

December 10, 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

**RESISTANCE TO ROCK ISLAND
CLEAN LINE LLC'S MOTION TO
ESTABLISH PROCEDURAL
SCHEDULE**

COMES NOW the Preservation of Rural Iowa Alliance¹ (“Alliance”), and through its undersigned counsel, hereby submits this Resistance to Rock Island Clean Line LLC’s (hereinafter “Clean Line”) Motion to Establish Procedural Schedule.

On November 26, 2013, this Board denied Clean Line’s first motion to bifurcate (the Order denying said motion is hereinafter referred to as the “First Order”). On February 13, 2015, this Board denied Clean Line’s “motion to consider eminent domain issue in a separate hearing,” which the Board determined was actually a **second** motion to bifurcate (the Order denying said motion is hereinafter referred to as the “Second Order”). Now, a scant ten months later, Clean Line presents this Motion to Establish Procedural Schedule, which is nothing more than a **third** motion to bifurcate (hereinafter referred to as the “Third Motion”). Because this Board has already twice denied Clean Line’s motions to bifurcate, and because Clean Line has failed to address issues identified by the Board as being fatal to Clean Line’s attempts to bifurcate, this Board should deny Clean Line’s third attempt to bifurcate these proceedings.

¹ The Alliance is a non-profit corporation whose members are comprised of people with a legal interest in real property in Iowa that are opposed to, or otherwise concerned about, Clean Line’s proposed transmission line.

Preservation of Constitutional Rights

In all three of Clean Line’s bifurcation motions, Clean Line seeks to separate the proceedings determining the precise route and whether Clean Line should have the power of eminent domain *generally* from proceedings determining parcel-specific eminent domain issues. *Compare* First Order at p. 4 *and* Second Order at p. 2 *to* Third Motion at pp. 1-2. In the two orders denying Clean Line’s bifurcation attempts, this Board determined such a division of proceedings would violate the due process rights of landowners. *See* First Order at pp. 12-13 (“[T]he Board is concerned about the potential effect of bifurcation . . . on the due process rights of landowners and other stakeholders Thus, Clean Line’s proposed bifurcation either presents a threat to the due process rights of various stakeholders or it is inconsistent with administrative efficiency and convenience.”); Second Order at pp.14-15 (“[I]t may be impossible to draw a clear demarcation between the issues of (a) the route of the overall line and (b) the use of eminent domain. . . . It appears that bifurcating the hearing may cause some affected landowners to be denied the full and fair opportunity to present their cases. At the very least, *bifurcation continues to represent a significant threat to the constitutional rights of those landowners.*” (emphasis added)). These due process concerns were so significant that this Board determined “[t]he constitutional due process concerns *alone* are sufficient to justify denial of the motion.” Second Order at p. 18 (emphasis added).

Clean Line has done nothing to address this fatal concern in its Third Motion: in fact, of the five sections providing “legal and factual support” for Clean Line’s motion, not one addresses due process considerations. Clean Line still proposes a bifurcation that separates the route determination from the parcel-specific eminent domain issues. As this Board held in both orders, such a bifurcation would, at the very least, require re-litigation of part or all of an

approved route during the second phase of proceedings for those landowners whose parcels are affected. If it denied to those landowners that right, those landowners would be denied a full and fair opportunity to contest the matter. *See* First Order at pp. 12-13, Second Order at pp. 14-15. Under Clean Line’s current bifurcation plan, there still exists a “significant threat to the constitutional rights of [affected] landowners.” Second Order at p. 15. This Board should *once again* rule that “[t]he constitutional due process concerns alone are sufficient to justify denial of the motion.” Second Order at p. 18.

Clarity and Possibility of Confusion

In both orders denying Clean Line’s motions to bifurcate, this Board determined that separate hearings cannot provide clarity to the stakeholders/landowners. *See* First Order at p. 14 (“Clarity is not improved by requiring two hearings where one is normally sufficient.”); Second Order at p. 15 (“The Board is not persuaded that separate hearings can be consistent with [the criterion of Clarity and Possibility of Confusion].”).

It is true, as Clean Line recognizes, that the Board took issue with Clean Line’s lack of clarity as to which issues would be litigated in which of the two hearings/phases. *See* Second Order at p. 15. While Clean Line attempts to provide this clarity, *see* Third Motion at pp. 3-11, Clean Line fails to understand it is a futile gesture: this Board has already held that even if such clarity is provided, clarity is not improved by bifurcation in this instance. *See* First Order at p. 14 (“*The Board will assume that it would be possible* to draft hearing notices that are so clear and informative as to provide a basis for denying any re-litigation of issues at the second hearing. *Even so*, the result would be inconsistent with the convenience of those stakeholders, who would almost certainly have to participate in both hearings Clarity is not improved by requiring

two hearings” (emphasis added)); Second Order at p. 15 (“The Board is not persuaded that separate hearings can be consistent with [the criterion of Clarity and Possibility of Confusion].”).

Clean Line’s Third Motion makes clear that affected landowners will have to attend multiple hearings in order to adequately protect its rights. *See* Third Motion at p. 11 (“A landowner may participate in the first phase to suggest alternative routing that does not impact his or her property or to dispute the necessity of the Project to serve a public use. If unsuccessful . . . , the same landowner will retain a full and fair opportunity in the second phase of the proceeding to litigate parcel-specific siting concerns Clean Line’s proposed procedural schedule makes it very clear to such a landowner when he or she may participate in the two phases of the proceeding.”). Because participating in two separate proceedings is the only way affected landowners may adequately protect their rights, Clean Line’s proposed schedule lacks clarity and this Board should once again deny Clean Line’s attempt to bifurcate.

Administrative Efficiency

For the third straight motion, Clean Line argues that bifurcation would benefit administrative efficiency by giving it more time to acquire voluntary easements. *See* Third Motion at pp. 15-16 (“Splitting the franchise-related issues from parcel-specific issues will allow Clean Line and landowners more time to negotiate voluntarily before any eminent domain proceedings are initiated. . . . Clean Line’s proposed procedural schedule provides more time for, and more information to inform, voluntary easement acquisition.”). This Board has already twice rejected *this exact same contention*. *See* First Order at p. 14 (“[T]he Alliance has advised its members not to sign voluntary easements; it seems unrealistic to expect that more time will result in significantly more voluntary easements. At the very least, there is no firm basis for a finding that bifurcation would improve administrative efficiency; *it is just as likely to have an*

adverse effect.” (emphasis added)); Second Order at p. 17 (“[T]here is no guarantee that these landowners will actually sign voluntary easements if the franchises are granted. In all, this argument for increased administrative efficiency is speculative at best, and outweighed by the inefficiencies with having two hearings to decide issues that are normally decided in a single hearing.”). Here, absolutely nothing has changed regarding administrative efficiency. Additional hearings will only result in more inefficiencies and there is no likelihood that any Phase One success by Clean Line will result in a meaningful increase in the number of voluntary easements Clean Line will obtain.²

Clean Line also argues that there are an **untold** number of landowners waiting on the Board’s decision in a proposed Phase One before negotiating a parcel-specific easement with Clean Line. *See* Third Motion at pp. 12-13 (“[A] number [of] landowners wish to have clarity on the Board’s decision about the Project in general before negotiating a parcel-specific easement. . . . During Clean Line’s initial right-of-way acquisition efforts, numerous landowners along the Project’s proposed route indicated to Clean Line that they do not wish to negotiate easements until the Board has decided on the need for the Project and the Project’s route.”). Once again, *this exact argument* was denied by the Board as being too speculative. *See* Second Order at p. 17 (“Clean Line does not offer any indication of the number of such landowners [who have expressed a preference for waiting], other than ‘many.’ In the absence of a substantiated number [of landowners], it is difficult to accept that this group represents a significant part of the overall number of easements Clean Line needs to acquire. . . . In all, this argument for increased administrative efficiency is speculative at best, and outweighed by the inefficiencies associated

² Clean Line has also not shown a willingness to work with landowners to secure voluntary easements since its second bifurcation motion was denied. On February 15, 2015, Clean Line had secured and filed 172 voluntary easements in the 16 relevant counties. As of December 5, 2015, that number has only risen to 177. *See* Exhibits 1 & 2, attached.

with having two hearings to decide issues that are normally decided in a single hearing.”). This Board should *once again* find that administrative efficiencies are not enhanced by bifurcation.

Convenience of the Parties

Similar to the due process issue, Clean Line does not address the convenience of the parties specifically, though one can gather that many of the arguments detailed above (increased easement acquisition, more clarity, etc.) are used to argue that bifurcation is the more convenient option. Once again, Clean Line’s third motion for bifurcation fails to address previously-identified fatal deficiencies. In its First Order, this Board found:

[B]ifurcation would be inconvenient for the affected landowners and other parties, as they would either be required to participate in two hearings where a single hearing is normally adequate or they would have to run the risk of being denied the ability to re-litigate issues in the second hearing that were decided in the first hearing.

First Order at p. 15. In its Second Order, this Board noted “Clean Line has not demonstrated that the convenience of *all of the parties* will be improved by bifurcation. It has, at best, shown that Clean Line’s convenience (and costs) would be benefited, but at the same time landowner interests would be detrimentally affected.” Second Order at p. 18 (emphasis added).

The same issues mandating such a ruling by the Board still exists at the present juncture. The Alliance’s members still value a single hearing and the resulting efficiencies over bifurcation. The only significant benefits of bifurcation still belong to Clean Line. The resulting inefficiencies and lack of clarity from bifurcation still outweigh any convenience Clean Line, or other parties, receive from bifurcation. *See also* First Order at p. 16 (“Any inconvenience to Clean Line from denial of bifurcation is relatively insignificant when compared to the significant and unavoidable inconvenience to all other stakeholders if the proceeding were bifurcated.”).

This Board should once again find bifurcation would not be a convenient solution for the parties and deny Clean Line's motion.

Conclusion

Clean Line has put forth a substantially similar bifurcation motion to its previous two motions. Clean Line has failed to address numerous fatal deficiencies from its previous motions in its present attempt to bifurcate. Clean Line has failed to show that concerns of due process, clarity, administrative efficiency, or convenience are enhanced by bifurcation. Once again, “[c]onsideration of these four factors does not support splitting the hearing [and] [t]he constitutional due process concerns alone are sufficient to justify denial of [Clean Line's] motion.” Second Order at p. 18.

WHEREFORE, the Preservation of Rural Iowa Alliance respectfully requests this Board deny Clean Line's Motion to Establish Procedural Schedule and enter a proposed schedule that addresses Clean Line's franchise petitions in a single proceeding.

BRADSHAW, FOWLER, PROCTOR & FAIRGRAVE, P.C.

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ATTORNEYS FOR PRESERVATION OF RURAL IOWA
ALLIANCE

CERTIFICATE OF SERVICE

I hereby certify that I have this date 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 on *December 10, 2015*.

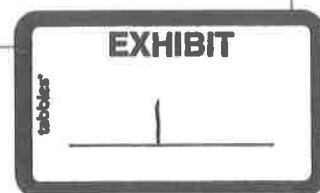
By: /s/ Justin E. LaVan
Justin E. LaVan

**The Preservation of Rural Iowa Alliance County Information for RICL proposed transmission line
Number of Objections filed with the IUB & Number of Voluntary Easement filed at County**

County	Objections filed at IUB	Voluntary Easements filed at county recorder February 10, 2015	Land Owners in each County as stated by RICL
Obrien	47	17	120
Clay	172	2	129
Palo Alto	89	9	98
Kossuth	43	41	135
Hancock	0	7	26
Wright	7	1	60
Franklin	86	33	187
Butler	9	1	9
Grundy	271	9	163
Black Hawk	52	12	85
Buchanan	173	3	49
Benton	0	2	21
Linn	79	17	160
Jones	32	1	38
Cedar	150	4	122
Scott	78	13	138
Totals	1288	172 RICL stated 194 when petition filed on Nov 10, 2014	1540

The Number of voluntary easements in each county differs from RICL stated numbers.

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**The Preservation of Rural Iowa Alliance County Information for RICL proposed transmission line
Number of Objections filed with the IUB & Number of Voluntary Easement filed at County**

County	Objections filed at IUB	Voluntary Easements filed at county recorder December 5, 2015	Land Owners in each County as stated by RICL
Obrien	48	19	120
Clay	178	2	129
Palo Alto	90	9	98
Kossuth	50	42	135
Hancock	2	7	26
Wright	7	1	60
Franklin	88	34	187
Butler	9	1	9
Grundy	278	9	163
Black Hawk	52	13	85
Buchanan	176	3	49
Benton	0	2	21
Linn	84	17	160
Jones	33	1	38
Cedar	152	4	122
Scott	80	13	138
Totals	1332	177	1540
	12/05/15	RICL stated they had 194 on November 10, 2014	

The Number of voluntary easements in each county differs from RICL stated numbers.

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EXHIBIT

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