

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>ENTERPRISE PRODUCTS OPERATING, LLC</p> <p style="text-align: center;"><i>Petitioner,</i></p> <p>v.</p> <p>IOWA UTILITIES BOARD,</p> <p style="text-align: center;"><i>Respondent.</i></p>	<p>CASE NO. _____</p> <p>PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION</p>
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COMES NOW, Petitioner Enterprise Products Operating LLC (hereinafter "Enterprise" or "Petitioner") with this Petition for Judicial Review of Agency Action (this "Petition") of that certain Order Assessing Civil Penalties and Denying Confidentiality (the "Order") entered by the Iowa Utilities Board (the "Board" or "Respondent") on or about April 21, 2023, against Enterprise, stating the following:

INTRODUCTION

1. Enterprise operates a hazardous liquid pipeline in Iowa and is regulated by the Board.

2. On April 21, 2023, the Board issued an Order directing Enterprise to pay a civil penalty of approximately \$1.8 million in relation to a permitting issue. The amount of this civil penalty exceeds the statutory maximum for the reasons detailed below.

3. In addition, the Board improperly denied confidential treatment as to certain documents and information related to the Enterprise pipeline. *See In re Enterprise Products Operating, LLC*, Dkt. No. SPU-2023-0002, 2023 WL 3093945 (Iowa U.B. Apr. 21, 2023).

4. During proceedings at the administrative level before the Board, Enterprise contested both the civil penalty and the denial of confidential treatment through a Motion for Rehearing and to Reconsider Order Assessing Civil Penalties and Denying Confidentiality (the

"Motion to Reconsider"). That Motion was timely filed on May 11, 2023, pursuant to IOWA CODE § 17A.16(2).

5. The Office of Consumer Advocate ("OCA") supported Enterprise's Motion to Reconsider in a filing submitted on May 25, 2023, concurring with Enterprise that evidentiary development was warranted, and that the Board violated Enterprise's due process rights. Nevertheless, the Board issued an Order denying Enterprise's Motion to Reconsider on June 9, 2023. *See* IOWA CODE § 17A.16(2).

6. Enterprise has exhausted its administrative remedies. *See* IOWA CODE § 17A.19(1).

7. Enterprise hereby submits this Petition requesting judicial review pursuant to IOWA CODE § 17A.19(3) ("[i]f a party files an application under [IOWA CODE § 17A.16(2)] for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deemed denied."). The thirty-day (30) period to file this Petition seeking judicial review has not expired and this Petition is being timely filed. *See id.* *See also* IOWA CODE § 4.34 (calculation of legal timing under Iowa law).

8. Enterprise respectfully requests that the civil penalty be stricken in its entirety given that the proceedings below constituted violations of Due Process and Equal Protection under the Iowa State Constitution. *See* IOWA CONST., art. I, § 9 (due process), § 2; IOWA CONST., art. I, § 6 (equal protection).

9. Alternatively, Enterprise respectfully requests that if any civil penalty is imposed at all, it be less than, or not exceed, the limits set in IOWA CODE § 479B.21(1).

10. Further, Enterprise respectfully requests the adverse decision on the confidentiality of information issue be reversed, as it is contrary to Federal and State law.

JURISDICTION AND VENUE

11. Petitioner seeks to have the decision of the Board reversed pursuant to IOWA CODE §§ 17A.19(3) and 17A.19(10) ("The court shall reverse, modify, or grant ...appropriate relief from agency action, equitable or legal" if the agency action was improper).

12. The relevant law and regulations relied upon by Enterprise in this judicial review action are within the subject matter jurisdiction of this Court. *See* IOWA CODE § 17A.19.

13. No other court, tribunal, or administrative body has been given exclusive or concurrent jurisdiction over this matter. *See* IOWA CODE § 602.6101.

14. The venue is proper pursuant to IOWA CODE § 17A.19(2), which specifically allows the venue to be in Polk County, Iowa.

PARTIES

15. Enterprise is a pipeline company with operations within the State of Iowa.

16. The Board is an agency of the State of Iowa with regulatory authority over Enterprise and similarly situated pipeline entities.

FACTUAL BACKGROUND & GENERAL ALLEGATIONS

17. Regrettably, the record in this case is sparse given that the Board did not provide Enterprise an opportunity to fully develop a factual record at the administrative level below. However, this Petition will fill in the gaps so the Court has a more comprehensive summary of this dispute as it will be developed during the pendency of this appeal.

18. The Enterprise pipeline in question (the "Pipeline") was constructed, installed, operated, and first permitted beginning in the 1960s by companies that are not parties to this docket. *See* IUB Hr'g Transcript, at p. 8, ¶¶ 2-10 (Mar. 22, 2023).

19. Iowans rely on the propane supplied by the Pipeline. In Iowa, Enterprise transports, in part, propane products to end-user consumers for home heating purposes. Consumers also heavily depend on propane supplied by Enterprise to dry crops, such as corn and beans during agricultural seasons.

20. Enterprise's transportation and delivery of propane is a vital public service that is requested, supported, and encouraged by the highest elected officers of the government of the State of Iowa. *See, e.g.,* GUBERNATORIAL PROCLAMATION REGARDING EASING PROPANE TRANSPORTATION (Gov. Kim Reynolds, signed January 6, 2023).

21. The majority of the Pipeline was originally constructed, installed, maintained, and operated by MAPCO, beginning in 1961. As recognized by the Board, MAPCO acquired the requisite permits under then-Iowa Code Chapter 479 from the State of Iowa at or around that time.

22. During the majority of the time MAPCO owned the pipeline assets, the State of Iowa regulated the construction and maintenance of natural gas pipelines and hazardous liquid pipelines under a permitting scheme codified in former Iowa Code Chapter 479. The State's regulatory authority over *interstate* hazardous liquid pipelines was drastically curtailed in the mid-1990s. In 1993, the Eighth Circuit Court of Appeals invalidated Iowa's state-issued permits for *interstate* hazardous liquid pipelines under then-Iowa Code Chapter 479 on federal preemption grounds. *See Kinley Corp. v. Iowa Utilities Board*, 999 F.2d 354, 360 (8th Cir. 1993).

23. After then-Iowa Code Chapter 479 was nullified as to interstate hazardous liquid pipelines, the Iowa Legislature enacted the current version of Iowa Code Chapter 479B on May 26, 1995, granting the Board authority over state permitting of *interstate* hazardous liquid pipelines and storage facilities on a much more limited basis than the predecessor statute. In fact, the current permitting scheme is informational in nature and imposes no safety or inspection duties on the

permittees; once constructed and in operation, the statute merely requires permittees to submit routine maintenance and land restoration plans.

24. Following the invalidation of Chapter 479 and the enactment of Chapter 479B, pipelines and storage facilities carrying hazardous liquids were required to apply for new hazardous liquid pipeline ("HLP") permits under Iowa Code Chapter 479B. Most of the rollover from a permit under the invalidated Iowa Code Chapter 479 to a new HLP permit under Iowa Code Chapter 479B occurred between 1996 through 1998. *See* IUB Hr'g Transcript, at p. 20, ¶¶ 10-18 (Mar. 22, 2023).

25. Shortly after the state law changed, in 1997, MAPCO was acquired by Williams Natural Gas Liquids, Ltd. ("Williams"). Williams held the pipeline in one of its subsidiaries called Mid-America Pipeline Company, LLC ("MAPL").

26. In July of 2002, Enterprise acquired a majority stake in both Williams and MAPL regarding the Pipeline, making it the *de facto* owner of this specific Pipeline operation in Iowa.

27. At the time of the acquisition of the Pipeline, representations and warranties were made by the sellers (Williams and MAPL) to the buyer (Enterprise), that all proper and complete permits were in place for the operation of the Pipeline. *See* IUB Hr'g Transcript, at pp. 19-20, ¶¶ 17-6 (Mar. 22, 2023). *See also* IUB Hr'g Transcript, at pp. 7-8, ¶¶ 19-22 (Mar. 22, 2023).¹

28. Enterprise justifiably relied on the representations and warranties of Williams and MAPL that all proper permits were in place at the time of purchasing the Pipeline. *See* IUB Hr'g Transcript, at pp. 19-20, ¶¶ 17-6 (Mar. 22, 2023).

¹ MAPL is wholly owned by Mapletree, LLC, which is wholly owned by Enterprise Products Operating LLC.

29. From the time of acquisition, and at all times after that, Enterprise was not aware, nor was it notified or in any way informed that there were deficiencies in its *state* permitting status as a hazardous liquid pipeline in the State of Iowa. *See* IUB Hr'g Transcript, at p. 17, ¶¶ 19-23.

30. Enterprise had no reason to believe that all proper permitting was not in order until the initiation of the Board's action against Enterprise. *See In re Enterprise Products Operating, LLC*, Dkt. No. SPU-2023-0002, 2023 WL 3093945 (Iowa U.B. Apr. 21, 2023). *See also* IUB Hr'g Transcript, at p. 7, ¶¶ 2-13, and p. 9, ¶¶ 21-25 (Mar. 22, 2023).

31. Upon information and belief, predecessors in interest of the Pipeline were never notified, cited, or fined for being out of compliance with the HLP pipeline permitting requirements in question.

32. Enterprise was not notified of any permitting compliance issues for the Pipeline for the more than 20 years between the date of acquisition in 2002 until February 6, 2023. *See In re Enterprise Products Operating, LLC*, Dkt. No. SPU-2023-0002, 2023 WL 3093945 at *1 (Iowa U.B. Jun. 9, 2023).

33. On February 6, 2023, the Board issued to Enterprise an Order Requiring Response and Setting Show Cause Hearing to take place in five weeks from the date of the order. (the "Show Cause Order").

34. For similarly sized and similarly situated entities, the Board provided multiple advance notices over a period of about 12 months to those entities to comply with regulations under Iowa Code 479B, and even where entities failed to adhere to deadlines, those entities were granted extensions of time to provide updated petitions and petition exhibits. When certain entities were delinquent and unresponsive on providing documents after being notified by Board staff of deficiencies in their filings, they were given reprieve and a chance to hold status conferences to

report on their progress — as opposed to being subject to a show cause hearing. Further, no civil penalties were assessed for comparable non-compliance by one entity across 13 separate dockets. *See In re Magellan Midstream Partners, L.P.*, 2022 WL 16963734, at *1 (Iowa U.B. Nov. 10, 2022).

35. The Board conducted an investigation of pipelines located in Iowa and then, for the first time since the new statute was enacted in 1995, determined that approximately 750 miles of hazardous liquid pipeline in Iowa was owned and operated by Enterprise.

36. Board records show that neither Enterprise nor its predecessors obtained a permit from the Board to construct, maintain, or operate any of the approximately 750 miles of pipeline under the 1995 permitting scheme.

37. By its own admission, in the Show Cause Order, the Board did not know of the permitting issues with the Enterprise Pipeline until it conducted its investigation this year.

38. Under these facts, it is clear the Board could not have — and did not — put Enterprise on notice of any permitting issues with the Enterprise Pipeline prior to the Show Cause Order. In fact, in the Board's Order Denying Motion for Rehearing and Reconsideration, the Board acknowledged that the first notification to Enterprise of any discrepancy came in the Show Cause Order in February of 2023. *See In re Enterprise Products Operating, LLC*, Dkt. No. SPU-2023-0002, 2023 WL 3093945 at *1 (Iowa U.B. Jun. 9, 2023).

39. The Board asserts the Pipeline assets have been out of compliance since 1995, yet has offered no explanation for this abeyance period in permitting notification and enforcement that was the Board's own responsibility.

40. Immediately upon learning of the permitting discrepancy regarding the Enterprise Pipeline through the Show Cause Order, Enterprise — through counsel — took diligent and good-

faith steps to submit paperwork to resolve the permitting issue. *See* IUB Hr'g Transcript, at pp. 21-22, ¶¶ 15-1 (Mar. 22, 2023).

41. Nevertheless, despite Enterprise's reliance on third parties who represented and warranted that proper permits were in place at the time of the acquisition of the Pipeline, the Board's failure for more than 20 years to notify anyone of the permitting deficiency, Enterprise's cooperation with the Board during the course of the administrative proceedings, Enterprise's good faith efforts to correct any missteps that might have occurred in the past, Enterprise's lack of any history of creating any dangers to health and safety to persons or property over the relevant time period in Iowa, the Board elected to impose the "maximum civil penalty against Enterprise." *In re Enterprise Products Operating, LLC*, 2023 WL 3093945, at *6.²

42. The theory under which the Board apparently relied is that although Enterprise may have failed to secure a permit at one time — that is, in 2002, at the time of the acquisition of the entire Pipeline asset (a singular purchase), which should have already been permitted under the 1995 statute — the violation actually constituted nine separate offenses due to the fact the Pipeline was permitted prior to 1995 in nine separate dockets.

43. This theory, however, contravenes common sense and the law. Although Enterprise's Pipeline asset was once permitted as nine different segments, under the existing permitting scheme, Enterprise submitted a single application to the Board for a permit on March 17, 2023, not nine.

² As explained herein, the penalty imposed by the Board against Enterprise improperly exceeded the maximum amount allowed by law by a multiple of nine.

44. In light of the facts, circumstances, misapplication of the law, and denial of due process and equal treatment, Enterprise submits this Petition for formal judicial review of the Board's actions below. *See* IOWA CODE §§ 17A.19(3) and 17A.19(10).

COUNT I
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF
(PAYMENT OF POTENTIALLY UNRECOVERABLE CIVIL PENALTY MONIES)

45. Petitioner re-alleges and incorporates by reference all prior paragraphs of this Petition and the paragraphs below as if fully set forth herein.

46. The Board has ordered Enterprise to pay the unlawful civil penalty of \$1.8 million. *See In re Enterprise Products Operating, LLC*, 2023 WL 3093945, at *6.

47. The Board further has ordered Enterprise to pay this extraordinary sum within thirty (30) days. *See In re: Enterprise Products Operating, LLC*, Order Denying Motion for Rehearing and Reconsideration, Dkt. No. SPU-2023-0002, at p. 11 (Iowa U.B. Jun. 9, 2023).

48. Enterprise requested to have that payment deadline suspended and stayed pending resolution of its Motion for Rehearing and to Reconsider Order Assessing Civil Penalties and Denying Confidentiality. That request was denied. *See id.*

49. The risk of irreparable injury is particularly acute, where, as here, the specific civil penalty monies to be paid to the State of Iowa under the legal theory of the Board will inevitably vanish and be nearly impossible to claw back.

50. Civil penalty funds obtained under the statutory provision relied upon by the Board are statutorily required to be redirected to the "department of human rights for the purposes of the low income home energy assistance program and the weatherization assistance program." *See* IOWA CODE § 479B.21(1).

51. Absent injunctive relief to suspend payment of the civil penalty in question, that money *will be gone*. In the likely scenario that Enterprise prevails in this appeal, and those funds are already distributed, the chances of getting that money back immediately or through a legislative appropriation — which would not occur until next year at the earliest, and may not occur at all due to political reasons — means that Enterprise will have no other remedy at law absent immediate injunctive relief. This is exactly the type of financial harm that is irreparable.

52. The Board would suffer no harm if injunctive relief is granted, while the wrongful exaction of \$1.8 million from Enterprise is unquestionably irreparable. After all, the money the Board is attempting to exact is not going to the Board, but to third party funding streams unrelated to pipeline regulation or safety. Put differently, the Board will suffer no loss as a result of an injunction, those third party funding streams will suffer no loss regarding funds they were never entitled to or expecting in the first place, but Enterprise will suffer concrete and particularized damages if an injunction is not entered.

53. An injunction is not adverse to the public interest. Certainly, being properly permitted is important for a pipeline company, but no adverse injury to life or property has occurred in the more than 20 years a permit may have lapsed. There is no reason to think the risk today is measurably different than the risk tomorrow if an injunction on the tendering of \$1.8 million does not occur. After all, money does not create safety, particularly where the money in question is not designated to be put towards safety purposes. Once the pipeline is constructed and operating, the permitting statute at issue, IOWA CODE § 479B, offers practically no oversight of the asset and provides little to no regulatory value; rather, it is merely a reporting statute.

54. For the reasons expressed herein and in briefing that will follow, the rights of Enterprise will be substantially impacted, Enterprise is likely to prevail on the claims raised herein,

Enterprise will be irreparably harmed, and absent an injunction, other remedies are not immediately available.

55. Accordingly, Enterprise respectfully requests temporary and permanent injunctive relief with respect to the imposition of the inordinately large civil penalty involved in this case. *See* IOWA R. CIV. P. 1.1501.

COUNT II
(VIOLATION OF IOWA CODE § 17A.19(10)(b))

56. Petitioner re-alleges and incorporates by reference all prior paragraphs of this Petition and the paragraphs below as if fully set forth herein.

57. IOWA CODE § 17A.19(10) demands that a "court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action..."

58. One of the grounds upon which judicial reversal of an agency action is appropriate is if the agency action was "beyond the authority delegated to the agency by any provision of law or in violation of any provision of law." IOWA CODE § 17A.19(10)(b).

59. The Board has imposed an astounding \$1.8 million fine on Enterprise over what essentially amounts to a combination of a communication error and a paperwork mishap that resulted in no harm to anyone or anything.

60. The maximum statutory penalty for pipeline violations — even a series of pipeline violations — is capped at \$200,000. The relevant civil penalty statute does not allow a penalty of \$1.8 million because the nine prior permitting periods constitute a related series of violations, not nine separate unrelated offenses. *See* IOWA CODE § 479B.21(1).

61. It is generally understood that statutory language means what it says, and says what it means. This requires government agencies to follow statutory plain meaning. *See, e.g., Wendling Quarries, Inc. v. Prop. Assessment Appeals Bd.*, 865 N.W.2d 635, 641 (Iowa Ct. App. 2015) (plain meaning of words in a statute govern interpretation). *See* IOWA CODE § 479B.21(1) (clearly stating "the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations.").

62. The Board's imposition of the enormous \$1.8 million civil penalty on Enterprise is beyond any authority held by the Board under Iowa law.

63. If Enterprise were required to pay a fine in excess of the statutorily permitted amount, it would be prejudiced and suffer injury. *See* IOWA CODE § 17A.19(10)(b).

64. IOWA CODE § 17A.19(10)(b) requires a court to void an administrative action or decision that is "unreasonable, arbitrary, capricious, or an abuse of discretion."

65. The Board violated IOWA CODE § 17A.19(10)(b) in this case. Its imposition of the \$1.8 million civil penalty is unreasonable, arbitrary, capricious, and an abuse of discretion.

66. Accordingly, this Court should reverse or modify the civil penalty imposed by the Board and remand for further proceedings. *See* IOWA CODE § 17A.19(10).

COUNT III
(VIOLATION OF IOWA CODE § 17A.19(10)(c))

67. Petitioner re-alleges and incorporates by reference all prior paragraphs of this Petition and the paragraphs below as if fully set forth herein.

68. IOWA CODE § 479B.21(1) caps the potential civil penalty for a pipeline company that commits a "series" of "related" offenses of Iowa law at \$200,000.

69. The Board applies this language incorrectly as against Enterprise. That is, because Enterprise, through its predecessors, failed to get one permit one time — despite not knowing it

needed additional ongoing permits, and the lack of clear communication from the Board on that issue — this statutory cap applies to this "related series" of events. *See* IOWA CODE § 479B.21(1).

70. "Series' means 'a group of (usually) three or more things or events standing or succeeding in order and having a like relationship to each other.'" *State v. Amsden*, 300 N.W.2d 882, 885 (Iowa 1981) (citing and quoting WEBSTER'S THIRD NEW INT'L DICTIONARY 2073 (1976)). *See also id.* at 855 ("A systemic course of conduct as contrasted with isolated or sporadic occurrences.") (citing and quoting *B.J. McAdams, Inc. v. Boggs*, 426 F. Supp. 1091, 110 (E.D. Pa. 1977)).

71. Further, the word "related" is defined as "'an aspect or quality (as resemblance) that connects two or more things or parts as being or belonging or working together or as being of the same kind..." *Amsden*, 300 N.W.2d at 885.

72. In this case, a "series" of "related" events triggers the statutory civil penalty safe harbor ceiling governed by IOWA CODE § 479B.21(1). There was one stand-alone event that precipitated this action: Enterprise's predecessor failed to obtain a new permit for its single pipeline system after the previous statute was invalidated and the new scheme was enacted. The oversight of not securing the new permit or permits for the Pipeline constitutes a "series" of "related" actions. *See In re Enterprise Products Operating, LLC*, 2023 WL 3093945, at *2-5. This brings Enterprise squarely into the domain of the statutory penalty cap set by IOWA CODE § 479B.21(1).

73. In its Order Assessing Civil Penalties and its Order Denying Motion for Rehearing and Reconsideration, the Board attempts to create multiple violations based on the invalidated pre-1995 "P Dockets," when, in reality, the single offense is that Enterprise's predecessor failed to re-permit its single system. Whether that consists of one or multiple pipelines does not convert what

is a singular error into 9 separate offenses. The Board tacitly admits they are "related" to the same offense; that is, not having the single permit. *See In re Enterprise Products Operating, LLC*, 2023 WL 3093945, at *6.

74. Each of the specific alleged violations are necessarily related and constitute the same series of related allegedly violative events. Each one could not possibly have existed without the other that preceded or followed it. *See generally Amsden*, 300 N.W.2d at 884-85 (holding separate criminal "offenses" could be considered as independent factually speaking, but if they are factually connected incidences "they may be considered a single theft, and may be charged in one count.")

75. The Board has adopted "an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." IOWA CODE § 17A.19(10)(c).

76. The Board is often not afforded deference to its interpretation of its administrative rules. *See, e.g., SZ Enterprises, LLC v. IA Utils. Bd.*, 850 N.W.2d 441, 450-51 (Iowa 2014); *NextEra Energy Resources, LLC v. IA Utils. Bd.*, 815 N.W.2d 30, 37-38 (Iowa 2012).³

77. The Board's erroneous interpretation of governing law threatens to cause Enterprise harm warranting judicial intervention and relief.

78. IOWA CODE § 17A.19(10)(n) requires a court to void an administrative action or decision that is "unreasonable, arbitrary, capricious, or an abuse of discretion."

³ *See also* IOWA CODE §§ 17A.19(11)(a)-(b) ("In making determinations...the court shall not give any deference to the view of the agency with respect to whether particular matters have been vested by a provision of law in the discretion of the agency...[and] [s]hall not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency...").

79. The Board violated IOWA CODE § 17A.19(10)(c) in this case by unreasonably, arbitrarily, capriciously imposing the \$1.8 million civil penalty. This was an abuse of the Board's discretion. *See* IOWA CODE § 479B.21 (giving the Board discretion to consider factors in deciding whether or not to levy a fine).

80. Accordingly, this Court should reverse or modify the civil penalty imposed by the Board and remand for further proceedings. *See* IOWA CODE § 17A.19(10)(c). *See also* IOWA CODE § 479B.21(1).

COUNT IV
(VIOLATION OF IOWA CODE § 17A.19(10)(n))

81. Petitioner re-alleges and incorporates by reference all prior paragraphs of this Petition and the paragraphs below as if fully set forth herein.

82. IOWA CODE § 17A.19(10)(n) requires a court to void an administrative action or decision that is "unreasonable, arbitrary, capricious, or an abuse of discretion."

83. The Board violated IOWA CODE § 17A.19(10)(n) in this case.

84. Based upon review of Annual Reports from the Iowa Utilities Board covering the period between 1981 to present, the next largest penalty assessed to any entity was one-fifth of the amount levied against Enterprise. A telecommunications company was penalized for engaging in a related series of illegal slamming/cramming activities (the practice of charging consumers for services that were not ordered, authorized, or received, or changing a customer's service without permission). *See OCA v. Ultimate Medium*, Dkt. No. FCU-07-05 (Iowa U.B. Sep. 4, 2007).

85. Upon information and belief, the civil penalty of \$1.8 million assessed to Enterprise may be the largest ever imposed by the Board against a regulated entity.

86. For reasons that remain unclear, the amount of the civil penalty imposed on Enterprise for what essentially amounts to a paperwork deficiency was grossly disproportionate to

the alleged offense. *See, e.g., In re Ames Municipal Elec. Sys.*, Dkt. Nos. E-22515 and E-22516 (Iowa U.B. Apr. 26, 2023) (assessing only a singular \$7,000 civil penalty across two independent dockets for a utility's failure to renew a franchise application for 8 years, despite the fact that the penalty could be higher than that imposed); *In re City of Kimballton*, Dkt. Nos. E-22511 and E-225-12 (Apr. 21, 2023) (assessing only a singular \$1,224 civil penalty across two independent dockets for violations spanning 6 years); *In re Algona Municipal Utils.*, Dkt. No. E-22527 (Iowa U.B. Apr. 13, 2023) (assessing only a \$6,000 penalty for a violation lasting 6 years); *In re ITC Midwest, LLC*, Dkt. E-21261 (Iowa U.B. Feb. 3, 2019) (assessing a civil penalty of only \$1,100); *In re Interstate Power & Light Co.*, Dkt. No. E-21686 (Iowa U.B. Feb. 1, 2022) (cancelling show cause hearing and assessing a civil penalty of only \$1,000); *In re Black Hills/Iowa Gas Utility Co., LLC*, Dkt. No. P-0872 (Iowa U.B. Aug. 9, 2010) (assessing a penalty of only \$500); *In re Corn Belt Power Cooperative*, Dkt. No. E-21519 (Iowa U.B. Aug. 29, 2003) (cancelling a show cause hearing for alleged regulatory violations and assessing a civil penalty of only \$300); *In re Corn Belt Power Cooperative*, Dkt. No. E-21570 (Iowa U.B. Feb. 1, 2002) (cancelling a show cause hearing for alleged regulatory violations and assessing a civil penalty of only \$600).

87. This is even more evident given that on the same day the *Enterprise Products Operating LLC* ruling was issued by the Board, a similar pipeline company was penalized at only the \$200,000 statutory maximum cap limit for a similar violation under the same statute even though the violation in that incident "continued" for 355 days. *See In re Sinclair Transp. Co.*, Dkt. No. SPU-2023-0003, 2023 WL 3093966, at *4-5 (Iowa U.B. Apr. 21, 2023).

88. The Board's decision was unreasonable, arbitrary, capricious, and an abuse of discretion under the specific circumstances of this case. *See IOWA CODE § 17A.19(10)(n)*.

89. If not reversed, Enterprise will suffer severe financial harm that can easily be avoided or mitigated if the Board is directed by this Court to correct its unreasonable, arbitrary, capricious imposition of the civil penalty in question.

90. Accordingly, this Court should reverse or modify the civil penalty imposed by the Board and remand for further proceedings. *See* IOWA CODE § 17A.19(10).

COUNT V
(VIOLATION OF IOWA CONST. ART I, § 9 (DUE PROCESS))

91. Petitioner re-alleges and incorporates by reference all prior paragraphs of this Petition and the paragraphs below as if fully set forth herein.

92. All factors for a Due Process claim are met in this case: **(a)** A private interest that will be impacted by a government action; **(b)** The risk of the erroneous deprivation of that interest; and **(c)** The government interest in the regulation, as balanced against the burdens imposed by the entity being burdened, is not in balance. This is also coupled with the need for notice and right to defend one's rights and be heard. *See, e.g., State v. Hernandez-Lopez*, 639 N.W.2d 226, 240-41 (Iowa 2002).

93. Enterprise has a private interest in the Pipeline.

94. The imposition of a disproportionate and inordinately large fine regarding the matter in question threatens or puts at risk the private interests of Enterprise.

95. The government's interests as weighed against the potential harm to Enterprise are not commensurate. The harm to Enterprise — who has operated a pipeline without any significant negative incident in Iowa for years — outweighs any paperwork malfunctions that have been identified by the State of Iowa.

96. While Enterprise was given an (insufficient) notice and a chance to be heard at the Show Cause Hearing, the proceedings that followed were not adequate to satisfy Due Process.

97. Accordingly, this Court should reverse or modify the civil penalty imposed by the Board and remand for further proceedings. *See* IOWA CONST., art I, § 9.

COUNT VI
(VIOLATION OF IOWA CONST. ART. I, § 6 (EQUAL PROTECTION))

98. Petitioner re-alleges and incorporates by reference all prior paragraphs of this Petition and the paragraphs below as if fully set forth herein.

99. Equal protection demands that laws treat similarly situated persons alike with respect to the legitimate purposes of the law. *See, e.g., McQuisition v. City of Clinton*, 872 N.W.2d 817, 830 (Iowa 2015) (citing *Varnum v. Brien*, 763 N.W.2d 862, 882 (Iowa 2009), *in turn citing Racing Ass'n of Cent. IA v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004)).

100. In this instance, two utility companies were handed down penalties for similar reasons on the same day by the same regulatory authority, but the penalties were wildly dissimilar. *Compare In re Enterprise Products Operating, LLC*, Dkt. No. SPU-2023-0002, 2023 WL 3093945 (Iowa U.B. Apr. 21, 2023), *with, In re Sinclair Transp. Co.*, Dkt. No. SPU-2023-0003, 2023 WL 3093966 (Iowa U.B. Apr. 21, 2023).

101. There is no basis by which Enterprise should have been treated differently than the matter on the *Sinclair* docket.

102. The Board has given no reason why it decided to choose to arbitrarily punish Enterprise more harshly than other utility companies for similar offenses.

103. Accordingly, this Court should reverse or modify the civil penalty imposed by the Board and remand for further proceedings. *See* IOWA CONST., art I, § 6.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgment and relief as against Respondent as follows:

a) An order granting a temporary and permanent injunction regarding the \$1.8 million civil penalty imposed by the Board as against Enterprise.

b) An order pursuant to IOWA CODE § 17A.19(10)(b) reversing the imposition of the \$1.8 million civil penalty as being incongruent with the Board's administrative powers and exceeding the statutory penalty cap set by IOWA CODE § 479B.21(1).

c) An order pursuant to IOWA CODE §§ 17A.19(10)(c) and/or 17A.19(10)(n) voiding the imposition of the \$1.8 million civil penalty as being unreasonable, arbitrary, capricious, and an abuse of the Board's discretion under the circumstances.

d) An order granting a temporary and permanent injunction against the Board restraining the Board from enforcing its imposition of the \$1.8 million civil penalty against Enterprise under the Due Process Clause of the Iowa State Constitution. *See* IOWA CONST., art. I, § 9.

e) An order granting a temporary and permanent injunction against the Board restraining the Board from enforcing its imposition of the \$1.8 million civil penalty against Enterprise under the Equal Protection Clause of the Iowa State Constitution. *See* IOWA CONST., art. I, §§ 1 and 6.

f) A waiver of any bond related to any request for temporary or permanent injunctive relief sought in this action that may otherwise be required. *See* IOWA R. CIV. P. 1.1508. *See also* *Stockslager v. Carroll Elec. Co-op Corp.*, 528 F.2d 949, 951 (8th Cir. 1976) (determinations on injunction bonds rest within the sound discretion of the trial

court). *Accord Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999) (injunction bonds are not mandatory despite language of the rules of procedure); *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (a rule of civil procedure requiring an injunction bond does not divest a court from discretionary jurisdiction to waive it in certain circumstances); *Doctor's Associates, Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir 1996) (same).

g) An order reversing the Board's ruling denying confidential treatment relating to certain documents submitted with Enterprise's permit application.

h) Such other further relief as the law, equity, and the nature of this case may require or allow.

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Respectfully submitted,

/s/ Colin C. Smith

Colin C. Smith AT #0011362

Amanda A. James AT #0009824

Denny L. Puckett AT #0011362

SULLIVAN & WARD, P.C.

6601 Westown Parkway, Suite #200

W. Des Moines, IA 50266-7733

E.: csmith@sullilvan-ward.com

ajames@sullivan-ward.com

dpuckett@sullivan-ward.com

Ph.: #(515) 244-3500

***COUNSEL FOR ENTERPRISE
PRODUCTS OPERATING, LLC***