

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ROCK ISLAND CLEAN LINE LLC	DOCKET NO. E-22248 (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)
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**ORDER ESTABLISHING MASTER DOCKET, GRANTING PETITIONS TO
INTERVENE, AND ESTABLISHING PROCEDURAL SCHEDULE**

(Issued August 8, 2016)

MASTER DOCKET ESTABLISHED

On November 6, 2014, Rock Island Clean Line LLC (Clean Line) filed with the Utilities Board (Board) 16 petitions for electric transmission line franchises in 16 different Iowa counties. Each petition was given a separate docket number, starting with Docket No. E-22123 and proceeding sequentially through Docket No. E-22138. (The Board typically establishes separate, county-by-county franchise proceedings for electric transmission lines to facilitate future franchise extensions, or renewals, on a county-wide basis, as permitted by Iowa Code § 478.13(1).)

In most electric transmission line franchise proceedings, the Board's practice has been to require that pleadings that relate to the project as a whole must be filed in each of the affected dockets and the filings are served on all individuals on the service lists in each docket, which include every person who has filed an objection as

DOCKET NO. E-22248 (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)

PAGE 2

permitted by Iowa Code § 478.5. However, application of that approach in these Clean Line dockets has had unintended consequences; every time a document is filed in any of the 16 dockets, notice of filing is sent to every person on the service list for each of those dockets by electronic mail. The total number of E-mail messages sent is in the thousands for every document filed in each of the 16 dockets. This has caused technical difficulties with the Board's E-mail service and the electronic filing system, interfering with the Board's ability to provide services to its customers, both in these dockets and in entirely unrelated matters.

That traditional practice is not required by statute or rule and will not be followed in this matter. Instead, the Board is creating a "master docket," Docket No. E-22248, to receive all pleadings, motions, and other filings that apply to all of these dockets. Everything filed in the master docket will be considered a part of the record in each of the individual dockets without having to be separately filed in those dockets, but it will not be served on the individual docket service lists; it will be served on the master docket service list only. Any pleading, motion, or other filing that applies to only one county may still be filed in that individual county docket and will be served only on the service list for the affected docket, but in general all filings relating to this matter should be filed in the master docket.

Filings made in the master docket will be served only on parties to that docket, meaning persons who have been granted intervention in any of the incorporated

DOCKET NO. E-22248 (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)

PAGE 3

dockets prior to this order and any persons granted intervention in the master docket by this or a subsequent order. The initial service list in the master docket will consist of those parties who have been granted party status in this matter, including Clean Line; the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; and the Preservation of Rural Iowa Alliance; plus the parties granted intervention later in this order. Any other person wishing to be included on the service list for the master docket must file a petition to intervene in the master docket. The Board notes that all filings are available to the public at any time, and at no charge, through the Board's Web site and its electronic filing system at <https://efs.iowa.gov> (unless filed confidentially pursuant to Iowa Code § 22.7), so it is not necessary to be a party in order to monitor this matter.

With these changes, notice of filings related to this matter will be served on the parties to the master docket and the filings will be available to any interested person at any time through the Board's electronic filing system. This will reduce the load on the Board's system and prevent unnecessary system issues. This order will be uploaded to each of the individual dockets and served on each service list, including those who must be served on paper, so that everyone has notice of these changes. Subsequently, paper copies will only be served on any intervenors that may request and be granted paper service, and on owners of, or those residing on, eminent domain parcels who request and have been granted paper service.

PETITIONS TO INTERVENE

On January 8, 2015, Wind on the Wires filed a petition to intervene. On July 6, 2016, petitions to intervene were filed by DJF Farmland Holdings; Roseberry Farms, Inc.; Iowa Farmland, LLC; and Alliant Energy Corporate Services, Inc. No resistances have been filed and all of these petitions to intervene will be granted.

PROCEDURAL SCHEDULE

A. New time deadline

On May 27, 2016, House File 2459 was signed into law, adding § 478.6A “Merchant line franchises – requirements – limitations” to the Iowa Code. This newly-enacted statute creates a new class of electric transmission lines, called “merchant lines,” and sets time limits for processing franchise petitions for merchant lines. Clean Line’s proposed electric transmission line is a merchant line as defined in the new statute.

Section 39 of House File 2459, which applies to merchant line petitions for franchise filed on or after November 1, 2014, that have not yet been approved by the Board as of May 27, 2016, requires that the Board must act on these petitions within two years. *Id.* The Clean Line petitions fall into this classification and therefore a decision on these petitions must be issued by the Board no later than May 27, 2018. Any schedule in these proceedings must allow for a Board decision prior to that date.

On June 23, 2016, the Board issued an “Order Setting Scheduling Conference and Setting Intervention Date” to allow the parties and the Board to discuss a possible procedural schedule. The conference was held on July 11, 2016, with participants in the hearing room and by webinar. At the conference, Clean Line presented one possible procedural schedule while Board staff presented a different schedule. The parties commented on the schedules; those comments generally focused on matters such as the length of time required for review of the proposed route, the desirability of setting deadlines for designation of experts and close of discovery, and dates for intervenors to file prepared testimony. The parties were then permitted to file written comments on the proposals by July 15, 2016.

B. Summary of comments

Clean Line filed comments identifying the main difference between the two potential schedules as the time for staff review of the proposed route. Staff proposed to begin that review, including viewing of the eminent domain parcels (which requires the Exhibit E condemnation documents), by August 1, 2016, while Clean Line proposed to file the initial Exhibit E documents by May 1, 2017. In its comments, Clean Line says it is willing to file initial Exhibit E documents by January 13, 2017, the complete set of documents by May 1, 2017, and the final version of Exhibit E by August 1, 2017. Clean Line says that staff can start its review of the route in November of 2016, after the company has re-engaged its land agents and

determined whether any minor route changes or alternatives should be considered by staff during that review.

Clean Line says that given the use of pre-filed direct testimony in Board proceedings there is no need to have either an expert witness designation deadline or a discovery deadline in advance of the filing of the testimony. Instead, Clean Line says, it is customary in Board proceedings for discovery to follow, and be based upon, the pre-filed testimony.

Clean Line also says that its proposed schedule can be modified to require that all intervenor testimony be filed at the same time approximately 60 days after Clean Line files its initial testimony.

Wind on the Wires filed comments supporting Clean Line's original proposal to file the Exhibit E documents in May of 2017, arguing that the additional time will allow Clean Line to make the filing as accurate as it can be. Wind on the Wires also supports setting a single date for all intervenor testimony. Finally, Wind on the Wires requests a briefing schedule that allows six to eight weeks from the end of the hearing to the initial briefs and a further four weeks for reply briefs.

Iowa Farmland, LLC, filed comments supporting the schedule prepared by Board staff and suggested the addition of expert designation deadlines of January 2, 2017, for Clean Line and supporting intervenors and March 1, 2017, for opposing

intervenors. Iowa Farmland, LLC, also suggested a discovery deadline of September 1, 2017, for all parties.

The Preservation of Rural Iowa Alliance (Alliance) filed comments rejecting Clean Line's proposed schedule and supporting the schedule prepared by Board staff, with the clarification that Clean Line should be required to file Exhibit E documents for four additional counties each month after August 2016. The Alliance also requests deadlines for designation of experts (including expert reports) and a discovery cutoff deadline.

Alliant Energy Corporate Services (Alliant) filed comments saying it does not oppose allowing Clean Line additional time to revisit or finalize its route decisions and to submit its Exhibit E documents. Alliant says that one intervenor filing date, rather than two, would be most appropriate and it should be at least six weeks after Clean Lines files its direct testimony.

C. Board analysis

1. Exhibit E filings and staff review time

Iowa Code § 478.4 provides, in relevant part, that in an electric transmission line franchise proceeding the Board "shall examine the proposed route or cause any engineer selected by it to do so." That route examination typically has been performed by Board staff and includes viewing the properties that are potentially subject to eminent domain proceedings; thus, the route review cannot properly begin

until at least some Exhibit E documents have been filed. The Board understands that based upon the current status of this matter, Clean Line could be requesting the power of eminent domain over more than 1,000 separate properties; review of that many parcels will require a significant amount of time.

Clean Line says that it wants time to re-engage its land agents and refine the number of eminent domain parcels before it begins filing the Exhibit E documents. However, the company does not commit to, or even project, a reduced number of condemnation parcels that might result from that refinement. Still, the Board agrees that better information in the Exhibit E documents is likely to be beneficial and will accept Clean Line's proposal to begin filing those eminent domain documents by January 13, 2017. However, that time comes at a potential price. Delaying the staff review process in that manner means it will be necessary for the Board to hire outside engineers to assist staff in its review. The cost of those engineers will be assessed to Clean Line pursuant to Iowa Code § 476.10(1)(a).

2. Expert designation and discovery deadlines

While some parties have indicated a desire for deadlines for designation of experts and close of discovery, the Board's standard process uses pre-filed testimony that makes such deadlines unnecessary. See 199 IAC 7.10. Each witness, expert or not, is identified at the time the witness's direct testimony is filed; there is no need for expert reports because the actual direct testimony of each

witness will be available to the parties to serve as a basis for discovery. As Clean Line says, it is customary in Board proceedings for discovery to follow the filing of the prepared written testimony; the result is focused, efficient discovery that helps to produce a better record.

The Board will not set deadlines for designation of experts or discovery at this time. If any party believes a discovery deadline is necessary in the time following the filing of direct testimony and prior to the hearing, that party can file an appropriate motion and the Board will consider it.

3. Intervenor testimony filing dates

The parties have offered a variety of proposals for the filing of intervenor testimony. Most appear to prefer a schedule that requires all intervenors to file at the same time, regardless of whether a particular intervenor is filing in support of, or in opposition to, Clean Line's petitions. The Board is concerned that if a schedule is set that requires Clean Line to make the initial filing, then all other parties are required to file, and Clean Line is then required to file reply testimony, the opposing intervenors will not have a clear opportunity to respond to the testimony filed by the supporting intervenors, and vice versa.

To address this concern, the procedural schedule will require that intervenors that support issuance of the franchises must file their prepared testimony, direct and rebuttal, at the same time as Clean Line. In this way, opposing intervenors will have

the opportunity to review and respond to the direct testimony filed by Clean Line and its supporters and Clean Line and its supporters will be able to respond to the opposing intervenors through their rebuttal testimony.

4. Briefing schedule

Some parties have proposed briefing schedules that would allow multiple months for the filing of briefs but leave the Board with only five weeks to read and consider the briefs, deliberate, and draft and issue a decision. Based upon the Board's recent experience in another matter of similar scope, *In re: Dakota Access, LLC*, Docket No. HLP-2014-0001, those proposals are unrealistic. The Board will establish a briefing schedule that allows the parties a reasonable period of time to brief the issues and gives the Board a reasonable period of time to consider the briefs.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Effective as of and from the date of this order, Docket No. E-22248 is opened as a master docket incorporating 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 as described in the body of this order. Filings made in Docket No. E-22248 will be served on the parties to that docket and will also be considered a part of the agency record in each of the

incorporated dockets. Filings made in any of the incorporated dockets will be served on the service list for the affected docket or dockets only.

2. The petition to intervene filed on January 8, 2015, by Wind on the Wires is granted.

3. The petitions to intervene filed on July 6, 2016, by DJF Farmland Holdings; Roseberry Farms, Inc.; Iowa Farmland, LLC; and Alliant Energy Corporate Services, Inc., are granted.

4. The following procedural schedule is established:

a. On or before January 13, 2017, Clean Line shall file initial Exhibit E documents for at least four counties, each of which shall have an approximately average number of condemnation parcels. Clean Line shall continue to file initial Exhibit E documents for at least four counties by the 13th of each month thereafter, with all Exhibit E documents to be filed no later than May 1, 2017.

b. On or before June 1, 2017, any party wishing to intervene in this proceeding must file a petition for intervention. All such petitions must comply with the requirements of 199 IAC 7.13.

c. On or before June 30, 2017, the engineers selected by the Board pursuant to Iowa Code § 478.4 to examine the proposed route shall file a report regarding that review.

d. On or before August 1, 2017, Clean Line and any intervenors supporting issuance of the franchises shall file prepared direct testimony and exhibits. Clean Line's testimony should address the legal requirements for issuance of the requested franchises and should also address those matters identified in the report filed by engineers selected by the Utilities Board to review the route. Clean Line shall also file its final Exhibit E documents at this time (subject to revision by withdrawal of documents as voluntary easements are signed or to correct errors or omissions or for such other purposes as may be appropriate).

e. On or before October 2, 2017, OCA, along with any intervenors not supporting issuance of the franchises, may file prepared direct testimony responding to the direct testimony filed on or before August 1, 2017.

f. On or before November 13, 2017, Clean Line and any intervenors supporting issuance of the franchises may file prepared rebuttal testimony.

g. Hearing in this matter will be scheduled at a time and place to be determined. The Board has blocked out the weekdays of January 3 to 26, 2018, for this purpose.

h. On or before February 12, 2018, all parties may file initial briefs.

DOCKET NO. E-22248 (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)

PAGE 13

i. On or before February 26, 2018, any party who filed an initial brief may file a reply brief.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 8th day of August 2016.