bifurcation of the franchise and eminent domain questions will bring clarity and efficiency to the process by informing the parties of the precise issues to be addressed in each

phase of the proceeding. A review of many of the Board's past decisions in these types of cases indicates that many of the parties confuse the required showing of necessity in the franchise context with the required showing of necessity in the eminent domain context. The results are bloated records, lengthy hearings and voluminous orders, on even the simplest cases.

20. Additionally, deciding the franchise question initially, apart from eminent domain, is likely to reduce the number of eminent domain requests that Clean Line may be compelled to pursue. If the first phase of the case is completed and a decision to grant the franchise is made because the Project is in the public interest, Clean Line would have the requisite assurance it needs to proceed and invest additional capital in right-of-way acquisition and would have additional time to voluntarily negotiate and acquire easements from many more landowners, thereby reducing the number of eminent domain requests required, and shortening the eminent domain phase of the case.

#### **VI. Bifurcation of the issues will preserve all parties Due Process rights**

21. Lastly, bifurcation is not likely to prejudice any persons likely to participate in these proceedings, or to interfere with any of their constitutionally-protected rights, as any affected landowners will receive the same notice that they would receive under a non-bifurcated franchise filing.

Under Chapter 478.5 of the Iowa Code and 199 IAC 11.5(2) all citizens of the county are required to receive notice of the proposed line through publication. This notice is to be published after the filing of the franchise petition with the Board. Additionally, under 199 IAC 11.5, the petitioner is required to serve notice of the filing of the franchise petition in writing to the record landowners and parties in possession of the lands over which easements have not been obtained by mail not later than the first day of publication of the official notice. It would be at this point that the landowners and parties in possession would be noticed and could file their objections and be heard on the necessity of the franchise, should they be so inclined. As such, the above notice process,

would remain unaffected by bifurcation. The Board shall prepare and prescribe the form of this notice and it could include language clearly delineating the two separate proceedings. See, 199 IAC 11.5(2)"a" (2013).

Similarly, should a hearing on eminent domain be necessary, Chapter 478.6 of the Iowa Code and 199 IAC 11.5(3) require that landowners of record and parties in possession of land over which a voluntary easement was not obtained, be provided notice of hearing in a form prescribed by the board and mailed no later than the first day of publication of the hearing concerning the petition. As such, under a scenario in which bifurcation is granted there would be the possibility of two hearings, one regarding the necessity of the franchise and the other regarding the necessity of eminent domain, should a voluntary easement(s) be unattainable for a parcel(s). Under this scenario, the Due Process rights of those landowners and parties in possession being noticed regarding an eminent domain hearing will not be diminished in any way, as those receiving notice of the eminent domain hearing would actually be receiving an additional notice, as they would have previously received notice of the hearing regarding the franchise. See 199 IAC 11.5(2) (2013) (requiring those landowners and parties in possession of lands over which easements have not been obtained to receive written notice of the franchise petition no later than the first day of publication of the official notice). The notice requirements would not change, but rather the landowners and parties in possession would be noticed regarding two separate hearings, the first one regarding the necessity of the franchise and the second, only if necessary, regarding necessity of eminent domain. The form of both notices would be prescribed by the Board and the Board could certainly clarify the nature and extent of each proceeding.

It is further contemplated that those, if any, receiving notice of any eminent domain hearing would be significantly fewer than those receiving notice under 11.5(2), as it is anticipated that

voluntary easement agreements can be worked out with the bulk of landowners and parties in possession affected by the line.

## **VI. Conclusion**

22. Given the large scope and commercial structure of the project, the fact that an affirmative decision regarding a franchise must be made before the Board can get to the issue of eminent domain, the promotion of the efficient use of the Board's resources and those of the other participants to these proceedings, and the protection of landowners' Due Process rights, the Board should grant Clean Line's Motion to Bifurcate, as bifurcation, in this instance, will best conduce to the proper dispatch of business and the attainment of justice. It will also send a strong signal that the State's regulatory process is flexible enough to attract more infrastructure investment in the State.

WHEREFORE, Clean Line respectfully moves the Board to enter an order bifurcating the Chapter 478 proceeding into two phases, the first addressing the franchise issue and the second addressing the eminent domain issues, to the extent that eminent domain authority is ultimately sought by Clean Line.

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 filed the foregoing document with the Iowa Utilities Board utilizing the Board's Electronic Filing System, and therefore causing the same to be served on all individuals or entities eligible to receive service through said system as required by the rules of Iowa Utilities Board.

In addition, a copy of the foregoing has been mailed by U.S. mail, postage prepaid, to all individuals or entities that are not eligible to be served through the Board's Electronic Filing System, at the addresses shown on the Board's Service List.

Dated: October 15, 2013

By:           /s/ Dennis L. Puckett





GOVERNOR TERRY E. BRANSTAD  
LT. GOVERNOR KIM REYNOLDS

ROBERT B. BERNTSEN, CHAIR  
KRISTA K. TANNER, BOARD MEMBER  
DARRELL HANSON, BOARD MEMBER

March 2, 2011

The Honorable Swati Dandekar  
The Iowa State Senate  
State Capitol  
Des Moines, Iowa 50319

The Honorable Chuck Soderberg  
House of Representatives  
State Capitol  
Des Moines, Iowa 50319

Re: Senate Study Bill 1143 and House Study Bill 157

Dear Senator Dandekar and Representative Soderberg:

I am writing you in connection with House Study Bill 157 and Senate Study Bill 1143, which propose to amend Iowa Code § 478.4 to expressly authorize the Iowa Utilities Board to order separate hearings and issue separate decisions on any issues that may arise in a proceeding to consider whether to issue a franchise for a proposed electric transmission line. I understand that Clean Line Energy Partners, LLC, has asked that this amendment be considered out of a concern that the Board may need this statutory authority to bifurcate hearings in this manner.

It is my conclusion that the Board already has the authority to regulate the course of its hearings in any manner that is necessary or appropriate to the discharge of its duties, so long as the resulting agency action is consistent with the law, including but not limited to the requirement in Iowa Code § 17A.12(4) that all parties must be afforded an opportunity to respond and present evidence on all issues involved. I have found no statute or other provision of law that prohibits the agency from dividing the issues in an

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electric transmission line franchise proceeding into separate hearings when it is just and reasonable to do so.

I hope you find this information helpful.

Sincerely,

David Lynch  
General Counsel

Cc: Sheila K. Tipton  
Paula S. Dierenfeld  
Cary Kottler