

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

ENTERPRISE PRODUCTS OPERATING  
LLC,

Petitioner,

v.

IOWA UTILITIES BOARD,

Respondent.

CASE NO. CVCV065780

**RESPONDENT IOWA UTILITIES  
BOARD'S PRE-ANSWER MOTION TO  
STRIKE OR RECAST THE PETITION  
AND MOTION TO ENLARGE TIME TO  
TRANSMIT CERTIFIED RECORD**

**COMES NOW** Respondent Iowa Utilities Board (Board), by and through its undersigned counsel, pursuant to Iowa Rules of Civil Procedure 1.421 and 1.1602, and Iowa Code section 17A.19(6), and for its Pre-Answer Motion to Strike or Recast Petition and Motion to Enlarge Time to Transmit Certified Record, respectfully states as follows:

**I. PRELIMINARY STATEMENT.**

1. On July 7, 2023, the Enterprise Products Operating, LLC filed a Petition for Judicial Review of the Respondent Iowa Utilities Board (IUB or Board) Order Assessing Civil Penalties and Denying Confidentiality issued on April 21, 2023, and its Order Denying Motion for Rehearing and Reconsideration (final agency action or final order) issued June 9, 2023, *in In re: Enterprise Products Operating LLC*, Docket No. SPU-2023-0002.

2. In Docket No. SPU-2023-0002, the Board investigated and assessed civil penalties for Enterprise's failure to have a hazardous liquid pipeline permit for nine different pipelines in violation of Iowa Code section 479B.

3. In its June 9 final order, the Board denied Enterprise's request for rehearing and reconsideration regarding the civil penalties assessed.

Relevant to this proceeding and the Board's motion, the Board also upheld its denial of Enterprise's request for confidential treatment of certain information Enterprise filed in the docket as Exhibit A. The Board cited its rule 199—1.9(6)(d) indicating the information would be kept confidential for 14 days to allow Enterprise an opportunity to seek injunctive relief and *after which, the materials become available for public inspection.* (Emphasis added).

4. Enterprise did not seek injunctive relief or judicial review of the Board's final order within 14 days – by June 23. Rather, Enterprise filed its petition for judicial review on July 7, 2023.

5. In its petition for judicial review, Enterprise alleges six causes of action (Counts I through VI), which do not include an action relating to or appeal of the Board's denial of Enterprise's request for confidential treatment of certain information. However, as a remedy, Enterprise requests this Court to reverse the Board's ruling “denying confidential treatment relating to certain documents”

6. Because Enterprise did not seek injunctive relief regarding confidential treatment of certain information within 14 days of the Board's final order and did not otherwise appeal the Board's final order on this issue (as one of the listed six counts in the petition), Enterprise is not entitled to relief regarding its request for confidential treatment of certain information in the Board docket. Accordingly, the Board respectfully requests that any and all references to Enterprise's application for confidential treatment of information be stricken from the petition including, but not limited to the introductory references and Paragraph “g” of the prayer for relief. Alternatively, the Board respectfully

requests Enterprise recasts its petition to eliminate any and all references to its application for confidential treatment of certain information.

7. The Board further requests the period for transmitting the certified record be enlarged during the pendency of this court's review of the motion to strike or recast the petition.

## II. STATEMENT OF THE FACTS.

8. The Board is the utilities division within the department of commerce and is also an administrative agency within the meaning of Iowa Code section 17A.2(1). See Iowa Code § 17A.2(1).

9. Pursuant to Iowa Code chapter 479B, any company operating a hazardous liquid pipeline located within the state of Iowa is required to have a permit. During the course of its investigation in another docket, the Board found approximately 750 miles of hazardous liquid pipeline in Iowa owned and operated by Enterprise. Enterprise did not have a permit from the Board to construct, maintain, or operate any of the approximately 750 miles of pipeline.

10. In February 2023, the Board opened Docket No. SPU-2023-0002<sup>1</sup> and issued an Order Requiring Response and Setting Show Cause Hearing for Enterprise. The Board indicated its identification of at least 13 hazardous liquid pipelines operated by Enterprise without a permit; notified Enterprise of the Board's authority to assess civil

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<sup>1</sup> Judicial notice may be taken of information contained on an executive branch agency's website. See *League of United Latin Am. Citizens of Iowa v. Pate*, 950 N.W.2d 204, 212-13 (Iowa 2020) (taking judicial notice of data posted on the Iowa Secretary of State's website). To the extent necessary to adjudicate the above-captioned motion, the Board requests the Court take judicial notice of the relevant underlying case filings and Board orders, which are available in IUB's EFS, Docket No. SPU-2023-0002, accessible at: <http://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=SPU-2023-0002>.

penalties; ordered a response from Enterprise; and set a show cause hearing for Enterprise's opportunity to explain why it is operating hazardous liquid pipelines without a permit and why it should not be assessed civil penalties.

11. On March 6, Enterprise filed its response to the Board order along with an Exhibit A. Pursuant to Board subrules 1.9(5) and (6), Enterprise also filed an Application for Confidential Treatment of the information contained in Exhibit A. In its application, Enterprise claimed the information should be treated as confidential pursuant to Board rules 199—1.9(5)(a)(1), 1.9(5)(a)(3), and 1.9(5)(a)(6) in addition to Iowa Code sections 22.7(50) and 22.7(71).

12. Board rule 199—1.9(22) addresses "Public information and inspection of records," and subrule 1.9(6) sets forth the process, "Requests that materials or information submitted to the board be withheld from public inspection." The subrule specifically provides for a placeholder in the public file when the Board grants confidential treatment. However, if the request is denied, "the information will be held confidential for 14 days to allow the applicant an opportunity to seek injunctive relief."

Subrule 1.9(5) describes "Records not routinely available for public inspection." If in fact the records have been withheld from public inspection and there is a request to review materials under subrule 1.9(5)(a)(1) and (3), such as what Enterprise has claimed, "the board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief."

13. The show cause hearing was held as scheduled in March and the Board issued its Order Assessing Civil Penalties and Denying Confidentiality on April 21. In its

order, the Board set forth its analysis in denying Enterprise's request for confidential treatment and, at the end, stated

Therefore, as the information is already public, the Board will deny Enterprise's request and require Enterprise to file an unredacted version of the material in Docket No. SPU-2023-0002 within 14 days of this order.

(Board April 21, 2023 Order at 12).

14. On May 2, Enterprise filed a Motion to Stay the Board's execution of its order. Enterprise indicated that it was filing a motion for rehearing and reconsideration and was seeking a stay in the interim period.

15. Enterprise filed its Motion for Rehearing and to Reconsider Order Assessing Civil Penalties and Denying Confidentiality.

16. On June 9, the Board issued its Order Denying Motion for Rehearing and Reconsideration. The Board upheld its assessment of penalties and its denial of Enterprise's request for confidential treatment. (Board June 9, 2023 Order (regarding confidential treatment) at 12-13). As its last paragraph, the Board stated,

*In accordance with the Board's rules at 199 AC 1.9(6)(d), the information will be held confidential for 14 days to allow Enterprise an opportunity to seek injunctive relief. After the 14 days expire, the materials will become available for public inspection unless the Board is directed by a court to keep the information confidential.*

(Board June 9, 2023 Order at 13). The Board also determined Enterprise's Motion to Stay as moot.

17. Enterprise did not file for injunctive relief within 14 days—June 23.

18. Enterprise filed its petition for judicial review in this matter on July 7 and alleges seven grounds for relief:

A. Count I, Temporary and Permanent Injunctive Relief (Payment of Potentially Unrecoverable Civil Penalty Monies) with a request for injunctive relief “with respect to the imposition of the inordinately large civil penalty;”

B. Count II, (Violation of Iowa Code § 17A.19(10)(b)) for the amount of the fine with a request for this Court to “reverse or modify the civil penalty;”

C. Count III, (Violation of Iowa Code § 17A.19(10)(c)) for the fine based on “series” of “related” offenses with a request for this Court to “reverse or modify the civil penalty;”

D. Count IV, (Violation of Iowa Code § 17A.19(10)(n)) for the civil penalty in comparison with others with a request for this Court to “reverse or modify the civil penalty;”

E. Count V, (Violation of Iowa Constitution article I, § 9 (Due Process)) for the alleged insufficiency of process given the size of the fine with a request for this Court to “reverse or modify the civil penalty;” and

E. Count VI, (Violation of Iowa Constitution article I, § 6 (Equal Protection)) for the Board’s alleged different treatment of Enterprise in comparison with others regarding penalties with a request for this Court to “reverse or modify the civil penalty;”

19. Enterprise references the confidential treatment in the “Introduction” of its petitions, Paragraphs “3” and “9,” and in Paragraph “g” of its Prayer for Relief, Enterprise requests an “order reversing the Board’s ruling denying confidential treatment relating to certain documents.”

20. Because Enterprise did not seek injunctive relief within 14 days, it is required to file an unredacted version of Exhibit A and the Board must make the information accessible to any public request that the Board may receive in accordance with Board rules.

### **III. MOTION TO STRIKE OR RECAST THE PETITION.**

21. Under these facts, Enterprise failed to seek injunctive relief in the 14-day time period and because the information is now considered public accessible, the issue of confidential treatment of Enterprise Exhibit A is moot. Enterprise’s request for relief on this issue should be stricken as a result.

22. Enterprise has failed to appeal the Board’s final order on confidential treatment of Exhibit A or seek injunctive relief pursuant to Iowa Code section 17A.19. The

petition does not include this issue in the listed causes of actions and thereby fails to delineate how Enterprise is adversely affected and the specific Iowa Code section 17A.19(10) ground upon which Enterprise seeks relief regarding the confidential treatment issue. Because Enterprise has not plead or asserted that the Board's order regarding confidential treatment is a cause of action, Enterprise's request for relief on this issue should be stricken.

23. Notice pleading is not applicable to an appellate review proceeding under chapter 17A where the pleading requirements are more stringent than those of an original action. *Kohorst v. Iowa State Commerce Comm'n*, 348 N.W.2d 619, 621 (Iowa 1984). The respondent is entitled to know the exact nature of the claimed errors, and each error must be separately and distinctly stated so that the respondent can adequately prepare and respond. *Id.*

24. Enterprise failed to seek injunctive relief within 14 days of the Board's final order. Thereafter, Enterprise also failed to include the Board's final order on confidential treatment of information as one of the six grounds asserted for relief. Enterprise only references confidential treatment in its Introduction and its Prayer for Relief – none of which includes an indication of how Enterprise is aggrieved or adversely affected by the Board's final order on this issue or is otherwise substantially complies with section 17A.19(4).

25. Because Enterprise missed its 14-day deadline and the confidential status of Exhibit A is now moot and because Enterprise has not appealed the Board's final order on the merits or sought injunctive relief, Enterprise's request for relief and all references on this issue should be stricken from the petition. Alternatively, Enterprise should recast

its petition to exclude all references to the confidential treatment of Exhibit A and the Board's respective orders on the subject.

**V. MOTION TO ENLARGE TIME TO TRANSMIT CERTIFIED RECORD.**

26. Iowa Code section 17A.19(6) permits the district court to enlarge the time by which the agency must transmit to the reviewing court a certified copy of the entire contested case record. See Iowa Code § 17A.19(6).

27. The Board requests the period in which it must file the certified record be extended until this Court has an opportunity to review and rule on the Board's Motion to Strike or Recast the Petition. In the event the Court denies the Board's motion, the Board requests the deadline for the transmittal of the certified record be set as 30 days from the date of the Court's order.

**WHEREFORE**, the Respondent Iowa Utilities Board respectfully requests this Court grant the above-captioned pre-answer Motion to Strike all references in the petition regarding confidential treatment of Enterprise information. This includes, but is not limited to the Prayer for Relief Paragraph "g" and all references in the Introduction. In the event the Court denies the motion, the Iowa Utilities Board respectfully requests this Court order Enterprise Products Operating LLC to recast its Petition for Judicial Review to eliminate references to its application and the Board's orders regarding confidential treatment of certain information (Exhibit A) contained in Docket No. SPU-2023-0002.

The Iowa Utilities Board also respectfully requests this Court set the deadline for the transmission of the certified record 30 days from the date of the order.



Respectfully submitted,

/s/ Jon Tack

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**ALL PARTIES SERVED ELECTRONICALLY  
THROUGH COURT EDMS.**