

Easement Negotiation 101: Focus on Gas Pipelines and Energy Transmission Lines
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- I. *A typical right-of-way agreement*
 - A. Refer to “Pipeline Right-of-Way Grant” and “Transmission Line Easement Agreement” attachments.

- II. *Easement negotiation*
 - A. Does the landowner want to negotiate?
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 - ii. Significant location changes are typically more successful early in the process.
 - B. The addendum.
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“Shale Oil and Gas Development” Fact Sheet Series

Understanding and Negotiating Pipeline Easements

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Introduction

Pipelines play an important role in the development of Ohio’s shale resources. As shale development in Ohio continues to expand, so does the need for pipelines that transport shale gas resources. Companies who want to construct a pipeline across their properties may approach many landowners. Landowners facing this situation will benefit from understanding and negotiating the pipeline easement, also referred to as the pipeline “right-of-way.” This fact sheet explains pipeline easements and reviews issues and terms for landowners to consider when negotiating an easement. For additional information on pipelines, pipeline regulation and pipeline construction see our pipeline fact sheet series on OSU Extension’s shale education library at <http://shalegas.osu.edu>.

What is a Pipeline Easement?

Generally, an easement is a legal interest that allows someone the right to use another’s property for a certain purpose. A pipeline easement specifically gives the easement holder the right to build and maintain a pipeline on a landowner’s property. It doesn’t grant the easement holder actual ownership of the land, just a right to use the land for pipeline purposes. The easement “runs with the land,” meaning that it remains on the property and applies to all future property owners. The easement should be in writing, signed by the landowner and recorded with the county recorder. Typically, a pipeline easement is permanent and does not have a termination date, although parties can agree to an easement that lasts for a certain period of time. Note that the term “right-of-way agreement” has the same legal meaning as the term “easement,” and that many refer to the piece of land that is the subject of the easement as a “right-of-way.” For this fact sheet, we will use the term “easement” rather than “right-of-way.”

Pipeline Easements and Oil and Gas Leases

An oil and gas lease might include pipeline easement rights as a provision of the lease. For this reason, landowners should examine existing oil and gas leases to determine if pipeline easement rights already exist. If so, the landowner should understand the extent of the easement rights granted in the lease. For example, the lease may grant the oil and gas company the right to establish gathering lines anywhere on the lease property. Or an oil and gas lease might prohibit the landowner from granting a pipeline easement to another company.

Landowners who have existing oil and gas leases should carefully review the leases and consult an attorney for clarification of any language that refers to pipelines. Landowners who are currently considering an oil and gas lease should consider removing any references to pipeline easements and negotiate those rights in a separate pipeline easement agreement.

Pipeline Easements and Eminent Domain

Eminent domain can play an important role in the development of pipelines and the negotiation of pipeline easements. If a landowner doesn't agree to grant a pipeline easement to a development company, the company may try to acquire the easement through the power of eminent domain. Ohio has a specific law in Ohio Revised Code 1723.01 that allows a private company that is organized "for transporting natural or artificial gas, petroleum, coal or its derivatives ... through tubing, pipes, or conduits" to do two things:

1. To enter upon any private land to examine or survey for pipelines, and
2. To use eminent domain to take private land, or any right or interest in private land, as is necessary for the pipelines.

Some argue that the statute only grants eminent domain rights for transporting gas, and does not extend the right of eminent domain for the transport of gas derivatives such as ethane. While there is not strong legal support for this argument, we can expect to see litigation on this issue in the near future.

To use eminent domain, the company must prove that the company and landowner were not able to reach an agreement about granting a pipeline easement and that the taking of the pipeline easement is "necessary." The company must follow the procedures for eminent domain laid out in Ohio Revised Code Chapter 163.

For an *interstate* pipeline that runs between Ohio and another state, federal law could allow a company to use eminent domain to obtain land from unwilling landowners. Federal law states that a company may acquire property rights for a gas pipeline if the company has obtained a Certificate of Public Convenience and Necessity from the Federal Energy Regulatory Commission and the company and landowner have not been able to agree on compensation for the pipeline easement. See 15 USC §717(F).

Pipeline Easements are Negotiable

While a landowner will likely receive a "form" or "model" easement from a development company, the landowner should consider this form easement as a starting point for negotiating easement terms rather than as a final offer from the company. It is acceptable to respond to the company's easement offer with additional provisions that address the landowner's needs. The assistance of a knowledgeable attorney throughout this easement negotiation process can be invaluable and well worth the investment.

Before the pipeline easement negotiation process begins, take into account three key areas of concern:

1. *Impact on property.* What effects could there be on the property due to the construction, maintenance and long-term presence of the pipeline, and are there ways to reduce those impacts?
2. *Income.* How much compensation should the landowner receive for the use of the land and for the impacts that will or might result from the pipeline?
3. *Eminent domain.* Does the company possess the potential power of eminent domain, and is the company willing to pursue eminent domain?

Pipeline Easement Terms

The following explains many of the key terms to consider in a pipeline easement. This list is a summary, and does not include all of the provisions that might exist. A landowner should understand each provision and determine whether it applies to the landowner's situation and should be a point of negotiation with the development company.

Location of the Pipeline

What is the company's proposed location for the pipeline? A landowner should carefully review the proposed location and consider its impacts upon the property. Are there areas of the property that the landowner does not want to disturb, such as important habitat, timber and soil resources or residential use areas? If so, the landowner should try to negotiate the location to avoid these areas. Because an easement usually prevents a landowner from building new structures over the easement area, the landowner should also try to determine where buildings or structures may be desired in the future and ensure that the easement will not cross those areas. Additionally, the landowner might consider asking the company to locate the pipeline parallel to property boundaries or other existing easements to reduce land use conflicts and ensure efficient land use.

Once the company and landowner agree to the pipeline location, the easement document should specify the exact location of the pipeline and the boundaries of the pipeline easement rather than using broad or general language such as "across the landowner's property." Problems or changes with the proposed route might occur during construction. To guarantee accuracy of the pipeline and easement locations after the pipeline is in place, the landowner can request that the company provide an "as-constructed" survey following the construction of the pipeline.

Pipeline Depth

Companies today place most pipelines underground. Although Ohio law requires that pipelines be buried at least 24 inches below the land surface, the landowner may want to negotiate a lower depth. Farmland owners should request additional depth to ensure that the pipeline will not interfere with crop production and other farming activities that might occur on the surface. The recommended depth of a pipeline on farmland is 48—60 inches below the land surface. Pipeline depth is measured from the land surface to the top of the pipe.

Width of the Easement

The pipeline easement width may range from 50 to 100 feet or more, depending on the type and size of pipeline, the nature of the landscape and construction and maintenance needs. Easement width might include land that is needed to be able to construct the pipeline, or additional width for construction could be addressed in a *temporary construction easement*, explained below under "construction rights." The easement document should state the width in specific terms rather than in general terms such as "a width as is necessary to support a pipeline."

Construction Rights

There are two approaches to addressing construction needs for the pipeline. A company might include construction needs when determining the width of the easement. In this situation, the landowner would grant construction rights as a permissible use of the pipeline easement and the width of the easement would be wide enough to accommodate construction activity.

Another approach is to negotiate a *temporary construction easement* in addition to the pipeline easement. The temporary construction easement allows the company access to additional land along the pipeline easement in order to install the pipeline. When construction is complete, the temporary construction easement terminates and the company's rights of use "shrink down" to a lesser width that is designated as the pipeline easement. Temporary construction easements are often included in the same document as the pipeline easement.

For either approach, it is important for the landowner to understand the boundaries for construction activity and the potential impacts construction might create on the property. Be wary of language that expands the size of the easement by granting the company "a width as is necessary to construct the pipeline," or that gives the company broad rights to access and use non-easement property for construction and construction-related purposes. The preferred language for the landowner regarding construction rights is to state the precise boundaries where construction will occur.

The landowner should also place restrictions on construction-related activities such as use of the property by construction workers. These restrictions could address construction parking and worker sanitary stations and rest areas, and could prohibit non-construction activities on the property such as hunting, fishing, camping or similar activities by construction workers.

Construction Timeline

A valuable provision for the landowner to request is a timeline that outlines the time period for construction and installation of the pipeline. The timetable gives the landowner certainty as to when activity will occur and can help avoid conflicts between pipeline construction and important events for the landowner, such as farm planting or harvest seasons. A favorable timetable would include remedies for the landowner if the company causes hardships and inconvenience by failing to meet the construction timeline.

Construction Standards

The Division of Soil and Water Conservation in the Ohio Department of Natural Resources (ODNR) has developed a comprehensive set of standards for pipeline construction that address issues such as soil compaction, erosion and drainage. Adherence to these standards is very important for minimizing impacts on soil and water resources. A landowner can include the ODNR standards in the easement document, which will require the company to adhere to these best management practices. For further explanation, see our Fact Sheet, "A Landowner's Guide to Understanding Recommended Pipeline Standards and Construction Specifications" or visit http://www.dnr.state.oh.us/portals/12/CE/Pipeline/Ohio_Pipeline_Const_Standards.pdf.

Pipeline development companies often use third party construction companies to install the pipelines. The easement should state that all third parties are also subject to the agreed upon construction standards and should make the development company liable for noncompliance by the construction company. Also, the landowner may request that the development company provide identification information for all third parties who will perform work on the land.

Crossing Waterways

Will pipeline construction require crossings of a ditch or waterway on the landowner's property? The easement can include a provision that requires the company to construct temporary crossings to prevent erosion and other interferences with the waterway, streambed and riparian areas.

Impacts on Woodlands and Timber

Pipeline construction projects often interfere with existing woodlands or timber stands. A landowner who does not want this type of interference should try to negotiate the pipeline location to avoid impacts on woodlands. If the pipeline will interfere with trees, the easement should address tree removal issues such as who will remove the trees, best management practices for tree removal, and who has rights to the timber. The landowner may want to use or sell the timber or may prefer to grant timber rights to the development company and seek compensation for the value of the timber. An additional consideration is restoration of the woodland area after construction; the landowner may negotiate for the company to reestablish trees and restore woodland habitat that was impacted by construction activities.

Drainage, Fencing, Gates and Other Improvements

The landowner may also need for the pipeline development company to replace or install improvements such as subsurface drainage, fencing, gates, storage tanks, outbuildings and other accessories. Address which improvements must be moved, how and where they will be moved and compensation for harm to the improvements. If there are livestock on the property, require procedures that contain the livestock during and after pipeline construction. A private third-party appraisal may be desirable to assess fair market value for harm to

structures and improvements. Instead of compensation, the company could be responsible for replacing or repairing structures and improvements.

Construction of Associated Structures or Facilities

There are a number of structures and facilities associated with the construction and operation of pipelines, such as compressor stations, pump stations, meter stations and meter pits. Legally, these structures are usually referred to in the easement as “appurtenances.” A landowner should examine the proposed easement to determine if the easement allows the development company to place appurtenances on the pipeline easement and if so, where and to what extent they may exist. If the landowner does not want these structures and facilities on the property, be sure that the easement language prohibits them. Alternatively, a landowner could limit placement of appurtenances to certain locations or require that the structure or facilities be hidden or visually pleasing. If the landowner does allow for these facilities, the landowner should request additional compensation.

Substances Permitted in the Pipeline

The easement should clarify what substances the pipeline may transport. Generally, the landowner would be wise to limit pipeline use to natural gas and its constituents and prohibit use of the pipeline for other substances such as wastewater, sewage and oil.

Number of Pipelines

The landowner might expect that the easement is for the construction of a single pipeline, but the easement language might allow more than one pipeline or “as many lines as regulations allow.” If the landowner agrees to more than one line, payment should reflect the additional value of the easement that multiple lines create for the development company. If the landowner is not willing to allow more than one pipeline, the easement language should prohibit multiple lines. Perhaps the landowner is willing to consider additional pipelines on the easement in the future; language could state that subsequent pipelines are possible if approved by the landowner and with additional compensation.

Pipeline Pressure

What is the pressure of the pipeline proposed by the development company? The easement should state the maximum pressured allowed in the pipeline. It is advisable to consider a higher payment to the landowner for higher pressure lines because of potentially higher safety risks, especially when the pipeline is located close to human activity.

Indemnification

A landowner should seek a provision that protects the landowner from liability for all acts of the company related to the pipeline. Because companies often subcontract to third parties to construct the pipelines, liability protection should include acts committed by third parties. The company should agree to defend the landowner and hold the landowner harmless from any liabilities arising from the pipeline or from any pipeline-related activities.

Access to Pipelines for Inspection

The law requires companies to perform routine inspections of their pipelines to make sure they comply with safety regulations. The methods of inspection a company will use can vary—from gas sampling and leak detection by personnel on the ground to aerial patrols by plane or helicopter. Landowners should consider addressing how and where the company may access the property for inspections and consider requiring the company to provide notice of inspection, including the inspection time and nature of the activity. A farmland owner may want to prohibit

inspections at specific times of the year, such as during harvesting or planting seasons. A routine inspection schedule could benefit the landowner, if the company is willing to agree to one.

A final consideration for the landowner is to address property damages and disruptions due to inspection, maintenance, repair and replacement. Soil compaction and erosion, loss of timber, water supply or property access and interference with livestock production are a few examples of potential disruptions that pose hardships on the landowner. Negotiate procedures that detail replacement, repairs or compensation for these disruptions.

Signage and Markers

Ohio Administrative Code section 1501:9-10-03 states that companies must identify the route of the pipeline on the surface in “a manner that is customary to the industry.” Under federal regulations, markers are to be placed so that the location of the pipeline is accurately known. It may be in the landowner’s best interest to require additional pipeline signage and markers so that the landowner can safely conduct agricultural, recreational or other types of activities without interfering with the pipeline.

Landowner’s Rights of Use

It is advisable for the landowner to retain broad rights to use the easement area. The landowner should try to forecast all potential uses of the property in the future and specify that the uses do not violate the easement. Such rights can include rights to farm in, on and around the easement; graze livestock; conduct recreational uses; grant other easements or place temporary structures, accessories, driveways, roads, walks, parking areas and landscaping on the easement. Stating these retained landowner rights of use within the pipeline easement will safeguard the landowner’s ordinary use of the property and minimize inconveniences and misunderstandings in the future.

Termination or Abandonment of Easement

Both parties should agree to conditions that will legally terminate or end the easement. Easements typically last forever (“in perpetuity”) as long as the company uses the easement for its stated purposes. However, the landowner may seek to clarify that there will be an automatic termination or abandonment of the easement if the company ceases to use the pipeline as intended or fails to utilize it for a certain period of time. For example, the easement could state that termination of the company’s rights takes place if “no construction occurs within X years after entering into the easement agreement or there is no actual use of the pipeline for X years.” Where there is a termination of the easement, the landowner may also want to require the company to remove the pipeline and other structures and restore the land surface after removal, so should be sure to include these obligations in the easement.

Disputes and Problems

How will the parties deal with disputes or problems that arise? The parties can agree upon methods for resolving disputes and include them in the easement. For example, a common dispute provision might prohibit a landowner from going to court over a dispute unless the landowner has first provided written notice of a problem to the company and given the company a specific period of time to address the problem. Another common provision is to require that the parties settle a dispute by arbitration or mediation rather than going to court. The landowner should carefully review these provisions with the landowner’s attorney and ensure that the process for resolving disputes is fair and understood by the landowner.

Assignment Rights

The easement should state whether the pipeline development company may transfer its rights under the easement to another company. If the parties agree to allow an assignment, it is common for the easement to state that the company must provide written notice of an assignment to the landowner within a certain period of time,

along with contact information about the new company and a statement that the easement will be binding on the assigned party.

Amendments to the Easement

What if the parties want to change or amend the easement in the future? The easement should outline whether amendments are permissible and what each party must do in order to formalize an amendment. It is common to include a provision stating that any amendments to the easement must be in writing and signed by each party or their successors.

Warranting Title

Another common clause often found in easements states that the landowner “warrants” clear title to the property and promises to compensate the company if a title problem occurs. A landowner’s attorney would likely demand to remove this provision, as it is always possible that an unexpected and unknown discrepancy could arise in a landowner’s title to the property.

Payment Provisions

Compensation is the final consideration a landowner should make, after gaining a clear understanding of how the pipeline may affect the landowner and the landowner’s property. This is an important part of the negotiation process and requires the landowner to carefully assess property impacts, other damages and property values. There are several elements that should make up the final offer of payment, which includes:

1. *Payment for the permanent pipeline easement.* The easement agreement should offer a payment for the actual land required for placing the pipeline on the property. This amount is usually offered as a set dollar amount *per linear foot* of pipeline that will be laid on the property. Sometimes the payment amount will be stated as “per rod,” which is 16.5 linear feet. Many factors contribute to the amount the company offers, including the size and type of the pipeline, the importance of the location to the pipeline route, current rates in the area and current land values. Individual impacts and factors should also affect the payment. Landowners may benefit from talking with other landowners in the area to ascertain baseline values offered to others, but be aware that individual circumstances can lead to different values. In addition to the per-foot or per-rod payment, a company might also offer a signing bonus, which gives the landowner another fixed dollar amount for signing the easement.
2. *Temporary construction easement.* A company may seek a temporary construction easement that gives the company rights to use a larger area during the initial pipeline construction and reverts to a smaller area once the pipeline is completed (see further explanation above under “construction rights.” The company should make an additional payment for this temporary easement, based on factors similar to those used to calculate the pipeline easement.
3. *Damages to the landowner.* Compensation to the landowner should also include any damages the landowner will incur as a result of the construction, maintenance and long-term presence of the easement on the property. We discuss many of these potential damages above, such as interference with land use, impacts on crop production or subsurface drainage and loss of timber. Damages should also include inconvenience impacts from the construction process.
4. *Costs to the landowner.* The landowner can also request compensation for additional costs incurred because of the pipeline, such as payments for an attorney, property appraisals, property surveys and recording fees.

Taxation on Pipeline Easement Payments

Landowners should be aware that income received for the easement creates tax payment obligations. For federal taxation purposes, income for an easement that lasts thirty years or more is considered a capital gain and must be reported as such. Income received for a “temporary” easement, one that lasts less than thirty years (such as a construction easement), is considered ordinary income for tax reporting purposes. Payment for damages to the landowner’s property is considered capital gain. Because of these distinctions, it is important for the landowner to obtain a statement from the company that itemizes and explains the payments made to the landowner.

The Importance of Professional Assistance

This fact sheet should not be used to replace the services of an attorney or other professional. We strongly encourage landowners to consult with an experienced attorney and other advisors when considering and negotiating a pipeline easement.

Useful References

Natural Gas Pipeline Right-of-Ways: Understanding Landowner Rights and Options; [Penn State Extension](#) (Apr., 2010).

PIPELINE RIGHT-OF-WAY GRANT

KNOW ALL MEN BY THESE PRESENTS:

That _____

hereinafter referred to as Grantor, whether one or more, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby warrant and convey unto _____

a _____ corporation, having its _____ office at _____,

its successors and assign, hereinafter referred to as Grantee, the right to lay, construct, maintain, alter, inspect, repair, replace, change the size of, operate and remove a pipeline, not to exceed _____ inches in diameter, and any appurtenances listed herein to the operation or protection thereof, for the transportation of oil, gas, petroleum or any of its products, on, over, and through the following described real estate situated in _____ County, _____, to wit:

APPURTENANCES:

TO HAVE AND TO HOLD THE SAME unto Grantee, its successors and assigns, together with the right of ingress and egress to and from said premises, for the purpose aforesaid.

1. Said pipeline shall be located as shown by the attached plat, which is made a part hereof as though fully set forth herein. All above-ground appurtenances, if any, shall be placed at or adjacent to the property line of the above described real estate.
2. The easement herein granted shall be limited to _____ feet (_____) for construction, replacement and removal purposes, and to _____ feet (_____) in width for the permanent easement, with the pipeline located in the center thereof.
3. The pipeline shall be buried to a depth of not less than forty-eight inches (48") below the surface, except in rock, where a minimum cover of twenty-four inches (24") will be provided.
4. If the easement is abandoned, the pipeline may be removed at the expense of the Grantee within twelve months from the abandonment, and a release of the easement shall be filed of record by the Grantee. If not removed within such period, such line will be considered abandoned in place and become the property of Grantor.
5. Grantor shall have the right to use and enjoy the above-described premises, subject to the rights herein granted. No consent from the Grantee is necessary for Grantor to fence, place temporary structures, to excavate for irrigation ditches, or to level the land, in the proper enjoyment of the land for agricultural purposes.
6. Any pipeline ditch across irrigated land shall be water packed when back-filled, and the right-of-way leveled so as to allow irrigation water to cross the pipeline ditch in a normal manner. The water packing, backfilling and leveling shall be performed in a workmanlike manner by Grantee and to the satisfaction of Grantor.
7. Water used for water packing the pipeline and expenses incurred in connection therewith shall be paid by Grantee.
8. Grantee agrees to pay for damages to land, crops, grasses, fences, timber, livestock and for damages to the personal property caused in the construction, maintenance, replacement, repair or removal of the pipeline, such damages to be paid after the damage is done.
9. As a part of the consideration hereunder, in addition to the damages provided in Paragraph 8 above, Grantee agrees to pay Grantor for any deficiency in growing crops on irrigated land, if the construction of the pipeline causes delay or inability to properly irrigate said growing crops below the pipeline right-of-way. Such deficiency in growing crops, if any, shall be determined by comparison of the growing crops above and below the pipeline.
10. Grantee also agrees, that at the time excavation for the pipeline is made, Grantee shall cause the top soil to be separately placed from the subsoil and replaced on top of the backfill, so that the ground will be restored to its original condition as nearly as possible upon completion of construction.
11. Grantee, upon written application by Grantor, agrees to make, or cause to be made, a tap in any gas pipeline constructed by Grantee upon the above described premises. Such tap shall be for the purposes of supplying gas to Grantor for his own use only, and not for resale. Grantee shall make such tap and will install and maintain a meter and regulator at the point of connection with its pipeline, all at no cost to Grantor. All piping and connections downstream of Grantee's meter shall be furnished, installed and maintained by Grantor, at no cost to Grantee.
Said tap shall be provided at a point adjacent to an existing public road, or at other convenient point on its line as Grantee may determine. Gas to be taken under this provision shall be measured and furnished to Grantor at such rate, and upon such terms, as may be established by Grantee, or its assigns, from time to time. All of the foregoing shall be subject, however, to Grantee's right, without further obligation to Grantor, to discontinue or interrupt its use of any such line or to transport substances through the same which are not suitable for use by Grantor.
12. Grantee agrees to assume the responsibility for and the expense of lowering said pipeline when requested by Grantor when reasonably necessary for the use of Grantor in his agricultural operations, including but not specifically limited to the use of said land for irrigation purposes.
13. The rights herein granted may be assigned in whole or in part.
14. Grantee shall be obligated, at Grantee's expense, to reseed and establish native grass cover, if any, on the right-of-way and adjoining land used in the pipeline construction.
15. Grantee shall take all reasonable precautions to prevent and suppress fires, to prevent pollution of soil and water resources, and to control excessive soil erosion.

- 16. Grantee agrees to indemnify Grantor against all damages, expenses, costs and charges, and to save Grantor harmless from any and all claims for damages by third parties, and all loss and liability incurred by reason of Grantee's use and enjoyment of such right-of-way.
- 17. Grantee agrees that all payments due and payable hereunder shall be paid to _____, as agent on behalf of Grantor.
- 18. Grantor agrees to compact, backfill and maintain the pipeline ditch at original level.
- 19. (a) Grantee agrees that it will comply with all regulations and statutes of all governmental entities having jurisdiction over compliance with environmental legislation. Grantee further agrees to accept the leased premises in its "as is" condition. It is acknowledged that Grantee has been advised to inspect the property to determine that it is suitable for the purpose intended and to ascertain that no environmental hazards or toxins are now present.
- (b) Grantee shall indemnify and hold Grantor harmless from any claims, damages, actions or causes of action from any environmental damage or contamination caused or contributed to by Grantee subsequent to the commencement of this lease.
- 20. Further terms and conditions.

The terms and conditions and provisions of this grant shall extend to and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

WITNESS OUR HANDS, this _____ day of _____, 20____.

GRANTOR

ACKNOWLEDGEMENTS

STATE OF _____

SS:

COUNTY OF _____

On this _____ day of _____, 20____, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, (marital status) _____, to me personally known to be the same person who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and official seal the day and year first above written.

My commission expires:

 Notary Public

 Typed or printed name of Notary Public

THIS DOCUMENT PREPARED BY:
Rock Island Clean Line LLC
1001 McKinney Street
Suite 700
Houston, Texas 77002

AFTER RECORDING RETURN TO:
[Name
[Address]
[Address]

(This space reserved for recording information)

Tract # - [_____]

TRANSMISSION LINE EASEMENT AGREEMENT

This Transmission Line Easement Agreement (“Agreement”) is entered into between _____, (collectively, “Landowner”), and Rock Island Clean Line LLC (“Rock Island”), a Delaware limited liability company. Rock Island has its principal place of business at 1001 McKinney St., Suite 700, Houston, TX 77002.

1. Landowner owns that certain real property (the “Property”) as identified on the attached Exhibit “A,” located in _____ County, State of Iowa.
2. Landowner does hereby grant and convey unto Rock Island, a perpetual, exclusive easement (the “Easement”) to construct, operate and maintain an overhead transmission line, as further described below.
 - a. In exchange for receiving the Easement, Rock Island has paid Landowner an initial payment of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged. Rock Island may pay Landowner additional consideration pursuant to that certain Easement Calculation Sheet executed by Landowner concurrently with this Agreement. In the event Rock Island does not pay the additional consideration by the date(s) provided in and in accordance with the terms of the Easement Calculation Sheet, subject to the cure period set forth in Section 10 of this Agreement, this Agreement shall automatically terminate. Additionally, to the extent applicable, Rock Island will pay Landowner for certain damages as set forth in and in accordance with the terms of the Structure and Damages Calculation Sheet executed by Landowner concurrently with this Agreement.
 - b. The Easement includes rights to construct, reconstruct, repair, expand within the Easement, improve, alter, replace, operate, use, inspect, maintain and remove an overhead transmission line, which transmission line shall include poles, towers and structures, such wires and cables as Rock Island shall from time to time suspend therefrom, foundations, footings, attachments, anchors, ground connections, communications devices, or other equipment, accessories and appurtenances, as Rock Island may deem necessary or desirable in connection therewith (the “Facilities”). The Easement will be used for the transmission of electrical energy, whether existing now or in the future in order to deliver electrical energy and for all communication purposes related to delivering electrical energy.

- c. The location of the Easement is generally as depicted on the attached Exhibit "B." Landowner and Rock Island agree that after the final engineering design and construction of the Facilities have been completed, Rock Island will commission a surveyor to create a precise legal description for the Easement, which will be a strip of land designated by Rock Island not to exceed 100 feet on each side of the center-line of the "as built" Facilities. Landowner authorizes Rock Island to unilaterally record a legal description and or drawings of the "as built" Facilities to reflect the precise location of the Easement. However, upon the request of Rock Island, Landowner agrees to cooperate with Rock Island and to join Rock Island in the execution of an amendment to this Agreement or any other documents in recordable form for the purpose of documenting and recording the precise location of the Easement.
 - d. The Easement includes the right of ingress and egress over the Easement itself, over the Property of Landowner in order to obtain access to the Easement, and over the Property of Landowner adjacent to the Easement and lying between public or private roads and the Easement in such manner that shall cause the least practicable damage and inconvenience to Landowner.
3. Rock Island will repair or pay, at Rock Island's option, Landowner or its tenants for any damage to Landowner's or Landowner's tenants' improvements, livestock and or crops as a result of Rock Island exercising its rights under this Agreement. Certain of these damages are addressed in and will be paid in accordance with that certain Damages Calculation Sheet executed by Landowner concurrently with this Agreement. Notwithstanding the foregoing, Rock Island shall, without being liable for damages, have the right from time to time, including after the initial construction of the Facilities, to: (a) clear the Easement of all buildings or other structures, except fences (provided Rock Island shall at all times have access through any such fence by means of a gate (at Rock Island's cost)); (b) control, cut down, trim and remove trees and underbrush from the Easement; and (c) cut down and trim any tree located outside the Easement that in the opinion of Rock Island may interfere with the safety, proper operation and/or maintenance of the Facilities. If it becomes known or apparent that any drainage tiles have been damaged as a direct result of Rock Island's activities in connection with the Facilities, then Rock Island shall, at Landowner's option, repair or replace, or pay to Landowner the cost to repair or replace the drainage tiles.
4. Landowner shall have the right to use the Easement for normal farming and grazing purposes and have the right to install and maintain fences (provided Rock Island shall at all times have access through any such fence by means of a gate), provided such uses do not interfere with Rock Island's rights and permitted use of the Easement for the purposes described herein. Landowner shall not, however, engage in any activity or grant any rights to third parties that would interfere with Rock Island's use of the Easement, including, without limitation, the drilling or operation of any well, construction of any building or other structure, changing of the existing grade, or installation of any utility or other line, main, conduit, fixture or other appurtenance within, under, upon or over the Easement, without in each case the prior written consent of Rock Island, which consent shall not be unreasonably withheld. Landowner acknowledges and agrees that during the initial construction of the Facilities or any major work on the Facilities, Landowner may not have access to or use of the Easement for any purpose so as to avoid interfering with such construction or other repair work and in order to allow Rock Island to maintain the safety of persons and property during such construction or other repair work.

5. Landowner, for themselves, their heirs, successors and assigns, represent, warrant and covenant that they are the true and lawful owners of the Property and have full right and power to grant and convey the Easement as herein provided.
6. Landowner shall have the right to cancel this Agreement within seven (7) days, excluding Saturday and Sunday, of Landowner signing the Agreement as provided by §478.33, Code of Iowa. Landowner acknowledges receipt from Rock Island of a form in duplicate for providing Rock Island written notice of cancellation under §478.33, Code of Iowa. Rock Island may terminate this Agreement at any time by providing written notice to Landowner and removing the Facilities (if such Facilities exist) within one hundred eighty (180) days of such notice whereupon all further obligations under this Agreement shall terminate. Consistent with and by following the procedures set forth in Iowa Code §478.15 (as applicable), if (a) the Facilities are constructed and the Easement is subsequently wholly abandoned for use for the intended purpose set forth herein for a period of five years, or (b) construction of the Facilities has commenced and work has ceased and has not in good faith been resumed for five years, then, (x) Rock Island shall remove the Facilities (if such Facilities exist), provided, however, that any foundations shall be removed only to a depth such that there is no interference with existing land use, (y) the Easement shall terminate, and (z) all rights to the Easement shall revert to the person or persons who at the time of the reversion are the owners of the property underlying the Easement.
7. All notices given or permitted to be given under this Agreement shall be in writing. Notice is considered given either (i) when delivered in person to the recipient named above, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery by an overnight courier service addressed by name and address to either party to this Agreement. Either party may, by notice given at any time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both.
8. The rights of Rock Island under this Agreement may be sold, assigned, mortgaged or leased, in whole or in part, by Rock Island at any time. In the event of any such sale, assignment or lease by Rock Island of its interests in this Agreement (in whole or in part), Rock Island shall be released from its obligations under this Agreement to the extent of such sale, assignment or lease, provided that any such purchaser, assignee or lessee assumes Rock Island's obligations.
9. The Easement and any restrictions of this Agreement are covenants running with the Property and land affected and shall be binding on and inure to the benefit of Landowner and Rock Island, together with their mortgagees, assignees, and respective successors and assigns, heirs, personal representatives, tenants or persons claiming by, through or under them. In furtherance of the foregoing, Landowner acknowledges and agrees that any and all sums due under this Agreement, including, without limitation, under the Easement Calculation Sheet and the Structure and Damages Calculation Sheet shall be paid to the then owner of record of the Property at the time the applicable payment is due.
10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Iowa. In the event of any breach of a monetary obligation by Rock Island under this Agreement,

Landowner shall provide Rock Island written notice and Rock Island shall have thirty (30) days after Rock Island's receipt of said notice to cure the breach. In the event of any non-monetary breach by Rock Island under this Agreement, Landowner shall provide Rock Island written notice and Rock Island shall have sixty (60) days after Rock Island's receipt of said notice to cure the breach; provided, however, if the nature of the breach is such that it cannot reasonably be cured within sixty (60) days, Rock Island shall not be deemed in breach under this Agreement so long as Rock Island commences the cure within thirty (30) days and thereafter diligently pursues the cure to completion. Notwithstanding anything to the contrary contained herein, Landowner shall have no rights to terminate this Agreement for a breach by Rock Island before the foregoing cure periods have expired. Landowner and Rock Island agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good faith negotiation. If Landowner and Rock Island are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity in state and federal courts in the State of Iowa.

11. Indemnification; Waiver of Claims

- a. Rock Island shall indemnify and hold harmless Landowner from any and all liability, claims, suits, demands, actions, loss, damage and expense, including court costs and reasonable attorney's fees (collectively "Claims"), for injury to persons or damage to property caused by Rock Island, or Rock Island's agents and representatives, in the exercise of Rock Island's rights under this Agreement, except to the extent resulting from Landowner's breach of the terms of this Agreement or from Landowner's negligence or intentional misconduct.
- b. Rock Island's indemnification obligation hereunder includes all Claims brought by Rock Island's employees, agents, contractors, subcontractors or other representatives related to any work performed on the Property in connection with the exercise of Rock Island's rights in this Agreement.
- c. Rock Island agrees that it shall not pursue, and hereby waives, any Claims against Landowner, except to the extent caused by Landowner's breach of this Agreement, gross negligence or intentional misconduct; provided however, this Section 11(c) shall not limit any of Rock Island's remedies for breach of the terms of this Agreement.

12. Landowner hereby consents to Rock Island contacting any lender, mortgagee or other pre-existing holder of a lien or interest in the Property in order to secure a subordination and or non-disturbance agreement in recordable form for the benefit of the parties. Upon the request of Rock Island, Landowner agrees to fully cooperate with Rock Island in order to secure a subordination and or non-disturbance agreement from each lender, mortgagee or other pre-existing holder of a lien or interest in the Property. Landowner shall not be required to incur any third party out of pocket expenses in connection with assisting Rock Island in the pursuit of the foregoing subordination and or non-disturbance agreements; all such third party out of pocket expenses relating to the same shall be paid by Rock Island. At no additional cost to Landowner, Landowner further agrees to cooperate with Rock Island's efforts to obtain financing, including providing any documents reasonably requested by Rock Island, its lenders or as otherwise reasonably required to effectuate the purposes of this Agreement

13. Landowner hereby releases and waives all rights and benefits under applicable homestead exemption laws.
14. This Agreement may be executed in multiple counterparts and, when executed by all parties, shall constitute one agreement effective and binding on all parties.

[Signature page follows]

IN WITNESS WHEREOF, Landowner and Rock Island have hereunto set their hands this _____ day of _____, 20____.

Landowner:

Print Name: _____

Landowner Address:

Print Name: _____

Landowner Address

Print Name: _____

Landowner Address

Print Name: _____

Landowner Address

Rock Island:

Rock Island Clean Line LLC,
a Delaware limited liability company

By: _____

Print Name: _____

Its: _____

SIGNATURE PAGE TO
TRANSMISSION LINE EASEMENT AGREEMENT

ACKNOWLEDGMENTS

STATE OF _____,
COUNTY OF _____,

TO-WIT:

I hereby certify that on this ___ day of _____ 20___, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, the _____ of Rock Island Clean Line LLC, a Delaware limited liability company, known to me to be the person whose name is signed to the written instrument hereto annexed and acknowledged before me in my said County that with full authority he/she executed the same for and as the act of said limited liability company for the purposes therein contained.

Given under my hand and official seal this _____ day of _____, 20___.

Notary Public
My Commission Expires: _____

(Seal)

STATE OF _____,
COUNTY OF _____,

TO-WIT:

I hereby certify that on this ___ day of _____ 20___, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____ known to me to be the person(s) whose name(s) is/are signed to the written instrument hereto annexed and acknowledged before me in my said County that he/she/they executed the same for the purposes therein contained.

Given under my hand and official seal this _____ day of _____, 20___.

Notary Public
My Commission Expires: _____

(Seal)

EXHIBIT “A”

[RECITE LEGAL DESCRIPTION AND TAX PARCEL IDENTIFICATION NUMBER(S)]

EXHIBIT “B”

[Sketch]

**NOTICE OF CANCELLATION
OF
TRANSMISSION LINE EASEMENT AGREEMENT
(To be Appended in Duplicate to the Agreement)**

The undersigned Landowner, or fiduciary acting on behalf of Landowner, notifies Rock Island Clean Line LLC (“Rock Island”), a Delaware limited liability company, having its principal place of business at 1001 McKinney St., Suite 700, Houston, TX 77002 that, pursuant to § 478.33, Code of Iowa, Landowner hereby cancels the Transmission Line Easement Agreement signed by Landowner or Landowner’s fiduciary on _____, 201_, granting Rock Island a transmission line easement over a portion of real property owned by Landowner.

Landowner acknowledges that to be effective this Notice of Cancellation must be mailed by certified mail, return receipt requested, to Rock Island’s principal place of business identified above to be received by Rock Island within seven (7) days, excluding Saturday and Sunday, of the date of the Transmission Line Easement Agreement.

Dated _____, 201_

Landowner

[Print Name Above]

**NOTICE OF CANCELLATION
OF
TRANSMISSION LINE EASEMENT AGREEMENT
(To be Appended in Duplicate to the Agreement)**

The undersigned Landowner, or fiduciary acting on behalf of Landowner, notifies Rock Island Clean Line LLC (“Rock Island”), a Delaware limited liability company, having its principal place of business at 1001 McKinney St., Suite 700, Houston, TX 77002 that, pursuant to § 478.33, Code of Iowa, Landowner hereby cancels the Transmission Line Easement Agreement signed by Landowner or Landowner’s fiduciary on _____, 201_, granting Rock Island a transmission line easement over a portion of real property owned by Landowner.

Landowner acknowledges that to be effective this Notice of Cancellation must be mailed by certified mail, return receipt requested, to Rock Island’s principal place of business identified above to be received by Rock Island within seven (7) days, excluding Saturday and Sunday, of the date of the Transmission Line Easement Agreement.

Dated _____, 201_

Landowner

[Print Name Above]