

MEMO

TO: PRESERVATION OF RURAL IOWA ALLIANCE
FROM: MARK TRUESDELL
DATE: JANUARY 24, 2014
ISSUE: What happens now?

The last County Informational Meeting was conducted by Rock Island Clean Line on Friday, December 13, 2013. What happens now?

Legally, Rock Island Clean Line may file its Petitions at any time now. Unless RICL requests a consolidation, there will be 16 petitions, one for each of the 16 counties through which the line will pass. Technically, Rock Island Clean Line is able to file each Petition within 30 days after the last Informational Meeting in that county is held. Because the last of those meetings was December 13, RICL is able to file all 16 Petitions at any time after January 13, 2014. Each of the 16 petitions has to meet all of the requirements of the Iowa Code and the IUB's rules.

Staff Review. IUB staff then undertakes a review of each Petition for sufficiency and completeness. The required contents of the Petition are quite specific and technical, including the planned route accompanied with the maps or plat showing the required detail and the specifications about typical structures, materials and manner of construction; as well as electrical details and demonstrations of compliance with the applicable electrical safety codes. So this staff review can take some time. When staff has finished its review of a Petition, if deficiencies are found, it will send the Petitioner a Deficiency Letter requesting additional information. The Petitioner will then resubmit; and staff will review again. In some cases, several of these Deficiency Letters are required before the staff accepts a Petition as "sufficient to set for hearing." When this point is reached, staff drafts a Staff Report which makes a recommendation for consideration of the Petition to the Iowa Utility Board. If past is prologue, it could take months for the staff to accept a Petition as "Sufficient to set for Hearing."

Iowa Utility Board Decision to refer or hear itself. At this point, the IUB decides whether it will conduct the hearing itself or whether it will refer the Petition to an Administrative Law Judge (ALJ). The Administrative Law Judge who hears cases at the Iowa Utilities Board is a professional attorney-adjudicator with special training and experience in hearing utility contested cases. Most franchise petitions get referred to an ALJ.

Preparation for Hearing. The ALJ, after receiving the Petition from the Utility Board typically proceeds as follows:

- The ALJ usually schedules a telephonic pre-hearing conference among the parties, primarily to coordinate calendars.
- The ALJ then issues a Procedural Schedule outlining the issues to be decided and the deadlines to govern the conduct of the hearing. These deadlines include:
 - A deadline for the Petitioner to prepare and submit Direct Testimony, Exhibits and Additional Documents.

- A deadline for the Office of Consumer Advocate, Intervenor and other Parties to file prepared Testimony, Exhibits and a Prehearing Brief. The Preservation of Rural Iowa Alliance has been granted Intervenor status.
- A deadline for the receipt of final Objections.
- A deadline for the Petitioner's publication of the second published notice required in the county.
- A deadline for the filing of Rebuttal Testimony, Exhibits and Reply Briefs.
- A date and place for the conduct of the hearing.

Eminent Domain; the Completion of Exhibit E's: An Exhibit E must be filed by the Petitioner for each parcel over which it seeks the power of Eminent Domain. An Exhibit E requires considerable detailed information on the subject parcel. The Petitioner need not complete the individual Exhibit E's until just before the hearing is conducted. In the IUB's experience, it is not uncommon for many objections to be withdrawn before the hearing is actually conducted. Instead of filing the individual Exhibit E's as attachments to the Petitions when originally filed, the Petitioner will typically file a sample Exhibit E, i.e., a template demonstrating that the real Exhibit E's when later filed will be adequate and complete. Obviously, waiting until the last minute to file all required Exhibit E's will save the Petitioner considerable trouble and expense.

Continued Negotiation. During all of these months, of course, RICL will continue its attempts to obtain as many Voluntary Easements as it possibly can.

Will 16 Hearings be Consolidated into One? Many franchise petitions involve more than one county although few if any petitions ever received by the Iowa Utility Board have involved 16 counties. In the past, transmission lines involving multiple counties have had their petitions considered at a single hearing. This may or may not be done in the RICL case.

An Objector may participate in the hearing if designated a party. While an objector may be presumed to be a party, no objector is entitled to party status merely because that person has filed an objection. An objector's right to party status may be challenged, in which case the objector must be able to demonstrate some right or interest that may be affected by the granting of the franchise. If opposing the grant of eminent domain over his or her land, that objector will certainly be a party. If designated as a party, the objector will have the right to testify at the hearing, to present witnesses, and the right to cross-examine petitioner's witnesses. Even if not designated a party, an objector may request permission of the presiding officer to be heard and to examine and cross-examine witnesses. Of course, the more objectors present at a hearing, the more the presiding officer will need to manage their participation in order to make the proceeding manageable as a practical matter.

Conclusion: RICL may file its Petitions tomorrow; it may not file its Petitions until the late Fall of 2015; no one can know when other than RICL. In the meantime, you can be sure that you will be approached by RICL which will be most interested in obtaining an easement from you voluntarily.