

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CEDAR FALLS UTILITIES	DOCKET NO. E-21647
-------------------------------------	--------------------

ORDER

(Issued April 5, 2005)

On April 4, 2005, Cedar Falls Utilities (Cedar Falls) filed a motion to require objector Ms. Diane Schou to undergo a medical examination. In the motion, Cedar Falls argues that discovery procedures applicable to civil actions are available to parties in contested cases; Iowa Rule 1.515 provides that, in cases when the mental or physical condition of a party is in controversy, the court may order the party to submit to a physical or mental examination by a health care practitioner; Ms. Schou has objected to the grant of the requested franchise based upon allegations in regard to "electrical magnetic sensitivities" and has filed a supporting document from a physician in Sweden; and the objection raised by Ms. Schou relates entirely to her physical or mental condition. Cedar Falls further argues that two elements must be shown before an order to submit to mental or physical examination will issue: the mental or physical condition of a party must be in controversy and there must be good cause shown for the examination. Cedar Falls argues the elements are met here. Cedar Falls argues that Ms. Schou has raised the issue of her mental or physical condition in her filings, the impact of electric lines on her condition is the

core of her objection; her only expert support in regard to her condition is a statement from a Swedish physician who is patently beyond the range of examination; and therefore, good cause exists to order an examination. Cedar Falls states that it has arranged for Ms. Schou to be examined by a physician on April 7, 2005, at 5 p.m.

While discovery procedures applicable to civil actions are available to all parties in contested case proceedings, it is not clear that the Utilities Board (Board) has the authority to order medical examinations of objectors in electric franchise contested cases. The Board has never ordered an objector or a party in a contested case before it to undergo a medical examination. Ms. Schou is an objector, but it is not clear that she is a party. Ms Schou is unrepresented by legal counsel. There is an issue regarding the relevance and materiality of Ms. Schou's evidence to the central issue in this case, which is whether the requested franchise should be granted. There is an issue regarding the proper weight to be given to Ms. Schou's evidence, since she did not present it through the prefiled testimony of an expert witness who can be cross-examined by opposing parties at the hearing. Requiring unrepresented objectors to undergo a medical examination based on non-expert testimony and documentary evidence without expert foundation could have a chilling effect on public participation in electric franchise proceedings. Finally, the hearing in this case is scheduled for April 15, 2005.

For these reasons, the standard for good cause to order the medical examination in this case is relatively high, and Cedar Falls has not met the standard.

IT IS THEREFORE ORDERED:

The motion to require Ms. Schou to undergo a medical examination filed by Cedar Falls on April 4, 2005, is hereby denied.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 5th day of April, 2005.