



Reforming the Iowa Utilities Commission

The Iowa Utilities Commission (IUC) (formerly called the Iowa Utilities Board or IUB) is responsible for regulating utilities, including electric, gas, and pipelines. Over the years, as the Iowa Chapter has engaged in cases handled by the IUC, it has become obvious that there are serious shortcomings.

The IUC should ensure that the right to due process is protected for all parties involved in IUC proceedings.

The formal IUC hearings are similar to a regular court hearing, but there are some unique features. Some of those features reduce the due process rights of parties appearing before the Board and need to be reformed, including:

- A party is entitled to discovery. The IUC should not arbitrarily limit the data requests that can be served on another party.
- Any party can request an extension of time in order to gather materials related to the issue before the board and to have adequate time to prepare for the proceedings.
- The IUC must rule on discovery issues brought by the parties before the formal hearing. Any ruling must be made such that all of the parties have time to react to the ruling before the formal hearing. That includes giving the parties adequate time to allow review of the discovery materials that were contested. In the case of the Dakota Access pipeline hearing, the IUC ordered Dakota Access to turn over discovery materials to the Sierra Club during the hearing. Then the IUC wanted Sierra Club to use those materials, an inch-thick stack of paper, for questioning the same day they were released. That is absolutely unreasonable.
- All parties have a right to question any individual giving testimony. There should be no prohibition on cross-examination of any witness, including witnesses of other parties even if they nominally are supporting the questioner's side. During the Dakota Access pipeline case, the parties were prohibited from asking questions of witnesses that were perceived to be on their own side, even though the testimony might not have been completely on an individual's side. The parties were further restricted by not being allowed to ask follow-up questions. This violated the parties' due process rights. The same situation occurred during the Summit Carbon Solutions hearing in 2023.

The landowners must be protected when easements must be obtained.

Private property rights comprise one of the core values conferred on citizens of the United States. At the same time, utility companies need rights-of-way for electricity and for pipelines. In the case of easements, the property remains in the hands of the original landowner. However the landowner will be paid by the easement holder for the use of the land. In return, the landowner will be restricted in what he or she can do on the easement, such as not growing trees and not building structures on the easement. Temporary easements can also be granted through eminent domain, which allow construction equipment to use the area, which allow storage of materials, and which are allowed to store topsoil and subsoils during the construction process. The IUC can grant the right of eminent domain for easements if a landowner is not willing to voluntarily grant an easement.

Generally land agents are hired to negotiate the sale of the private property for the easement. Some landowners report being harassed by land agents, called multiple times a day by land agents trying to convince a landowner to sell, lied to, and otherwise mistreated by the land agents. Given our long-held tradition of private property rights, landowners need to be protected by a bill of rights.

- Landowners are to be given truthful information about the projects.
- Inferences about the project being approved when the regulatory agency has not issued a permit and authorized the right to eminent domain are to be treated as fraud and subject to prosecution.
- Landowners are the only parties to be contacted and involved in negotiations. Landowners may hire attorneys to represent them in this process. Landowners may also designate other parties, such as family members, to negotiate on their behalf. Tenants are to be contacted only if the landowner designates so.
- Access to property prior to regulatory authorization shall only be granted by the landowner or his/her designated representative.
- A landowner is to be given the name and phone number of the land agent, name and phone number of land agent's employer, as well as the name and phone number of the company who will be owning the easement or the property.
- The land agents are to make appointments to visit with the landowner or the landowner's representative and not show up at the landowner's doorstep without an appointment.
- Land agents are not to harass or mistreat landowners.
- The IUC must investigate all complaints from landowners about being harassed, intimidated, lied to, and otherwise mistreated. Penalties shall be assessed against any land agent, his/her employer, and the company requesting the easement or sale of the property found to be acting inappropriately.
- The presentation of routes to the IUC should be considered a draft, so that the IUC has enough flexibility to change the route if testimony indicates that is necessary.
- Landowners should have the right to request that a new easement run parallel to any existing easements on the property, that an easement be moved on the property to protect current and future uses of the property, and that the easement avoid wetlands, forests, prairie and other natural areas. Further that right trumps the right of the requester to take an easement wherever they want it.
- No money should change hands between the utility and any landowners until the Board has ruled that it will issue the permit, even for voluntary easements.

All projects that will be built on easements shall have an environmental assessment completed before the formal hearing.

The IUC should require that a utility conduct an environmental assessment before the utility applies for a construction permit. That assessment will be required to review archaeological and biological assets. It should also require an analysis of alternatives to avoid forested areas, wetlands, prairies and other natural areas. Iowa has lost a significant amount of its natural areas. Remaining areas in private hands should not be destroyed.

The Utilities Commission should require a consultation with the State Archaeologist's Office before granting a construction permit.

Indemnity Funds need to be raised beyond \$250,000.

For a hazardous liquid pipeline, the state law requires an indemnity fund of \$250,000. The IUC can choose to require assurances from the utility that they will cover greater costs in the event of a spill or leak. The utility can voluntarily pledge to cover the costs of cleanup due to spills or leaks. However state law should require a greater indemnity fund. Cleanup costs from leaks can cost millions of dollars. The only way to

protect the public is to require the utility to prove that it can cover cleanup costs before the construction permit is granted.

The IUC should ensure that future generations are protected when the Board makes decisions.

The IUC members must take into account in their decision how the proposed project or request will affect future generations. Some of the decisions that the IUC renders will affect people living in Iowa for generations. The decisions need to consider the risks and benefits to those people.

Conclusion

The changes to the laws related to the Iowa Utilities Commission jurisdiction, regulations, and authority that are suggested would better protect the public and would ensure that the public is better represented.