

October 28, 2013

IOWA UTILITIES BOARD

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: ROCK ISLAND CLEAN LINE LLC	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, E-22138
--	--

RESISTANCE TO MOTION TO BIFURCATE

The Office of Consumer Advocate, a division of the Iowa Department of Justice (hereinafter “OCA”), submits this Resistance to Motion to Bifurcate to state its opposition to the motion filed by Rock Island Clean Line LLC (“RICL”) on October 15, 2013.

1. In its October 15, 2013 Motion to Bifurcate (“Motion”), RICL asked that the Iowa Utilities Board (“Board”) bifurcate the issue of the grant of the franchise from the issue of the grant of eminent domain authority. RICL argues that the franchise issue should be decided first in order to spare RICL the risk of negotiating and obtaining easements without the certainty of a franchise. RICL argues that as a privately-funded company, it is uniquely sensitive to this risk because it would have no way to recover these costs if its franchise petition were denied.
2. RICL argues that the issues are sufficiently distinct to merit bifurcation.
3. OCA asserts bifurcation is not appropriate. Iowa Code § 478.4 governs the Board’s determination of the franchise issue. This statute requires the Board to make two findings before granting a franchise:
 - i.* That the line is “necessary to serve a public use”, and
 - ii.* That the line “represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.”

4. The Board's determination regarding eminent domain is described in two statutory provisions. The first, Iowa Code § 478.6, states that any person granted a franchise by the Board "shall be vested with the power of condemnation to such extent as the [B]oard may approve and find *necessary for public use.*" (emphasis added) The second relevant provision, Iowa Code § 478.15, uses very similar language and states that any person granted a franchise "shall thereupon be vested with the right of eminent domain to such extent as the utilities board may approve, prescribe and find to be *necessary for public use.*" (emphasis added) Thus, assuming a franchise has been granted, the Board is to grant eminent domain authority if, and to the extent such authority is "necessary for public use."

5. OCA disagrees with RICL's claim that "the franchise issue and the eminent domain issue in the Chapter 478 proceeding to be filed by [RICL] involve substantially different questions and will not involve overlapping proof."

6. RICL acknowledges that the Board's past practice has been to decide these two issues in the same proceeding. This past practice is an implicit recognition of the overlapping factual and policy matters binding both decisions.

7. OCA doubts that the Board and the public will realize the administrative efficiencies of bifurcation claimed by RICL. RICL's approach would only shift the timing and place of the taking of certain evidence; it would not reduce the volume or variety of that evidence. Further, RICL's approach would require two hearings instead of just one.

CONCLUSION

OCA respectfully requests that the Board deny RICL's Motion to Bifurcate and continue its past practice of deciding both issues in the same proceeding.

Respectfully submitted,

Mark R. Schuling
Consumer Advocate

/s/ John S. Long

John S. Long
Attorney

1375 Court Avenue
Des Moines, Iowa 50319-0063
Telephone: (515) 725-7200
E-mail: IowaOCA@oca.iowa.gov
OFFICE OF CONSUMER ADVOCATE