

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:)
) DOCKETS NO. E-22123, E-22124,
) E-22125, E-22126, E-22127, E-22128,
ROCK ISLAND CLEAN LINE LLC) E-22129, E-22130, E-22131, E-22132,
) E-22133, E-22134, E-22135, E-22136,
) E-22137, E22138
)
) **THE PRESERVATION OF**
) **RURAL IOWA ALLIANCE**
) **RESISTANCE**
) **TO RICL MOTION**
) **TO CONSIDER AN EMINENT**
) **DOMAIN ISSUE IN SEPARATE**
) **HEARING**

Preservation of Rural Iowa Alliance (“Alliance”), by and through the undersigned counsel, and in Resistance to the Rock Island Clean Line LLC (“Clean Line”) Motion to Consider Eminent Domain Issue in Separate Hearing, state as follows:

1. Clean Line on December 8, 2014 requested of the IUB to reconsider the Order denying its prior motion to bifurcate the proceedings specifically on the issue of Eminent Domain into a separate proceeding which was issued by the IUB on November 26, 2013. In effect, Clean Line’s motion suggests:

(a) Clean Line needs eminent domain separated, because of costs and convenience to Clean Line;

(b) That somehow the landowners and public would benefit from separate proceedings, which suggestion the Alliance completely denies;

(c) That new facts or circumstances have changed.

However, the Alliance asserts that overlapping factual and policy matters which may be binding in both decisions still make bifurcation wholly inappropriate and assert the original reasoning and order denying the first motion to bifurcate remain. The motion should be denied.

ARGUMENT

I. The Hearing should not be bifurcated in the anticipated Clean Line case.

A. The Essential Facts and Circumstances have not changed since the filing of Clean Line's Original Pleading. The essential facts and circumstances of this case were at the original filing and remain, these include:

1. Clean Line proposes to build a 600-kV high voltage, direct current (HVDC) transmission line originating at a converter station in O'Brien County, Iowa to the Mississippi River at Princeton Iowa.
2. This line would traverse more than 375 miles across Iowa through 16 Iowa counties.
3. The line would cross an estimated 1,540 parcels and require easements from (according to RICL), 2,295 individuals or entities.
4. The proposed line has generated considerable controversy.
5. The petitioner claims it has obtained voluntarily over 200 easements which is fewer than 15% of the easements ultimately required for its construction of the line.

Those essential facts were true when Clean Line filed its original Motion to Bifurcate on October 15, 2013. They remain true today.

B. The Due Process rights of landowners would be abridged by bifurcation. The first hearing in a bifurcated proceeding would determine whether a Franchise should be issued, and if so, the Route. It could also address other terms, conditions, restrictions of the Franchise or modifications to line location and Route. As noted by the Board in its 11/26/2013 Order, once

the Franchise is granted and a Route is approved, then the affected parcels will have been determined and any landowners or other persons objecting to the Route across their land will have been denied a full and fair opportunity to contest the entire matter. Or, in the alternative, it would be necessary to permit re-litigation of the Route. (Order, p.13). The first result would be inimical to landowners' due process rights; the second, requiring a re-tread of issues, would be administratively inefficient.

More important, if the Board were to approve both the Franchise and the requested Route before Clean Line completed its easement negotiations, Clean Line's resulting leverage against landowners would be prejudicially powerful. Clean Line would be able to truthfully tell each landowner that the Board had already approved both the Franchise and the Route, implying that the project is already a *fait accompli*. To stack the cards against Iowa landowners in this manner would be both inconsistent with Iowa Utility Board precedent and basic notions of fair play.

C. Bifurcation would result in more Confusion; not Clarity. Thousands of Iowans have evidenced documented interest in this case, whether as an Objection or a Letter of Support.¹ These persons have learned about the procedure by attending an IUB informational meeting, or a Clean Line event, or by reading information found or provided by either the IUB or by Rock Island Clean Line. That information has to date consistently referred to just one hearing, to-wit:

- If objections are filed, however, **a hearing** may be held. If objections are on file, or if eminent domain is requested, **a hearing** must be held. Notice of **the hearing** will be published, and objectors and/or owners of eminent domain parcels will receive notice by mail.
6. When the electric line for which **the hearing** is being held is more than one mile long, Iowa Code section 478.6 requires **the hearing** be held in the county seat of the county located at the midpoint of the proposed line.
IUB's document "*Informational Meeting Presentation*," Items #5 and #6 (emph. added).

¹ As of last month, 1208 Objections and 1,700 Letters of Support have been filed with the IUB.

- 9. **Public hearing** is held by the Utilities Board.
- 10. **A Utilities Board decision** denying or granting franchise is issued. **If the petition requested eminent domain, a ruling granting or denying that right will also be issued.**
IUB's document, "*Typical Sequence of Events*".
(emph. added).
- "Rock Island Clean Line project manager Beth Conley said her company likewise remains "absolutely" committed to winning voluntary easements from the vast majority of landowners within the Iowa corridor." See,
<http://www.desmoinesregister.com/story/news/2015/01/04/foes-energy-lines-legislature-oil-pipeline-wind-lawmakers-help/21237001/>

If the procedure were to now be fundamentally altered, the stakeholders would, without a second round of authoritative presentations and corroborative information provided by the IUB, be confused by the inconsistency. Without this proactive informational effort, there may be a considerable risk that the affected stakeholders may lose confidence in the process.

D. The Members of the Alliance would be Inconvenienced by Bifurcation. This proposed line, if constructed, would be the longest in Iowa history, extending 375 miles across Iowa, crossing an estimated 1540 parcels and requiring easements from 2,295 individuals or entities. At the time of this writing, 1220 objections have been filed and the vast majority of RIICL Letters of Support filed are form letters, over 500 were filed in one day, Nov. 4, 2014. The persons interested in attending the IUB hearing on the Clean Line application are likely to number in the hundreds. It would be obviously more inconvenient for those affected landowners and other interested parties to participate in two hearings instead of one, than one consideration of convenience and costs for RIICL.

E. The Alliance and its Landowners value a single hearing and its efficiency far more than the potential avoidance of survey work. Clean Line asserts the process would be cleaner and simpler if the Board bifurcate; that under a two-hearing process, if the Project is not approved, the impacted landowners avoid the intrusion they would have incurred for the surveying and other “Exhibit E” work. Once again, Clean Line is making assumptions about the interests and desires of the landowners. The Alliance, an association of these very landowners, would respectfully disagree. The Alliance and its Landowners value a single hearing and its efficiency far more than the potential avoidance of survey work. The Alliance would urge the Board to disregard Clean Line’s assumptions of landowner’s desires.

F. The Alliance’s efforts to make Clean Line’s work more difficult are the precise opposite of questionable or impugnable. They are the laudable exercise of constitutional rights by citizens joining together to advance their common interests, as empowered by the First Amendment. Clean Line impugns the collective opposition which the Alliance has garnered against Clean Line’s transmission line, reciting that the Alliance has indicated on numerous occasions that their goal is to create an unworkable and expensive process for the case. This assertion may contain some truth, a fact of which the Alliance will not deny. Alliance is opposed to this transmission line. Alliance is opposed to the chosen route. In addition, the truth of the assertion lies in both (1) The fact that this an extremely large project (1540 parcels and 2,295 landowners); and 2) The landowners’ exercise of their First Amendment freedom of association . The members of the Alliance are simply exercising their Constitutional rights to freedom of association and petitioning the government for a redress of grievances;² indeed

² “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” First Amendment, U.S. Constitution.

entirely within the parameters of Iowa's Administrative Procedure Act and the Board's own rules. To be impugned for doing so is to be impugned for being good citizens of this Land of the Free. Any person supporting Clean Line is entirely free to associate with others to accomplish the same goal by the same means.

G. Clean Line's assumption about the ultimate goal of certain landowners may be 180° opposite of the truth. Since the Original Pleading, Clean Line has communicated with numerous landowners who have indicated to Clean Line that they do not wish to sign easements until the Board has determined that it will issue a transmission line franchise. This landowner preference is significant and should be considered. In rebuttal, the Alliance would observe:

- 1) Clean Line has not identified these "numerous landowners". Until and unless it does so, the Alliance respectfully questions the claim of "numerous."
- 2) Clean Line appears to presume that these landowners will wish to sign easements once the Board has granted the Franchise. IUB may also likewise presume that these landowners have no desire to *ever* sign an easement with Clean Line.

II. The Board will be required to find in a manner sustainable by the District Court upon review, that its Order granting the Motion rests at least upon a Rational Basis or perhaps even a higher standard since eminent domain is involved.³

³ When rights of eminent domain are involved, Landowner rights are a fundamental right whose derogation requires a higher standard than rational basis. The 14th Amendment to the United States Constitution requires due process in a taking of property. *Aplin v. Clinton Cnty.*, 256 Iowa 1059, 1062, 129 N.W.2d 726, 727 (1964)(County statutorily authorized to condemn land for bridge and approach). "The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but *no person shall be deprived of life, liberty, or property, without due process of law.* "Iowa Const. Art. I, § 9 (emph. added). Further, statutes delegating the power of eminent domain are strictly construed and restricted to their expression and intention. *Iowa State Highway Comm'n v. Hipp*, 259 Iowa 1082, 1088, 147 N.W.2d 195, 198 (1966)(Iowa State Highway Commission staff lacked statutory authority to enter right to enter upon the Wright County farms owned or occupied by defendants

To avoid a finding of arbitrariness or capriciousness, the Board's Order must be founded upon a rational basis. Clean Lines attempted offer of a rational basis, e.g., scope or size of the project; wind energy; costs; and regulated vs. unregulated basis, all fall short of the standards to order the extraordinary relief requested. If scope is the rational basis, how big must a Chapter 478 transmission line be to merit this special bifurcated treatment? Is the dividing line to be based on:

- Length? 100 miles? 200 miles of new transmission right-of-way?
- Or number of easements required? 500 easements? 1,000 easements?

If the special wind energy nature of the project is the rational basis, then how is that factor to be measured? And how certain is the Board of the permanence of its finding on this factor?

If the rational basis is cost, what cost?

- \$10,000,000?
- \$50,000,000?
- \$100,000,000? And why?

If the regulated or unregulated nature of the petitioner constitutes the rational basis; then which type of petitioner would and would not, be entitled to the special treatment?

- An integrated public utility like MidAmerican Energy?
- A partially regulated public utility like a cooperative?
- Or only a merchant line company like Clean Line?

for the purpose of making surveys and investigations in contemplation of condemnation for highway purposes.) *citing Aplin v. Clinton County, 256 Iowa 1059, 1061, 129 N.W.2d 726, 727. Affirmed: City of Des Moines v. Geller Glass & Upholstery, Inc., 319 N.W.2d 239 (Iowa 1982)*(Condemnor City precluded from leasing and renting property until date it made the required payments under order finding lessee entitled to condemnation damages).

The Alliance submits that none of the bases offered constitute a legally sufficient rational basis for the special procedural treatment requested by Clean Line.

III. CONCLUSION.

The Alliance requests that the Board deny Clean Line's Second Motion to Bifurcate for the reasons set forth above and in the original order denying the motion to bifurcate.

Respectfully submitted,

BEVING, SWANSON & FORREST, P.C.

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ATTORNEYS FOR THE
PRESERVATION OF RURAL
IOWA ALLIANCE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all individuals or entities on the service list in accordance with the requirements of the rules of the Iowa Utilities Board, meaning those participating in the Electronic Filing System will be automatically served with notice. Dated at Des Moines, Iowa this _____ day of January, 2015.

By:

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