
IOWA UTILITIES BOARD

Docket No.: E-22123, et al.
Utility: Rock Island Clean Line LLC
File Date/Due Date: September 12, 2014
Memo Date: October 22, 2014

TO: The Board
FROM: David Lynch, Cecil Wright
SUBJECT: Recommendation Regarding Motion for Clarification

I. Clean Line's Request for Clarification

On September 12, 2014, Rock Island Clean Line LLC (Clean Line) filed a "Request For Clarification Concerning Service Of The Petitioner's Initial Franchise Petitions" in Docket Nos. E-22123 through E-22138. Clean Line asked for Board direction or clarification regarding the service requirements associated with Clean Line's upcoming petitions for electric franchises. Clean Line asserted that the Board's service rules are not entirely clear and asked whether service of the petition (or a notice) must be made on all of the individuals who have filed objections or letters of support of the various electric franchise dockets. The concern expressed by Clean Line is with over 400 objectors who have not provided an e-mail address for electronic service and are therefore served by U.S. mail. According to Clean Line, the expense of serving the petitions (and all subsequent filings, such as deficiency letters, petitions to intervene, amendments, and so on) on all of these objectors could be a waste of resources if that service is not required.

Clean Line noted that the Board's rule 199 IAC 7.4(6)"c" would normally require that the petition be served on all other parties to the proceeding. However, pursuant to rule 7.1(3), the procedural rules of chapter 7 do not apply to electric transmission line proceedings under chapter 11 (with some exceptions not relevant here). There is nothing in chapter 11 that would require that the actual franchise petitions be served on all other parties at the time of the initial filing, assuming that objectors are considered parties in the first place.¹

Meanwhile, according to Clean Line, the Board's electronic filing rules require that a party who files a document using electronic filing system (EFS) must serve paper copies "on all persons entitled to service for whom electronic service is not available..." (Rule 14.16(2).) To that end, a service list is maintained by the Board. At this stage, the service list includes all who have

¹ Strictly speaking, the objectors are not "parties." However, it has been the Board's practice to treat them as prospective parties, at least up to the time of the hearing.

submitted objections or letters of support, for a total of 1,148 individuals or entities on the combined service lists for all 16 counties. Of those, 702 receive electronic notice of filings, while 446 must be served by U.S mail (as of September 1, 2014).

Clean Line proposed that it should not be required to mail copies of its petitions and exhibits to every individual who filed an objection or letter of support. If the Board believes some sort of service is appropriate, Clean Line proposes to send a notice of filing, rather than the actual petition, along with information about how any interested person can access or obtain a copy of the filing. Clean Line noted that once the petitions are filed, the next step in the process is review of the filings by Board staff, typically followed by deficiency letters and responses from the petitioner. Clean Line suggested that neither the company nor the Board should be required to mail a copy of each such document to each of the persons on the U.S. mail service list for each docket. Further, as the matter moves forward, objectors who want to become parties should not be required to mail over 400 copies of every pleading they file on objectors who are not parties unless there is a legal requirement to do so. Accordingly, Clean Line requested that a Board order be issued that either (1) clarified that service of the initial petition and subsequent filings need not be made on persons who are not participating in EFS service or (2) established a procedure that allowed a notice of such filings be sent to all persons on the service list, rather than a copy of the actual filing.

On October 6, 2014, the Preservation of Rural Iowa Alliance (PRIA) and the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed responses to the motion for clarification. On October 14, 2014, Clean Line filed a reply to the PRIA and Consumer Advocate responses. Also, on October 6, 2014, Clean Line filed a clarification as requested by the Board.

On October 14, 2014, Consumer Advocate filed a response to procedural efficiencies described by the Board in the September 30, 2014, order. On October 16, 2014, PRIA filed a response to the procedural efficiencies described in the Board's order.

On October 20, 2014, Kay Christian filed a response to the Board's August 6, 2014, order. In the response, Christian has a question about the location of the hearing, or possible satellite hearings. Christian states that she lives closer to the midpoint and asks if she and other landowners would have a choice of which hearing each could attend. In addition, Christian states that the order said service of responses and comments will be by electronic means only and she does not have access to a computer. Christian indicates that although she received the Board's August 6, 2014, order, she is not on the service list attached to the order.

On October 20, 2014, Margaret Sadeghpour-Kramer filed a response to the August 6, 2014, order. Also on October 20, 2014, Robert Platttenberger, HOF Plattenberg LLC, filed a response to the August 6, 2014, order. The responses filed by Sadeghpour-Kramer and Plattenberg are similar in many aspects. Both filers indicate they are landowners potentially affected by the proposed transmission line and they did not receive the Board's August 6, 2014, order, but were given a copy by someone else. Both filers state that all landowners, objectors, and those who filed letters of support should receive notification, either electronically or by mail, concerning how to obtain all documents relating to the proposed transmission line dockets.

Specifically, both filers state they were not given sufficient time to receive the August 6, 2014, order regarding the motion for clarification to respond to the motion. Both filers state that landowners must receive notice of the proceedings and other interested persons who can, should receive email notice of filings and those without email should receive directions on how to obtain the filings.

Both filers state that two week publication in newspapers is not sufficient since there may be more than one newspaper in a county and most people will not take all of the papers. Plattenberg states that he understands the need to reduce duplication; however, he believes that 1000 objectors should be allowed a proportionate number of representatives. Sadeghpour-Kramer states that she owns property in Jones County but lives in Linn County. She receives one small town paper, which she thinks will not be chosen by Clean Line for the notice.

Both filers support satellite hearing locations. Both filers state that objectors are private people who will have to take time from work to attend the hearings and reducing the driving time for those private people will be beneficial. Both filers request the Board to minimize the time private people need to take off from work for the proceedings.

II. Board's September 30, 2014, Order

The Board issued an order on September 30, 2014, that established dates (1) Clean Line to clarify its request with respect to 199 IAC 11.5(2)"b;" (2) for interested persons to respond to the motion for clarification; and (3) to address procedural efficiencies described in the order. The Board directed that the order be sent to all persons who had filed objections or letters of support in the various dockets.

In the September 30, 2014, order, the Board stated that it had been considering a number of steps that might help to manage these dockets in the interests of efficiency and administrative economy. The Board noted that the number of objections the Board had received at this early stage of the franchise process is unusually large and presents the possibility of significant wasted resources for all parties and the Board if all of the traditional (but not required)

procedures are followed. The Board recognized that some efficiency measures may inadvertently detract from or interfere with the rights of interested persons, which would be unacceptable and the Board requested comments on the procedural efficiencies in order to avoid this possibility.

Staff provides in the following sections of this memorandum a summary of the responses to the motion for clarification and a summary of the responses to the proposed efficiencies described in the September 30, 2014, order.

III. Clean Line Response to Board Order

Clean Line points out that the statutory notice of the filing of the petition required by Iowa Code § 478.5 is only published after the petition is deemed complete by Board staff and Clean Line has a publication notice approved by the Board. The other notice required is to those landowners or persons in possession of parcels where Clean Line requests the right of eminent domain. (11.5(2)"b"). Clean Line points out that these persons may not be parties to the franchise proceeding.

Clean Line states that its original request was primarily to address the issue of service requirements for those filings or pleadings made in advance of the publication notice required by Iowa Code § 478.5 and the actual notice required by 11.5(2)"b." Clean Line states that it has no issue with the publication, the notice of petition, or mailing that notice to landowners or those in possession of property who have not signed voluntary easements.

Clean Line does not request a waiver of the notices required by 199 IAC 11.5(2), (3), or (4). Clean Line is only requesting clarification of its obligation to serve the actual franchise petition and other pleadings which precede the published notice of the petition on those individuals or entities which have filed objections or letters of support prior to the filing of the petitions or pleadings. Clean Line suggests that it not be required to mail copies of the franchise petitions and exhibits upon all individuals who have filed objections or letters of support.

IV. Responses to the Motion for Clarification

1. Consumer Advocate

Consumer Advocate states that the Board should clarify notice and service requirements. Consumer Advocate points out that the proposed transmission line will cross Iowa from west to east and has attracted a great deal of attention. Consumer Advocate states that all parties and interested persons would benefit from clarification of the service and notification requirements by the Board.

2. PRIA

PRIA points out that Clean Line proposed that it not be required to serve the franchise petitions and deficiency letter responses on those persons who required paper service, or only be required to mail a notice of the petition to those persons who require paper service. If the latter option was approved, a person who received the notice by mail could send a postcard requesting a complete copy of the petition be mailed to that person. PRIA characterizes this as an "opt-in" option. PRIA states that the notice rules are equivocal and require clarification with a rational balance between the expenditure of public and private resources on the one hand, and openness and transparency on the other.

PRIA states that 199 IAC 11.5(2)"b" applies only to owners of record and persons in possession, while 199 IAC 14.16(2) requires paper service on all persons "entitled to service." PRIA urges the Board to err on the side of inclusion rather than exclusion. PRIA states that the Clean Line transmission line would be the longest and largest electric transmission line built in Iowa, and possibly the first non-incumbent merchant line built in Iowa.

PRIA states that the proposed transmission line project will have significant implications not only for landowners, but for property-taxing authorities, organized labor, those interested in global warming, the wind industry, the natural gas industry, and the coal and nuclear industries. Based upon the wide impact of the proposed line, PRIA urges the Board to err on the side of inclusion in the notice procedures.

Specifically, PRIA objects to Clean Line's alternative that Clean Line not be required to serve hard-copy documents on "mail-only" participants. This alternative is based upon the assumption that all truly interested parties could participate electronically if desired. This is unfairly prejudicial, according to PRIA.

PRIA consents to the alternative that would require an "opt-in" Notice such as Exhibit A to the Clean Line motion; however, PRIA suggests that the notice be sent by the Board and not Clean Line. This alternative does not answer four questions PRIA says are important:

1. Having received a certified "Exhibit A" type letter from the Board, what would be a mail-only participant's deadline for returning the post card?
2. Having "opted-in" and received the hard copy documents, what Comment/Response deadline would then apply to that participant?
3. Having "opted-in" via postcard to one certified "Exhibit A" letter, would that mail-only participant then be permanently assigned "opt-in" status for the duration of the entire proceeding?
4. How will this process work for new objectors?

PRIA proposes the following enhancements to the "opt-in" alternative.

1. That the Order be clear as to the deadline by which mail-only participants would be required to return the postcard; and that the postcard be returned by certified mail. PRIA suggests that the return date be left open so that anyone could opt in throughout the duration of the proceeding.

2. That an "Opting-in" mail-only participant, receiving some days later by return mail the complete documents in hard copy be given a full 20 days after receipt thereof to file a comment/response to the documents mailed; and

3. Having opted in once, the opting in mail-only participant be deemed to have opted-in to receipt of hard-copy documents for the duration of the entire proceeding.

4. That the certified postcard be returned to the Board. The Board would then instruct the document filer to mail hard copies to the opt-in list participants. The Board would keep a record of opt-in mail-only participants and record the dates of receipt.

5. That new participants be given the same opt-in options.

6. That PRIA and all parties be granted access to the names and addresses of all mail only participants, present and future, for purposes of clarity and consistency.

3. Clean Line Reply

On October 14, 2014, Clean Line filed a reply to the responses filed by Consumer Advocate and PRIA. In the reply, Clean Line states that there is agreement that all participants would benefit from a clear procedural order that clarified notice requirements and service requirements. Clean Line agrees with PRIA that the proposed transmission line has significant implications for the future of Iowa, and Clean Line considers the line important to the entire region.

Clean Line agrees that the Board should establish procedures that make participation readily available while balancing needs so that unnecessary inefficiencies are not placed on the proceedings. Clean Line points out that although the Board's order was served on all persons who have filed an objection or letter in support only two responses were filed to the motion. Clean Line states that alternative one was not a comment on the interest of "mail-only" participants but was based upon a reading of the applicable statutory requirements for notice. Clean Line points out that those persons who have provided an electronic address will receive all filings, those that are "mail-only" are not prejudiced since the statute does not require service on either set of participants.

Clean Line addresses the PRIA suggested modifications to alternative two. With regard to the PRIA suggestions, Clean Line states the following:

1. Clean Line states that certified mail is unnecessary and overly burdensome and Board rules do not require use of certified mail. Clean Line also opposes the suggestion that the Board be responsible for serving participants. That responsibility should be on each participant.

2. Clean Line states the same reasons for opposing a requirement that the postcard be sent by certified mail and returned to the Board as stated in response to 1 above. Clean Line states that it is more efficient for the postcard to be returned to the filing party.

3. Clean Line states that it is not appropriate to deem a participant who elects to receive a hard copy of one pleading to have expressed a desire to receive all future pleadings. Clean Line points out that a "mail-only" participant may be only interested in one issue or pleading and may at some point decide to participate electronically.

4. Clean Line does not object to an open-ended time period for participants to obtain hard copies of filings; however, Clean Line suggests that the procedural schedule not be delayed unnecessarily to allow said participants to get hard copies. Clean Line notes that a 20-day response period, regardless of when the hard copy is requested, could create an unworkable situation. Clean Line suggests that the Board establish a date upon which the postcard should be returned, if the participant wishes to respond to the filing.

5. Clean Line agrees that new participants to the case should be given the same opt-in option as existing participants. Clean Line points out that a new participant may have limited ability to respond to filed documents.

6. Clean Line states that the Board's service list as maintained in EFS identifies which participants are participating by mail and which have provided an electronic address. This list should suffice for access to mail-only participants.

V. Responses to Proposed Efficiencies

The responses to the proposed efficiencies described in the order are set out below:

A. Intervention Deadline

In the September 30, 2014, order, the Board stated that it was considering setting a specific intervention deadline for these various dockets. Traditionally, objectors whose rights may be affected by the proposed line have been allowed to show up at the hearing and participate, effectively setting the hearing date as the intervention deadline. However, the sheer number of potential parties in these franchise dockets may make that approach unworkable. The Board suggested that an earlier intervention deadline would allow for more efficient management of the hearing without adversely affecting the rights of any of the parties.

The Board pointed out that Iowa Code § 478.5 provides that notice of the filing of the petition must be published for two consecutive weeks in a local newspaper in each county. The statute also provides that written objections to the project must be filed with the Board within 20 days after the date of the second publication. Objections may be filed by any person whose rights may be affected by the projected. The Board stated that logically, the intervention

deadline should be after the deadline for filing objections, thus any person wishing to intervene and become a party would have until after the date for filing objections to intervene. Petitions to intervene filed after the deadline might still be granted, but only upon a showing of good cause for the failure to file on a timely basis.

Petitions to intervene would be required to disclose the name and address of the person intervening, including an e-mail address; the name and address of any attorney representing the intervener; a clear and concise statement of the grounds for the proposed intervention, including a detailed description of the petitioner's interest in the proceeding; and a concise statement of the relief desired. Further, the Board may consider imposing reasonable limitations on intervention. For example, if two or more interveners have substantially similar interests and positions, the Board may reserve the authority to limit the number of such parties who may cross-examine, make and argue motions, or object on behalf of such interveners. The Board noted that Iowa Code § 17A.14(1) provides that in a contested case, "irrelevant, immaterial, or unduly repetitious evidence should be excluded." The Board stated that it has an affirmative duty to prevent undue repetition in the presentations at hearing which may require the Board to limit cross-examination by parties with identical interests.

1. Consumer Advocate

Consumer Advocate does not object to the Board requiring interested persons to intervene to become a party to the franchise dockets and setting an intervention deadline. Consumer Advocate cites to the Board's rule on intervention, 199 IAC 7.13, and states that the Board's proposal is consistent with that rule.

2. PRIA

PRIA agrees that the large number of those who have filed objections or in support of the proposed transmission line may require the Board to earlier notice for participation at the hearing. Some type of reasonable deadline for determination of Intevenor status may be necessary.

B. Discovery Procedures

The Board stated that discovery is the means by which parties obtain information from other parties. The Board does not normally get involved in discovery matters unless a specific motion is filed; instead, discovery is typically governed by 199 IAC 7.15; however, this rule does not apply to E dockets. The Board suggested to minimize the complications that may result if discovery became an issue in these dockets, the Board would consider announcing some special discovery procedures and requirements in advance.

1. Consumer Advocate

Consumer Advocate does not object to a requirement that all data requests and responses be filed in EFS or that a deadline be established for completion of discovery as long as adequate time is allowed.

2. PRIA

No comment.

C. Hearing Procedures

The Board pointed out that pre-filed testimony from all parties is usually required in cases before the Board. Because of the complex nature of much of the evidence heard by the Board in a typical docket, the Board requires pre-filed direct and rebuttal testimony in most cases, instead of allowing each party to present its direct case live from the witness stand. This gives all parties, and the Board, advance knowledge of the positions of all parties and allows for a more efficient hearing. When the witnesses take the stand, it is not necessary or appropriate for them to restate their prefiled testimony; instead, the parties proceed directly to cross-examination. The Board stated that these procedures should be used in this docket for all parties, with the express understanding that the pre-filed direct and rebuttal testimony and associated exhibits should contain the entirety of a party's evidentiary case (subject to additions that may become necessary at hearing).

Under these procedures, parties interested in cross-examining one or more witnesses must be present on the day or days those witnesses are scheduled to testify. In order to allow parties to use their time efficiently, witnesses could be scheduled in advance. However, because of the difficulty in predicting how long each witness will be on the stand, all parties would have to understand that the schedule will be subject to change. The Board stated that this seems a reasonable step to take in order to make the hearing more convenient for those who are only interested in particular issues.

Assuming the testimony is pre-filed, the parties will have an opportunity to review it in advance of the hearing, so the Board may prohibit "friendly" cross-examination because it often duplicates points already made in the pre-filed testimony, unnecessarily prolonging the hearing and wasting time and resources. Thus, it may be appropriate to prohibit parties who have similar interests from engaging in cross-examination that is primarily designed to allow the witness to reiterate points from the witness's pre-filed testimony.

The Board also addressed the location of the hearing required by Iowa Code § 478.6. In that section of the statute, the hearing is required to be held in the county seat of the county that is located at the midpoint of the proposed line.

The Board suggested that the hearing could be convened in that location, but subsequently be adjourned to “satellite” hearings that would be held in locations closer to either end of the proposed line for the convenience of landowners located near extremities. The Board stated that there is some question whether this option would comply with the statute.

Finally, the Board stated that oral opening statements might not be allowed at the hearing. The parties’ cases should be contained in their pre-filed testimony and exhibits (if that is required of all parties), so opening statements should be unnecessary.

1. Consumer Advocate

Consumer Advocate does not object to the Board following the normal procedure that all parties file pre-filed testimony. Consumer Advocate considers the Board's procedure for cross-examination will protect the parties' rights and will not unnecessarily extend the length of the hearing. Consumer Advocate does not support a change from the normal cross-examination procedure. Consumer Advocate states that the Board's suggestion that the hearing could be adjourned to satellite hearing locations does not comply with Iowa law. Iowa Code § 478.6 requires that the hearing be held at the county seat at the mid-point of the proposed transmission line. Consumer Advocates states that the statute does not allow for satellite hearings.

2. PRIA

PRIA supports the conduct of a reasonable number of satellite hearings at locations along the proposed transmission line. PRIA states that the law clearly requires a hearing at the mid-point of the proposed line. PRIA suggests that the issue is whether the statutory requirement for the hearing at the mid-point is directory or mandatory. Violation of a directory statute has no consequences, since according to PRIA the statute is permissive. Failure to comply with a mandatory statutory requirement either invalidates the transaction or subjects the non-complier to the consequences provided by the statute. (Statutes and Statutory Construction (7th Ed) 25:3).

PRIA suggests that Iowa courts will treat the requirement of the hearing at the mid-point as directory and not mandatory. Taylor v. Iowa Department of Transportation, 260 N.W.2d 521 (Iowa 1977). PRIA states that the Taylor decision found that a requirement of in the driver's license statute that a hearing be held in 20 days was directory and a hearing held after 53 days did not prejudice the driver. The Taylor court held that:

"This construction is in accord with the general rule that statutory provisions fixing the time, form and mode of proceeding of public functionaries are directory because they are not of the essence of the thing to be done but are designed to secure system, uniformity and

dispatch in public business. Such statutes direct the thing to be done in a particular time but do not prohibit it from being done later when the rights of the interested persons are not injuriously affected by the delay. (citations omitted). And it is a general rule of law, that statutes directing the mode of proceeding of public officers, relating to the time and manner, are directory. Taylor v. IDOT, at 523.

PRIA urges the Board to give a directive construction of Iowa Code § 478.6 to allow for the inclusion all persons interested throughout the state.

PRIA urges the Board to provide an opportunity for full participation by all stakeholders commensurate with the unprecedented scale of the proposed transmission line. PRIA states that hundreds of lowans are interested in attending the hearing and use of satellite hearing locations, as many as five, would allow for full participation by those who have expressed an interest in the proposed transmission line.

Satellite hearings will not prejudice Clean Line and other parties since witnesses and experts will already be required to incur the expenses of time and travel. Satellite hearings would save many individual participants expense and travel time. Since this is the largest single transmission line proposed in this state and the line may have sweeping consequences on landowners.

PRIA reiterates it supports a clear set of procedures for the conduct of these proceedings.

VI. Staff Analysis

A. Analysis of Clean Line's Motion for Clarification

Initially, staff notes that there is no statutory requirement for service of the petition when it is filed but only a requirement that notice of the filing of the petition be published for two consecutive weeks in each county where the line is proposed to be located. (Iowa Code § 478.5.) The statute then provides that those persons wishing to object have 20 days to file written objections to the petition. The next statutory notice requirement is the notice of hearing in Iowa Code § 478.6, which requires that notice of the hearing be served by ordinary mail on all objectors. This section also requires that the Board shall prescribe the hearing notice to be sent to the owners of record and parties in possession of property over which the right of eminent domain is sought.

The Board's rules regarding the notice of the petition expand the statutory publication requirement by requiring that the petitioner serve notice of the petition on "the owners of record and the parties in possession of the lands over which easements have not been obtained." (Rule 11.5(2)"b") The rule contemplates service of notice of the petition, rather than the actual petition, and requires

service only on a smaller group than all persons who have filed objections or letters of support. The focus of the rule is on persons who have an interest in land that may become the subject of an eminent domain proceeding if the electric transmission line franchise is granted.

In the September 30, 2014, order, the Board requested Clean Line to clarify whether it is seeking a waiver of the notice in 11.5(2)"b." The Board also asked for comments on several efficiencies that could be adopted to ensure the proceedings regarding the franchise petitions are conducted in a fair and efficient manner. In the October 6, 2014, response, Clean Line states that it does not request a waiver of the notices required by 199 IAC 11.5(2), (3), or (4) and is only requesting clarification of its obligation to serve the actual franchise petition and other pleadings which precede the published notice of the petition on those individuals or entities which have filed objections or letters of support prior to the filing of the petitions or pleadings. In addition, Clean Line requests that it not be required to mail copies of the franchise petitions and exhibits upon all individuals who have filed objections or letters of support.

Clean Line, Consumer Advocate, and PRIA agree that some clarification of the service requirements would be beneficial for all participants in these franchise proceedings. Based upon that agreement, staff is recommending the Board adopt the following procedural requirements for the filing of the petition, deficiency letters, responses to deficiency letters, objections, and other pleadings filed in each franchise docket prior to the completion of staff's review of the petitions and publication of the notice of petition pursuant to Iowa Code § 478.5.

1. Clean Line is not required to serve a copy of the petitions on persons who have filed objections or letters of support when it initially files the petitions for staff review.
2. Staff is not required to serve a copy of deficiency letters on persons who have filed objections or letters of support.
3. Clean Line is not required to serve responses to deficiency letters on persons who have filed objections or letters of support.
4. Clean Line need only serve notice of the franchise petitions, once the petitions have been reviewed by Board staff and the publication notice has been approved by the Board, as required by Iowa Code § 478.5 and 199 IAC 11.5(2)"b." Clean Line would not be required to serve a copy of the petitions on any person who filed an objection or letter of support of the franchises, unless those persons would receive service pursuant to Iowa Code § 478.5 and 199 IAC 11.5(2)"b."

Staff recognizes that those persons who have filed objections or letters of support that have provided an electronic address will receive notice of the filings through EFS and those persons who have not provided an electronic address will not receive the notice, unless the person is a landowner or person in possession of property over which Clean Line has not obtained a voluntary easement. Staff

believes that the service of the petition is not required so those persons without an electronic address are not prejudiced by this recommendation, even if persons with electronic addresses receive the notice.

Staff does not consider any type of postcard opt-in procedure or other interim procedure to be required by statute or Board rule and recommends the Board not adopt such procedures. Clean Line may voluntarily send notice to those persons on the service list in each docket; however, staff is not recommending that the Board impose such a requirement.

B. Central Docket for Hearing

Instead of opt-in procedures or other interim measures, staff believes that the Board should open a central docket, such as an SPU docket, for conducting the hearing that addresses all of the petitions and the overall proposed transmission line. Staff believes that management of the hearing process will be best accomplished for administrative efficiency while still protecting the rights of landowners and other persons who wish to participate in the process by adopting the procedures discussed below. The central docket would not be opened until after the petitions are filed for review by staff. Staff will circulate a gold memo at that time that includes the information needed for parties to intervene in the central docket.

Under current practice the newspaper publication notice required by Iowa Code § 478.5 is not approved until after the review of the petitions by staff has been completed and the Board has either assigned a petition to the ALJ or decided to conduct the hearing themselves. The newspaper publication notice then includes the date, time and location of the hearing, even though that is not a statutory requirement. This means that before the newspaper notice is published, the Board or ALJ must have decided on the hearing dates and location. In this case, that means that issues regarding satellite hearings, friendly cross, discovery, etc. will need to be decided before approval of the newspaper publication notice.

Staff is recommending that the central docket be opened when the petitions are filed for staff review to allow those persons who wish to participate as parties in the proceeding to file to become parties. This means that the Board will need to serve the order opening the central docket on all persons who have filed objections or letters of support in all of the franchise dockets.

The specific procedures recommended by staff concerning the central docket and procedures for the hearing process is discussed below.

1. Persons who want to participate as parties in this proceeding would be required to file a petition to intervene in the separate SPU docket. Persons who wish to intervene and become a party to the evidentiary proceeding may

request to file any pleadings and testimony and be served in paper; however, the person will need to justify being allowed to participate as a party through paper and the Board must approve the request to file by paper. See 199 IAC 14.4(1).

Those who are granted intervention will be included on the service list for the separate SPU docket. The service list in the SPU docket will be the official service list of parties who may participate in the evidentiary hearing. The hearing will address each franchise petition, the overall proposed transmission line, and all objections to the proposed line.

2. The separate service lists in the individual franchise dockets will be maintained in those dockets. Clean Line will be expected to address all of the objections filed in the individual dockets in prefiled testimony filed in the SPU docket, even if the objector does not file a petition to intervene in the proceeding as a party. Staff will address the objections in the staff report.

3. Petitions to intervene should be required to disclose the name and address of the person intervening, including an e-mail address (if the person has one); the name and address of any attorney representing the intervener (if the person has an attorney); a clear and concise statement of the grounds for the proposed intervention, including a detailed description of the petitioner's interest in the proceeding; and a concise statement of the relief desired. It should be made clear that a person does not need an attorney to intervene and become a party.

4. Staff believes that limitations on those who intervene, such as no friendly cross-examination, or consolidation of parties, may be decided in the later order that approves the newspaper publication notice. Under current practice the publication notice includes the time and date of the hearing, so decisions on the conduct of the hearing should be made in the order approving the publication notice.

5. Landowners and those in possession of property over which Clean Line is requesting the right of eminent domain will be automatically placed on the service list in the central docket and made parties to the SPU proceeding. This is standard practice in all franchise dockets and will be followed in this proceeding.

6. The intervention date should be set at least 20 days after the last second publication of the notice of petition required by Iowa Code § 478.5. Petitions to intervene in the SPU docket may be filed any time after the Board's order opening the SPU docket.

7. Clean Line will still need to comply with the notice publication requirements and the notice of hearing requirements in Iowa Code §§ 478.5 and 478.6. This includes separate notice for those landowners and persons in

possession of property over which Clean Line has not obtained voluntary easements.

8. Staff believes that issues regarding satellite hearings, discovery, prefiled testimony, and cross-examination can be left to the order approving the newspaper publication notice and scheduling the hearing and need not be addressed in the order opening the SPU docket.

Staff has not provided a detailed response to the suggestions in the pleadings filed by Clean Line, PRIA, and Consumer Advocate since staff believes that the procedures proposed in this memorandum will supersede those suggestions. Staff can provide a more detailed discussion of any, or all, of the proposals, if the Board would like them addressed.

B. Individual Customer Comments

1. Kay Christian

Kay Christian filed the paper response to the Board's August 6, 2014, order. She indicated that she was not on the service list attached to the order; however, she was listed on the service list, with the same address-1391 334th Rd, Woodward, Iowa, as Shirley Kay Christian. As indicated above, whether the Board will schedule satellite hearings will be decided in a later order; regardless, interested persons, including landowners, will be able to attend any of the satellite or main hearing that they choose. Also, the Board did not limit responses to electronic means, which is evident by acceptance of the filing made by Christian. Filings may still be made in the individual franchise dockets by paper; however, persons wishing to file in paper in the SPU docket will need to file for Board approval to file paper filings.

2. Robert Plattenberg

Plattenberg commented on the time for responding to the Board's August 6, 2014, order and the need for all landowners to receive copies of all pleadings. As indicated above, all landowners and those in possession of property over which the proposed transmission line will be located will receive written notice of the filing of the petition and the hearing. Those persons who have filed objections in the individual franchise dockets and have provided an electronic address will receive notice of all filings made in the dockets.

Plattenberg also commented on elimination duplication of hearing procedures and satellite hearing locations. Those procedures will be addressed by staff in a later memorandum. Consolidation of intervenors who have the same interests and positions on the issues have been proposed and the issue of if and how satellite hearing locations will be part of the proceedings will be addressed in a later memorandum.

3. Sadeghpour-Kramer

Sadeghpour-Kramer raised the same issues as did Plattenberg. She also raised an issue about newspaper publication in local county newspapers. Since the newspaper publication requirements are statutory, the Board has little discretion on the publication requirements. Staff does not believe it would be reasonable to require publication in all local newspapers in a county. If Sadeghpour-Kramer is a landowner affected by the route, she will receive actual notice of the petition and hearing. She has now provided an electronic address so she can receive all notices sent from EFS.

V. Recommendation

Board staff recommends the Board direct General Counsel to prepare a proposed order for the Board's consideration that includes the procedures described in this order. Staff also recommends the Board in a separate order issued after the franchise petitions are filed for staff review open an SPU docket for the purpose of conducting a hearing regarding the franchise petitions and establish an intervention date so interested persons can file for intervention once the Board's order is issued.

RECOMMENDATION APPROVED

IOWA UTILITIES BOARD

IOWA UTILITIES BOARD

/cw

/s/ Elizabeth S. Jacobs 10-24-14

Date

/s/ Nick Wagner 10/23/14

Date

Date