

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

IN RE: :
: **DOCKET NOS. E-22123,**
ROCK ISLAND CLEAN LINE LLC : **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**
:

**REPLY TO RESISTANCES TO
MOTION TO BIFURCATE**

Rock Island Clean Line LLC ("Clean Line"), by and through undersigned counsel, in support of its Reply to the Resistances to Motion to Bifurcate filed by the Office of Consumer Advocate ("OCA") and by the Preservation of Rural Iowa Alliance (the "Alliance") states the following:

I. Course of Proceedings

1. Rock Island Clean Line ("Clean Line") filed its Motion to Bifurcate on October 15, 2013.
2. The Alliance filed its Petition to Intervene on October 25, 2013. Clean Line does not resist this intervention, but has filed a separate response thereto which is filed concurrently with this Reply.
3. OCA filed its Resistance to Motion to Bifurcate on October 28, 2013. In its Resistance, OCA argues that the Iowa Utilities Board ("IUB") must determine whether granting a franchise and eminent domain to Clean Line is "necessary for public use," and that this analysis should not be severed into separate matters as it involves overlapping proof.
4. The Alliance filed its Resistance to Motion to Bifurcate on October 29, 2013, arguing several issues. The Alliance argues that a Motion to Bifurcate is only appropriate after a

Petition for Franchise has been filed and, thus is premature. The Alliance also argues that stakeholders would be deprived of due process because they would not have adequate notice and corresponding time to respond to Clean Line's Motion to Bifurcate. This alleged due process deprivation, the Alliance argues, would be subject to a higher standard on judicial review because it involves eminent domain.

II. Reply to OCA

5. OCA argues that analysis of the necessity for public use under the Franchise Petition and the decision whether to grant eminent domain is essentially identical and based on the same evidence. However, the Board itself has specifically recognized that these determinations turn on separate findings. *See Corn Belt Power Coop*, Docket No. E-20972 "Proposed Decision and Order Granting Franchise". 1992 WL 465959 (Iowa U.B. Mar. 10, 1992); *see also Mt. Pleasant Municipal Utilities*, 188 P.U.R.4th 357 (Iowa U.B. 1998). The Franchise determination is based on whether the proposed transmission line is necessary to serve a public use and whether the proposed transmission line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. IOWA CODE § 478.4 (2013). The eminent domain public use determination is based on whether the taking is necessary to carry out the purpose of the franchise. *Mt. Pleasant Municipal Utilities*, 188 P.U.R.4th 357 (Iowa U.B. 1998); IOWA CODE § 478.6 (2013). Additionally, before the Board can determine the issue of eminent domain, it must first make a determination on the threshold issue of whether a Franchise will be granted in the first place. The fact that one finding is contingent upon the other evidences the findings' inherent distinctiveness. Thus, the analysis of "necessity for public use" in the Franchise Petition would be separate and distinct from the analysis of the necessity and scope of eminent domain.

III. Reply to the Alliance

6. Although it is not clear who, in particular, the Alliance represents, the motive of the Alliance is clear: to make sure Clean Line does not build this transmission line. A recent statement from the Alliance Board President Carolyn Sheridan to the Alliance members concisely details the strategy:

"From the Board President

Think about it: Imagine you're [Rock Island Clean Line ("RICL")] and you have to file all this information about a parcel of land in a distant location: How much time would it take you to learn the names and addresses of all persons with an ownership interest in the land? How much work would it be for you to prepare a map showing the location of all electric lines and supports within the proposed easement; and the location of and distance to any building w/in 100ft. of the proposed line? A lot of work. Multiply that by hundreds; and you have an idea of how important it is to the success of RICL's project that it obtains.

The more parcels upon which RICL has to do all this work, the less likely this project is to succeed. Every parcel upon which it has to do all this work is one more shovel of dirt on the grave of this RICL line. Join the opponents of the line. DO NOT sign an easemnts [sic] with RICL.

Carolyn Sheridan
Board President"

The Preservation of Rural Iowa Alliance Newsletter, October 20, 2013,

(<http://archive.constantcontact.com/fs173/1114408021343/archive/1115358581529.html>) (Excerpt

attached as Exhibit B). As the arguments of the Alliance are addressed herein, it is important to note that Clean Line's primary purpose for its Motion to Bifurcate is to efficiently collect necessary information and present the same to the Board to facilitate the Franchise process. Without bifurcation, it is clear that the Alliance will seek to make this process unnecessarily burdensome and overly complicated before the Board can even make its initial determination on whether the Franchise should be granted.

7. The Alliance first argues that a Motion to Bifurcate is only appropriate after a Petition for Franchise has been filed, thus it is premature. For the IUB to prohibit the filing of a procedural Motion to Bifurcate until the Petition to Franchise is filed would defeat the underlying purpose of the Motion in this case: to request that the IUB organize the procedural process in a way

that most effectively and efficiently addresses the Franchise and the subsequent eminent domain authority necessary to accomplish the Franchise. The IUB has the ability to bifurcate; the Alliance admits the IUB has such authority in its Resistance. This is a procedural matter and not a determination on the merits. The IUB has the authority to regulate the course of its hearings in any manner that is necessary or appropriate to the discharge of its duties.¹ Accordingly, the IUB could order the bifurcation on its own without a motion. Ultimately, the Motion is not premature, but rather fully within the scope of the IUB's authority at this stage.

8. The Alliance argues that a "premature" Motion to Bifurcate would deprive stakeholders of due process because they would not have adequate notice and corresponding time to respond to Clean Line's Motion to Bifurcate. In actuality, the due process rights of stakeholders would be increased by bifurcation because stakeholders would be entitled to two separate hearings in which to participate, with each hearing narrowly focused on the distinct issues to be determined. All stakeholders will receive notice of both hearings and an opportunity to participate. The initial hearing would determine whether the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. The hearing may also address the terms, conditions, and restrictions of the Franchise, or modifications as to line location and route. The second hearing would address whether a specific eminent domain request is appropriate and necessary for the public use (i.e., necessary for the construction of the line). The IUB has the authority to prescribe the contents of the notice of hearings and it can assure

¹ This is also consistent with an opinion previously provided by the Board's General Counsel to the Iowa Legislature. Specifically, by letter dated March 2, 2011 concerning HSB 157 and SSB 1143, which proposed to specifically authorize separate hearings and allow for separate decisions on issues that may arise in an electric transmission line franchise proceeding, the General Counsel states that "I have found no statute or other provision of law that prohibits the agency from dividing the issues in an electric transmission line franchise proceeding into separate hearings when it is just and reasonable to do so." A copy of the referenced letter was attached to the Motion to Bifurcate as Exhibit A.

that all stakeholders are aware of their rights to participate in the hearings and the issues to be determined in each hearing.

9. The Alliance also expresses concern that the IUB's ruling on Clean Line's Motion to Bifurcate would be subject to a higher standard on judicial review because it involves eminent domain. However, if the Motion to Bifurcate is granted, public use for eminent domain would not even be the subject of the first hearing and, depending on the Franchise determination by the IUB, may not even be invoked. If Franchise is granted, stakeholders would have a full and fair hearing regarding public use necessitating eminent domain, so no due process or constitutional takings problems would arise.

10. In addition to the message from the Alliance Board President excerpted above (Exhibit B), the Alliance has issued a number of notices to its members and other stakeholders encouraging them to intentionally delay the process and therefore requiring Clean Line to expend more money and resources.

In a letter titled "From the Alliance Lawyers" dated October 18, 2013 and distributed to the membership of the Alliance via the Alliance website, Alliance members are told, in part, the following:

"Do Not Sign an Easement Voluntarily with RICL." (emphasis original)

"Wait until RICL has to obtain eminent domain (condemnation) authority over your land."

"It's very premature. RICL doesn't even have permission from the Iowa Utilities Board yet to proceed with this project. It might not get that permission."

"MOST IMPORTANT: It will make RICL's row very much harder to hoe. How? Because for every individual easement that RICL has not obtained voluntarily when it petitions the IUB, RICL must do an incredible amount of expensive work."

"Don't sign an easement with RICL voluntarily. Wait until (and unless) they get eminent domain authority from the IUB. Then make them use it. - Mark Truesdell and Justin LaVan."

"From the Alliance Lawyers," October 18, 2013, Mark E. Truesdell and Justin LaVan, Beving, Swanson & Forrest, P.C. (Electronically linked to the "Preservation of Rural Iowa Alliance Newsletter of October 20, 2013) (letter attached as Exhibit C). This letter indicates a number of points. First, the Alliance's own attorneys note that eminent domain may not be necessary. Second, despite the potential non-occurrence of eminent domain, the attorneys encourage the landowners not to negotiate with Clean Line. Third, through this refusal to negotiate, the Alliance contemplates that it will create "an incredible amount of expensive work" for Clean Line.

The Alliance's purpose for resisting Clean Line's Motion to Bifurcate is not about due process or the IUB's authority; it is to impede Clean Line from efficiently gathering and presenting evidence to the IUB. The Alliance seeks to force Clean Line to waste time and resources, and consequently also the time and resources of the IUB, with the hope that Clean Line eventually gives up on the project.

VI. Conclusion

Clean Line's Motion to Bifurcate will allow the IUB to protect the time and resources of all parties involved. Clean Line does not want to waste the IUB's time, the landowners' time, or its own time. Clean Line wants the interested parties to first address the Petition for Franchise effectively and efficiently. All interested parties will be involved in this process, and will be afforded their procedural and substantive due process rights. If the Franchise Petition is granted, then the Board can determine the necessity of eminent domain to carry out the purpose of the franchise. The Iowa Utilities Board has the authority to grant Clean Line's Motion to Bifurcate, and Clean Line respectfully requests that it do so.

Respectfully submitted

SULLIVAN & WARD, P.C.

/s/

Dennis L. Puckett AT0006476
6601 Westown Parkway, Suite 200
West Des Moines, Iowa 50266-7733
Telephone: (515) 244-3500
Facsimile: (515) 244-3599
Email: dpuckett@sullivan-ward.com

John B. Rosenkild
Corporate Counsel
Clean Line Energy Partners LLC
1001 McKinney Street, Suite 700
Houston, Texas 77002
Telephone: 832-319-6330
Cell: 361-563-9738
Telefax: 832-319-6311
jrosenkild@cleanlineenergy.com

Cary Kottler
General Counsel
Clean Line Energy Partners LLC
1001 McKinney Street, Suite 700
Houston, Texas 77002
Telephone: 832-319-6320
Cell: 713-412-1682
Telefax: 832-319-6311
ckottler@cleanlineenergy.com

ATTORNEYS FOR ROCK ISLAND CLEAN
LINE LLC

November 08, 2013

IOWA UTILITIES BOARD

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing document with the Iowa Utilities Board utilizing the Board's Electronic Filing System, and therefore causing the same to be served on all individuals or entities eligible to receive service through said system as required by the rules of Iowa Utilities Board.

In addition, a copy of the foregoing has been mailed by U.S. mail, postage prepaid, to all individuals or entities that are not eligible to be served through the Board's Electronic Filing System, at the addresses shown on the Board's Service List.

Dated: November 8, 2013

By: _____/s/ Dennis L. Puckett_____

From the Board President

Think about it: Imagine you're RICL and you have to file all this information about a parcel of land in a distant location: How much time would it take you to learn the names and addresses of all persons with an ownership interest in the land? How much work would it be for you to prepare a map showing the location of all electric lines and supports within the proposed easement; and the location of and distance to any building w/in 100ft. of the proposed line? A lot of work. Multiply that by hundreds; and you have an idea of how important it is to the success of RICL's project that it obtains.

The more parcels upon which RICL has to do all this work, the less likely this project is to succeed. Every parcel upon which it has to do all this work is one more shovel of dirt on the grave of this RICL line. Join the opponents of the line. DO NOT sign an easemnts with RICL.

Carolyn Sheridan

Board President

EXHIBIT B

“From the Alliance Lawyers”

October 18, 2013

By Mark E. Truesdell and Justin LaVan
Beving, Swanson & Forrest, P.C.

Do Not Sign an Easement Voluntarily with RICL. By now, if you received an RICL letter and live in O’Brien, Clay, Palo Alto, Kossuth, Hancock, or Wright Counties and your land is in the proposed RICL right-of-way, you will soon be approached about signing an Easement if you haven’t been approached already. If you are the least bit hesitant about doing so, please don’t. Wait until RICL has to obtain eminent domain (condemnation) authority over your land. There are many good reasons not to sign until condemnation:

- 1) It’s very premature. RICL doesn’t even have permission from the Iowa Utilities Board yet to proceed with this project. It might not get that permission.
- 2) It’s too early for you to ascertain right now what the market value of such an easement is. Sure you know what RICL is offering. But what is market value? If no one has sold any farmland in your township for the last 20 years, but you and three neighbors are each considering selling, do you want to be the first to do so? Or would you like to first get a better idea of what the market price of your land might be through a very current comparable sale? Let your neighbor sell first. Then work at getting a better price than he did.
- 3) If you wait to be condemned, you will not get any less than your neighbors. When RICL has to go to condemnation, the compensation fixed for your easement is determined by a county commission. What comparables will that commission look to? Other Easements already given to RICL by your neighbors up and down the road. Do you think the county commission is going to award you less than they received? I don’t think so. Wait until condemnation.
- 4) MOST IMPORTANT: It will make RICL’s row very much harder to hoe. How? Because for every individual easement that RICL has not obtained voluntarily when it petitions the IUB, RICL must do an incredible amount of expensive work. Here’s what the rules require of RICL as to each and every parcel for which it seeks the right of eminent domain: RICL must file with the IUB:
 - a. The legal description of the property.
 - b. A specific description of the easement rights being sought.
 - c. The names and addresses of all persons with an ownership interest in the property and of all tenants.
 - d. A map drawn to an appropriate scale showing the boundaries of the property,
 - the boundaries and dimensions of the proposed easement;
 - the location of all electric lines and supports w/in the proposed easement;
 - the location of and distance to any building w/in 100 ft. of the proposed line;
 - any other features pertinent to the location of the line and its supports or to the rights being sought. 199 I.A.B. 11.2(1)

Don’t sign an easement with RICL voluntarily. Wait until (and unless) they get eminent domain authority from the IUB. Then make them use it. - Mark Truesdell and Justin LaVan.

Beving, Swanson & Forrest, P.C. represents the Preservation of Rural Iowa Alliance, a 501(c)(6) nonprofit corporation incorporated under Iowa law. The content of this article is for the informational benefit of Alliance members; and is not to be relied upon for any other purpose.

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