

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

The Office of Consumer Advocate, a division of the Iowa Department of Justice (OCA), submits its Response to the Motion to Establish Procedural Schedule filed by Rock Island Clean Line LLC (RICL) on November 30, 2015.

**Response to Motion to Establish a
Bifurcated Procedural Schedule**

1. OCA has no objection to the Iowa Utilities Board (Board) establishing a procedural schedule in the above entitled matters. RICL has requested bifurcation as part of its request for a procedural schedule. OCA asserts that the issue of bifurcation has previously been addressed twice by the Board adversely to RICL.
2. RICL asks the Board to establish a procedural schedule and 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.
3. This is the third 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).

The Board rejected bifurcation the second time RICL raised the issue in its December 8, 2014, Motion to Consider Eminent Domain in Separate Proceeding (Second Motion).

4. 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. *Rock Island Clean Line LLC*, Docket Nos. E-22123, *et al.*, OCA Resistance to Motion to Bifurcate, filed October 28, 2013. 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.

5. OCA, in its January 8, 2015, Response to the Second Motion asserted there were no facts and circumstances that had changed substantially since the Board's order denying the First Motion. *Rock Island Clean Line LLC*, Docket Nos. E-22123, *et al.*, OCA Response to Motion to Consider Eminent Domain Issues in Separate Hearing, filed January 8, 2015.

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

7. If the Board is convinced by 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.

WHEREFORE, 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,

/s/ Mark R. Schuling

Mark R. Schuling
Consumer Advocate

/s/ John S. Long

John S. Long
Attorney

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

OFFICE OF CONSUMER ADVOCATE