STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:	:	**DOCKET NOS. 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**
ROCK ISLAND CLEAN LINE LLC	:	**REPLY TO RESPONSES TO MOTION TO CONSIDER EMINENT DOMAIN ISSUE IN A SEPARATE HEARING**

Rock Island Clean Line LLC ("Clean Line") filed a Motion to Consider Eminent Domain Issue in a Separate Hearing in these Dockets on December 8, 2014 (hereafter the "Motion"). The Iowa Utilities Board ("Board") issued an Order Setting Time to Respond to the Motion on December 16, 2014, indicating that responses to the Motion were to be filed on or before January 8, 2014, and then Replies may be filed on or before January 19, 2015. Responses were filed by the Association of Business and Industry ("ABI"), Mr. James Doorley ("Doorley"), the Preservation of Rural Iowa Alliance ("PRIA"), the Office of Consumer Advocate ("OCA"), Wind on Wires ("WOW"), and Mr. Gordon Koch ("Koch"). Clean Line hereby submits this Reply pursuant to the Order issued December 16, 2014.

Prior to addressing the specific allegations contained in the Responses filed by the various stakeholders, Clean Line notes that there are a number of statements and allegations contained in Clean Line's Motion that were *not* contested in any of the Responses. For example, none of the stakeholders filing responses questioned the Board's authority to consider the eminent domain issue in a separate proceeding. In fact, the OCA acknowledged the Board's authority to separate the issues. As stated in Clean Line's Motion, it is clear that Iowa Code §474.3 permits the Board to

"conduct its proceedings . . . in such manner as will best conduce to the proper dispatch of business and the attainment of justice" and 199 IAC 7.14(2) provides that the "Board or presiding officer may order any contested case or portions thereof severed for good cause." Further, none of the stakeholders contested the many benefits that would accrue to Clean Line and those who support the Rock Island Clean Line Project ("Project") from a separation of the issues.

Clean Line also notes that while PRIA argues that certain facts and circumstances remain the same as they were when Clean Line filed a Motion to Bifurcate on October 15, 2013 ("Original Pleading"), it is undeniable that: (a) this Motion is being filed after the Franchise Petitions have been filed and all required Public Informational Meetings have been completed; (b) Clean Line has acquired numerous easements and expended significant capital since the Original Pleading; (c) the number of individuals or entities that have filed either an objection or letter of support has grown exponentially since the Original Pleading; and (d) Clean Line has notified all potentially affected landowners and those participating in the Dockets through the Board's electronic filing system (EFS) of the filing of the Franchise Petitions and has notified all potentially affected landowners and all individuals or entities on the service lists for each of the Dockets, either by mail or through the EFS, of the instant Motion. As stated in Clean Line's Motion, all of these changes warrant revisiting the matter and support a separation of the issues.

While Mr. Doorley, Mr. Koch, and PRIA object to and resist the granting of Clean Line's Motion, the OCA only raises concerns and asks the Board to ensure members of the public and interested parties have sufficient notice and guidance about the appropriate hearing in which to properly raise their concerns. Clean Line notes that the OCA had previously filed a Resistance to Clean Line's original request but has not done so this time. Both ABI and WOW support the granting of Clean Line's Motion. Replies and comments on each of the Responses follow:

A. <u>Reply to Mr. Doorley</u>.

Mr. Doorley notes in his Response that his Docket is E-22131 (Grundy County). Mr. Doorley filed an objection to the grant of Clean Line's franchise Petition in said Docket on November 19, 2013. Mr. Doorley resides in Iowa City and states that he has an ownership interest in property in the West Half of the Southeast Quarter of Section 15-88-15. As reflected in the Franchise Petition filed in Docket E-22131 on November 6, 2014, the proposed transmission line route runs along the centerline of said section 15 from north to south. The route would appear to run along the western edge of Mr. Doorley's property. In his November 19, 2013 objection, he suggested that the route be modified by shifting the line to the west, running through the middle of an adjacent property owner's land.

Mr. Doorley urges the Board to reject Clean Line's Motion and suggests that the Board should "not feel an obligation to subsidize Clean Line's construction expenses by changing the franchise process, and thereby allowing them to possibly intimidate 1300 landowners." (Doorley Response at p. 1). He also makes the unsupported allegation that "Clean Line is seeking approval of this Motion so they could use possible Project approval to finally intimidate and frighten those landowners who have been reluctant to sign easements." (Doorley Response at p. 2). Contrary to Mr. Doorley's suggestion, Clean Line is not asking the Board or any other party to subsidize its development or construction expenses. Clean Line is responsible for all of its expenses. Further, Clean Line's motivation behind the filing of this Motion is not for the purpose of attempting to intimidate landowners, but *rather is based on the belief that all parties in the easement negotiations will benefit from the presence of clear factual information*, and that the Board's determination on the Project and the route is a crucial piece of information for both parties that would be available in the easement negotiations in a two hearing process but unavailable in a one hearing process. The specific facts of this case as provided in Clean Line's Motion are highly relevant here:

> Many of the objections that have been filed, however, worded in various fashions, are based on the concern that the Project is serving regional needs (rather than exclusively serving Iowa electric consumers) or are based on a misunderstanding of the benefits of the shipper-funded business model ("no eminent domain for private gain"). The interstate nature of the Project and the shipper-funded business model both significantly distinguish this Project from other recent electric transmission projects in Iowa. (Motion at paragraph. 27)

Given the prominence of these specific issues in this specific case for many objectors, the Board has a superior opportunity to provide useful information to the parties involved in easement negotiations in a timely fashion by utilizing a two hearing process rather than a single hearing process. If the Franchise is not issued in the first hearing, then the subsequent easement negotiations and potential eminent domain request would be unnecessary. If the Franchise is granted in the first hearing, then both the landowner and Clean Line will be in a more informed position in which to negotiate easements, as the parties will know that the Project has met the required showing of being necessary to serve a public use and that the route has been approved.

Mr. Doorley also accuses Clean Line of attempting to change the rules in the middle of the process (Doorley Response at p. 1). Mr. Doorley's characterization of Clean Line's Motion as an attempt to change the rules in the middle of the process is without support and demonstrably incorrect. Clean Line is not requesting that the Board modify or change any of its administrative rules; the separation of issues is clearly permitted within the existing rules. While Clean Line recognizes that the separation of the eminent domain issue from the grant of the Franchise is not customary, it is not outside the scope of the Board's current authority. Further, Clean Line is not seeking a change "in the middle of the process." On the contrary, Clean Line has from the outset made known its intent and desire to separate these issues in the same manner as it is done in many other states. As reflected in Clean Line's Original Pleading, the Board's General Counsel was consulted on this issue more than three and a half years prior to the filing of Clean Line's Franchise Petitions and opined that there was no statute or other provision of law that prohibited an agency

from dividing the issues in an electric transmission line franchise proceeding into separate hearings when it is just and reasonable to do so. (See Exhibit A attached to Clean Line's Original Pleading). Further, Clean Line filed the Original Pleading, in which it requested that the proceedings be separated, approximately one year prior to filing its Franchise Petitions and is again seeking separation of the issues early in the process following the filing of the Franchise Petitions.

Mr. Doorley notes the provisions of Iowa Code §§ 476.41 and 476.53A in his Response, and he implies without support that the legislature did not intend to support a project like this Project, but rather was attempting to encourage "Iowa Utilities to do more renewable energy and upgrade transmission lines." (Doorley's Response at p.1). The ultimate goal in interpreting a statute is to ascertain and give effect to the legislature's intent, looking to the object to be accomplished and construing the statute so as to best effect, rather than defeat the legislative purpose. *Iowa Federation of labor, AFL-CIO v. Iowa Dept. of Job Service*, 427 N.W.2d 443 (Iowa 1988). The text of the noted statutes provide as follows:

> Iowa Code § 476.41
>
> It is the policy of this state to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use.
>
> Iowa Code § 476.53A
>
> It is the intent of the general assembly to encourage the development of renewable electric power generation. It is also the intent of the general assembly to encourage the use of renewable power to meet local electric needs and the development of transmission capacity *to export* wind power generated in Iowa. (emphasis added)

It would be difficult to argue that the construction of the Project would be inconsistent with either of these legislative directives, as the Project will enable more than 3,500 MW of new wind generation to be constructed and allow Iowa-based wind energy producers to export wind energy to Illinois and states farther east. Mr. Doorley's apparent belief that the legislature was only interested in

encouraging Iowa utilities to build renewable energy for serving Iowa consumers is not supported by the plain reading of the statutes. In fact, since Iowa Code §476.53A explicitly references the *export* of wind generated in Iowa, Mr. Doorley's interpretation would be contrary to the legislative intent.

Mr. Doorley claims Clean Line is utilizing "guilt" as a motivating factor for the Board to approve its Motion. (Doorley Response at p. 1). He notes that Clean Line states the failure to grant the Motion will place a "significant chilling effect on participant-funded transmission projects." Clean Line certainly made this statement, but not for the purpose of attempting to place guilt on the Board. Instead, as also argued by ABI in its Response, an insistence on adherence to a single hearing process in the face of clear evidence of advantages to a two hearing process in terms of administrative efficiency and convenience would discourage other private investors from attempting to develop new infrastructure projects in Iowa. In the words of ABI, adherence to a single hearing process "would be exactly the type of obstructive and unnecessary governmental regulation stifling private investment which ABI seeks to preclude." (ABI Response at p. 2).

Mr. Doorley claims in Section C of his Response that the lack of easements is the "real reason for Clean Line's Motion" and repeats the allegation that Clean Line is seeking a "rule change" as a result of this "financial disaster" (Doorley Response at p. 2), as if the lack of more executed easement agreements is the motivating factor for Clean Line's request to separate the proceedings into two hearings. In fact, it is a matter of record that Clean Line originally requested a separation into a two hearing process prior to the commencement of most easement negotiations, so Clean Line's motivations clearly preceded such negotiations. Further, to the extent that it is relevant, Clean Line now states that the total cost and pace of securing easements has been approximately commensurate with its budget expectations. Moreover, Clean Line will need to negotiate the same number of easements whether the Motion is granted or not; the timing of these

negotiations, however, is highly relevant and will change if the Motion is granted. Clean Line's arguments in favor of a two hearing process are fully described in Clean Line's Motion (and do not need to be repeated here), but Clean Line certainly believes it is much more reasonable for Clean Line to complete easement negotiations and incur much of the substantial at-risk capital investment necessary to do so *after* the Board has ruled on whether or not the Franchises should be issued.

Mr. Doorley (Doorley Response at p. 3) alleges in his Response that most of the landowners who have not signed easements "probably think wind energy is a good idea but are hoping the Iowa Utilities Board will be their champion and either change the route of the Clean Line or reject the project entirely." If one were to assume for the purpose of argument that some landowners share this view, then the separation of the issues as proposed by Clean Line will allow the Board to make the requested decision *before* the landowner negotiates an easement with Clean Line or, if an easement cannot be negotiated voluntarily, grants it survey access so it can prepare the necessary eminent domain documents. Again, if one were to assume that parties who have not signed easements share the view expressed by Mr. Doorley, separation of the issues would be more convenient and appropriate for them for the reasons described in Clean Line's Motion.

Mr. Doorley also describes in his Response (Doorley Response at p. 3) some preferences for a different route than the one selected by Clean Line. The routing of the line was also the subject of the supplemental material filed by Mr. Doorley on January 12, 2015. These issues can be decided at a later hearing and are not relevant at this time in determining whether or not the hearings should be separated. Accordingly, Clean Line will not specifically respond to Mr. Doorley's route proposal in this Reply. Further, Mr. Doorley raises the issue of the potential impact the Project may have on property values in his Response (Doorley Response at p. 3). Like the route issue, valuation impacts are not pertinent to this procedural motion. Clean Line therefore has elected not to respond to Mr. Doorley's allegations regarding value impacts at this time. Such lack of a response should not be

viewed as an admission, but rather is an attempt to keep the focus on the pertinent issue, which is the most efficient and effective way to conduct these proceedings.

B. Reply to PRIA.

PRIA claims in its Resistance that the essential facts and circumstances have not changed since the filing of Clean Line's Original Pleading, and then describes simply the characteristics of the Project (PRIA Resistance at p. 2). It is certainly true that the Project *itself* essentially is the same as it was when the Original Pleading was filed; however, there is no question that the facts and circumstances surrounding the Project have changed. The timing of this Motion in relation to the filing of the Franchise Petitions is different; the extent of easement activity is significantly different; the capital expenditures made by Clean Line are different; the number of objectors and supporters who have made filings with the Board is substantially different; and the notification provided to potentially interested parties is exponentially different. These differences are among the reasons that warrant a different conclusion concerning the propriety of granting the Motion.

PRIA asserts that the due process rights of landowners would be abridged by separate proceedings (PRIA Resistance at p. 2), but the explanation of this argument does not support the assertion. PRIA acknowledges that the first hearing would determine whether a Franchise should be issued and, if so, the route. PRIA notes that the Board could also address other terms, conditions, restrictions of the Franchise or modifications to line location and route. However, PRIA then concludes without support that if the Franchises are granted and a route approved, the affected parcels will have been determined and any landowners or persons objecting to the route across their land will have been denied a full and fair opportunity to contest the entire matter. On the contrary, as described in the Motion and later in this Reply, any landowners who object to the route across their land will have had appropriate notice and a full, fair, and complete opportunity to contest the route in the initial hearing. Further, if the route is determined in the first hearing, there will be no

need to re-litigate or revisit the route in the second hearing that deals solely with eminent domain issues. Clean Line describes in its Motion the issues to be tried in the first hearing and those to be tried in the second hearing.[1] None of the parties responding to the Motion disputed the suggested delineation of issues. There would be no due process concerns, as any party wishing to contest the issues to be decided in each hearing will be given notice prior to each hearing and a full and fair opportunity to contest the issues to be determined in each hearing. Any due process concerns are also addressed by the fact the Board is being asked to make this determination early in the proceedings while the Board staff is continuing to review the Franchise Petitions and Exhibits. There is ample time—months—for interested parties to make sure they understand the manner in which the hearings are to be conducted.

PRIA, like Mr. Doorley with his "intimidation" concern, then raises a concern about an increase in leverage in favor of Clean Line in connection with easement negotiations if the Board were to approve the Franchise and the route prior to Clean Line's completing its easement negotiations (PRIA Resistance at p. 3). As stated in Clean Line's Motion, Clean Line is confident that it will have more success in negotiating easements after the route and Franchise have been approved and that the need for eminent domain applications would thereby be significantly reduced. As stated in response to Mr. Doorley's "intimidation" concern, however, Clean Line believes that the Board's determination on the Project and the route is crucial information that would be available to easement negotiations in a two hearing process but unavailable in a one hearing process, and that all parties in the easement negotiations will benefit from the presence of such clear factual information. Many of the potentially contentious issues that divide the parties in the easement

[1] The first hearing will include 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. This includes a determination of the route. The second hearing, if necessary, will be for the purpose of determining whether or not Clean Line has made a good faith effort to acquire the easements voluntarily; whether the specific easement rights requested are necessary and reasonable; whether the easement area requested is necessary given the previously approved route; whether proper notice has been provided to all parties; and whether the easement area has been properly described.

negotiations will have been determined, and it is only reasonable to assume that a more informed and focused negotiation will follow.

PRIA also alleges that separation of the issues will result in more confusion instead of clarity (PRIA Resistance at p. 3). In support of this allegation, PRIA refers to the text of material distributed at the informational meetings describing the typical sequence of events. Even if one were to assume that a person attending an informational meeting presumed that the description of the "typical sequence of events" (emphasis added) was the process that always would be followed, there is ample opportunity to educate interested parties about a two hearing process through appropriate notice. In fact, all interested parties should already be well aware that a two hearing process is possible since Clean Line notified all landowners and objectors of the filing of its Motion. More importantly, the notices that will be provided for each hearing can be crafted to carefully describe the issues to be determined in each proceeding. Any legitimate concerns about confusion can be reasonably addressed.

PRIA then notes a perceived risk that the change in the typical process will cause affected stakeholders to lose confidence in the process (PRIA Resistance at p. 4). Clean Line disagrees and believes that separating the issues will demonstrate to interested stakeholders that the Board is capable of managing large cases like this in an efficient, effective, and convenient way. As such, it will instill confidence in the process, both for parties within Iowa and for those within or outside the State interested in pursuing large infrastructure projects like the Project that will bring tremendous benefits to the State of Iowa.

PRIA then argues that the persons interested in attending the Board's hearing on the Clean Line application are likely to number in the hundreds. Clean Line does not dispute that there may in fact be hundreds of persons interested in attending the first hearing where the project and route are approved. However, as Clean Line envisions the issues being separated, Clean Line anticipates that

many of those interested persons (like WOW or ABI, or landowners who have negotiated easement agreements by that time) would not have an interest in attending the second proceeding. In the second proceeding, evidence would be offered about: the extent of Clean Line's efforts to negotiate voluntarily with a proposed eminent domain parcel owner; whether or not the easement rights being sought are necessary and reasonable; whether or not all of the persons who have an interest in the eminent domain parcel have been properly identified and noticed; and whether the eminent domain parcel has been properly described. While there may well be hundreds of persons interested in attending the first hearing, such interest is all the more reason to make sure the first hearing is conducted in the most efficient way possible. Including many discrete issues in one unwieldy single hearing that could instead be heard in separate, focused hearings could extend the total hearing process by weeks, inconveniencing all those participating. There may very well be some parties who must attend both hearings, including Clean Line, Board staff, and the presiding officer; however, two focused hearings can undoubtedly be conducted more efficiently and in less time than one cumbersome hearing that includes, for the reasons mentioned in the Motion and this Reply, far more eminent domain parcels than otherwise would be necessary if the proceedings are separated. Any inconvenience to the parties needing to attend both hearings would be less than the overall convenience to all parties resulting from the superior administrative efficiency of the two hearing process presented in the Motion.

PRIA furthermore directly concedes that its goal is an unworkable process rather than an efficient process. In responding to Clean Line's assertion in its Motion “that the Alliance has indicated on numerous occasions that their goal is to create an unworkable and expensive process for the case" (Motion at p. 19), PRIA states that: "This assertion may contain some truth, a fact of which the Alliance will not deny." (PRIA Resistance at p. 5). Accordingly, PRIA's objection to

Clean Line's Motion should be recognized by the Board as being biased toward accomplishing its acknowledged goal of an unworkable process, and evaluated by the Board as such.

Additionally, PRIA does not deny that the two hearing process proposed by Clean Line would potentially avoid unnecessary intrusion on landowners for surveying and other Exhibit E work. However, PRIA claims it and its landowners value a single hearing and its efficiency far more than the potential avoidance of survey work. (PRIA Resistance at p. 5). Given PRIA's known and acknowledged goal of an unworkable process, the single hearing process is most likely "valued" by PRIA precisely for its unworkable and inefficient nature rather than any perceived efficiency. The Board should evaluate PRIA's preference appropriately.

PRIA then calls into question Clean Line's assertion in its Motion that it has communicated with numerous landowners who have indicated to Clean Line that they do not wish to sign easements until the Board has determined that it will issue a transmission line franchise, stating that Clean Line has not identified these landowners (PRIA Resistance at p. 6). A similar concern is raised by Mr. Doorley (Doorley Response at p. 2) and Mr. Koch (Koch Response at paragraph 4). Clean Line treats its individual landowner negotiations as confidential and has elected not to identify any individual landowner: revealing any landowner identities without their permission would be contrary to the privacy provisions of Section 3 of Clean Line's Code of Conduct for Right of Way Agents, which is posted on Clean Line's website[2]. However, Clean Line reiterates that its records related to the conversations that have been held with landowners clearly indicate that many landowners would prefer not to execute easements or engage in negotiations until the Board has made a determination concerning the grant of the Franchises and the approval of the route. Attached to this Reply is a verification statement by an officer of Clean Line. Clearly, Clean Line's assertion is not without support, and the statements of these landowners should not be ignored.

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[2] http://www.rockislandcleanline.com/sites/rock_island/media/land_owner_code_of_conduct.pdf

PRIA concludes its Response with a section noting that the Board's Order granting the Motion must be founded upon a rational basis and should not be arbitrary or capricious. Clean Line agrees, and has set forth a strong and rational basis for granting its Motion. PRIA sets forth hypothetical reasons one might distinguish the Project from other transmission line projects (suggesting it could do so based on the length of the Project, the cost, the number of easements involved, or the identity or character of the Petitioner), seeming to imply that the Board must take a one size fits all approach and rely on some single uniform criteria for determining the appropriate number of hearings for all electric franchise cases. (PRIA Resistance at p. 7). However, the facts and circumstances of this case are very different from other cases, and the Board need not support its decision to grant Clean Line's Motion by comparing this case to other applications with false simplicity. Instead, the Board must decide, based on the facts and circumstances specific to this case, that good cause exists for the separation of the hearings and that such separation can be accomplished without compromising anyone's constitutional rights. As stated in Clean Line's Motion, ample grounds exist for separating the issues to be determined into two hearings and no due process or constitutional rights will be jeopardized.

PRIA also suggests that a higher standard may be applicable to the Board's ruling on this Motion since eminent domain is involved. However, this misses the point entirely: one purpose of Clean Line's motion is reduce any need to resort to application for eminent domain. The issues to be heard in the case would be identical in either a one or two hearing process: the location and route of the Project, the necessity of the proposed line to serve a public use and the reasonable relationship of the line to an overall plan of transmitting electricity in the public interest, and, as necessary, all landowner rights regarding eminent domain. All landowners will have full ability to contest all issues under either process. Clean Line has asserted, however, that the number of eminent domain parcels involved will be much smaller in a separated proceeding (as well as

pointing out numerous other benefits of the two hearing process in its Motion). To the extent there is a sense that caution needs to be taken due to the presence of the eminent domain issue, such caution would favor separation since doing so will minimize rather than increase the use of eminent domain

Clean Line also notes, as it did in its Original Motion, that the grant of eminent domain authority subsequent to and after the grant of an electric line franchise is not unprecedented. 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). The Board has been delegated broad authority by the Legislature. It has the authority to "make or amend its rules or orders as necessary for the preservation of order and the regulation of the proceedings before it, including forms of notice and the service thereof." Iowa Code § 474.5(1) (2015). The Board may in all cases conduct its proceedings, when not otherwise prescribed by law, in such a manner as will conduce the proper dispatch of business and the attainment of justice. Iowa Code § 474.5(1) (2015). With regard to electric transmission line proceedings, the Board has been given discretion to establish rules for an abbreviated franchise process, including setting forth the steps of the abbreviated process, and specifying the requirements for the petition and landowner notification. Iowa Code § 478.1(5) (2015). Clearly the Legislature had confidence in the Board's ability to determine the best way to handle the proceedings under its jurisdiction and it would be well within its authority to rule in favor of Clean Line's Motion.

C. Reply to Koch

Mr. Gordon Koch submitted a brief letter in response to Clean Line's Motion on January 12, 2015. Mr. Koch is a landowner in Black Hawk County, who filed a letter of objection to the Project on November 7, 2013. In his Response Mr. Koch expresses his disagreement with certain factual statements contained in Clean Line's Motion, but he fails to provide any new legal arguments or

facts countering the many arguments in support of considering eminent domain in a separate hearing put forth by Clean Line. It is apparent from the text of his letter that Mr. Koch is not in support of the Project; however, he will have ample opportunity to present evidence concerning the need for the Project and Clean Line's use of eminent domain whether the issues are separated or not. Accordingly, he presents no basis for denying the Motion.

D. Reply to OCA.

The OCA has not filed a resistance or objection to Clean Line's Motion, but rather expresses concerns about the ability to neatly separate the issues to be tried in the two different hearings. The OCA understandably suggests that if the Motion is granted, sufficient notice must be provided to the interested parties. Clean Line agrees that sufficient notice must be provided and asserts that such notice can be accomplished. Further, Clean Line notes that making the determination to separate the issues at this stage of the process will allow ample opportunity for the Board, Clean Line, PRIA, the OCA, and others to make it abundantly clear to the interested stakeholders that any concerns about the need for the Project or the route proposed by Clean Line need to be raised and adjudicated in the first hearing, with the second hearing dealing with the question of eminent domain in light of the approved route. A detailed description of the issues to be tried in each hearing is set forth in Clean Line's Motion at pp. 22-24. Clean Line notes that notice of the first hearing and the second hearing will be required by applicable statute, with a published notice and a mailed notice to certain parties being required in each instance. Clean Line provides a suggestion for possible language for such notices in the attached Exhibits, with Exhibits A and A-1 being the published and mailed notices that would relate to the first hearing and Exhibits B and B-1 being the published and mailed notices that would relate to the second hearing. To be clear, these are offered solely as examples and the Board, as always, will be free to insist on additional or different language or solicit comments from other parties. The examples are offered merely to demonstrate

that the OCA's notice requirement can be achieved, such that members of the public and interested parties are given sufficient notice and guidance about the hearing in which to properly raise their concerns.

The OCA notes in its Response that the Board should consider the issues raised in OCA's response to the Original Pleading. (OCA Response at Paragraph 5). The OCA noted in its response to the Original Pleading that the Board's determination regarding eminent domain was described in Iowa Code §§478.6 and 478.15, both of which required a showing that the right of eminent domain was *necessary for public use.* (OCA response to Original Pleading at Paragraph 4). The OCA also noted that Iowa Code §478.4 requires a determination that the line for which a franchise is being sought is *necessary to serve a public use.* (OCA response to Original Pleading at Paragraph 3). The OCA then expressed a concern about overlapping factual and policy matters affected both issues and expressed disagreement with Clean Line's conclusion to the contrary. The OCA's earlier concerns are addressed by the delineation of issues as set forth in detail in Clean Line's Motion. Clean Line acknowledges that there will be evidence offered concerning need in each hearing; but the evidence and specific need required will not be overlapping. In the first proceeding evidence will be presented concerning the need of the line; while in the second the evidence will focus on the need of the Petitioner to exercise the right of eminent domain (if the Petitioner is unable to obtain the easement voluntarily) and the extent of the rights required (i.e, width of easement, scope of activities permitted by the easement, etc.). These issues are separate and require differing proof.

E. <u>Reply to WOW</u>.

WOW submitted a Response in support of Clean Line's Motion. WOW notes in its Response that a separate proceeding for determining eminent domain authority will improve the efficiency of the case, and will be more convenient for the parties. (WOW Response at p. 2).

WOW notes that it does not have an interest in eminent domain issues regarding any specific parcel along the Project's proposed route and would prefer said issues be separate from the hearing concerning the Project need and benefit. (WOW Response at p. 3). Clean Line notes that it is reasonable to assume there are other entities like WOW that will be interested in the Board's approval of the Project, but that have little interest in the presentation of evidence concerning the details of negotiations between Clean Line and individual landowners or the exact easement rights that should be granted to Clean Line if an eminent domain proceeding is necessary. ABI filed a letter, as further discussed herein, making a similar statement that its interest is limited to the hearing on the determination that the Project is necessary to serve a public use and is in the public interest, and that it has no interest in participating in any portion of the proceedings regarding eminent domain on specific parcels. (ABI Letter at p. 1). Accordingly, WOW's filing supports separating the proceedings.

Clean Line also notes WOW's description of its experience with transmission line proceedings in other states. Clean Line noted in its Motion that the two hearing process envisioned for this proceeding is commonly used in other states throughout the country (Motion at paragraph 8) and WOW's description is consistent with Clean Line's experience. (WOW's Response pp. 4-6). The Board can be confident that the two stage process has been tried and tested in other states and has worked. To be clear, the Board does not need to determine that a two hearing process is always better than a one hearing process, but rather needs only to conclude based on the specific facts and circumstances of this case that a two hearing process is appropriate in this instance.

F. Reply to ABI

ABI submitted a letter in support of the Clean Line Motion. Within the letter, ABI notes that its mission is to "foster a favorable business, economic, governmental and social climate within the State of Iowa so that our citizens have the opportunity to enjoy the highest quality of life." (ABI

Letter at p. 1). In furtherance of that mission, ABI notes that it supports "entrepreneurship that creates jobs, spurs private investment and economic growth and broadens the Iowa tax base." (ABI Letter at p. 1). The Project clearly meets many of ABI's noted goals. A detailed discussion of the investment in Iowa resulting from the Project, job creation, and tax impacts can be found in the Exhibit D Affidavit submitted with Clean Line's Franchise Petitions.

CONCLUSION

As described above and as set forth in the Motion, Clean Line has offered a substantial legal basis for the Board to grant its Motion. None of the Responses present appropriate justification for denial of the Motion, and WOW and ABI offer additional justification for the granting of the Motion. The Motion should be granted.

WHEREFORE, Clean Line respectfully moves the Board to enter an Order granting its Motion to Consider Eminent Domain in a Separate Hearing, the first hearing addressing whether the requested Franchises should be granted (i.e., is the proposed line necessary to serve a public use and does the line represent a reasonable relationship to an overall plan of transmitting electricity in the public interest) and the second hearing addressing whether Clean Line has shown a need for the right of eminent domain and has it satisfied the requirements necessary to the grant of such a right.

Respectfully submitted

SULLIVAN & WARD, P.C.

/s/

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ATTORNEYS FOR ROCK ISLAND CLEAN LINE LLC

AFFIDAVIT OF HANS DETWEILER

State of Illinois)
) ss:
County of Cook)

The undersigned, having first been duly sworn, deposes and states as follows:

1. I am the Vice President of Development of Rock Island Clean Line LLC (Clean Line).

2. I have reviewed Clean Line's Motion to Consider Eminent Domain Issue in a Separate Hearing and Clean Line's Reply to the Responses to said Motion to which this Affidavit is attached.

3. The facts and allegations set forth in said pleading are true and correct.

/s/ Hans Detweiler
Hans Detweiler, Vice President of Development
Rock Island Clean Line LLC

Dated: January 20, 2015

Subscribed and sworn to before me on this 20th day of January, 2015.

/s/ Linda Marrs
Notary Public in and for
the State of Illinois

My commission Expires: 11/5/2018

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 participating in these Dockets through said system as required by the Board's Order issued December 16, 2014.

Dated: January 20, 2015.

By: _____/s/ Dennis L. Puckett_____