

January 08, 2015

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

**RESPONSE TO MOTION TO CONSIDER EMINENT DOMAIN
IN SEPARATE HEARING**

The Office of Consumer Advocate (“OCA”), a division of the Iowa Department of Justice, submits this Response to the Motion to Consider Eminent Domain in Separate Hearing (“Current Motion”) filed by Rock Island Clean Line LLC (“RICL”) on December 8, 2014.

1. RICL asks the Board to divide the issues in this case into two parts and consider them in two different hearings—the first related to the franchise determination and the second related to the grant of eminent domain authority.

2. This is the second time RICL has raised this issue. The Board rejected bifurcation the first time RICL raised the issue in its October 15, 2013, Motion to Bifurcate (“First Motion”).

3. OCA, in its October 28, 2013, Resistance to the First Motion, acknowledged that the Board has the authority to bifurcate the issues, but questioned the merits of such bifurcation. The OCA’s primary concern was that the franchise and eminent domain determinations could not be neatly separated but instead involved “overlapping factual and policy matters.” The Board in its November 26, 2013, Order denying the First Motion regarding bifurcation found that the statutory determinations for the franchise and eminent domain decisions were interrelated.

4. RICL argues in the Current Motion that “facts and circumstances have changed substantially” since the Board’s order denying the First Motion. In support of this position RICL argues that the Board underestimated the cost to RICL of acquiring voluntary easement rights and preparing necessary exhibits to its petition. In addition, RICL explained that it believes that

many landowners would sign voluntary easements if the Board were to approve the project by deciding the franchise issue.

5. OCA remains concerned that bifurcation could confuse interested parties and asks the Board to consider the issues raised in OCA's response to RICL's First Motion.

6. If the Board is convinced by the materials provided in RICL's Current Motion that there are no overlapping factual and policy matters and decides to hold separate hearings regarding the franchise and eminent domain decisions, OCA asserts that the Board must issue sufficient notice and guidance to the public. Such notice and guidance must enable all interested parties to know and understand well in advance of any hearing or hearings the proper venue for each argument or evidentiary item.

CONCLUSION

OCA respectfully requests that the Board give due weight to the potential confusion of interested parties that would result from bifurcation. §The Board should deny RICL's Current Motion if the Board cannot ensure that members of the public and interested parties will have sufficient notice of and guidance about the appropriate hearing in which to properly raise their concerns.

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