

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

WOLF CARBON SOLUTIONS US LLC,)
)
 Petitioner,) No. EQCE088016
)
 vs.)
) RESISTANCE TO MOTION TO STRIKE
 IOWA UTILITIES BOARD,)
)
 Respondent.)

Comes now Sierra Club Iowa Chapter and in support of this Resistance to Motion to Strike, states to the Court as follows:

1. Wolf requests that one paragraph of the affidavit of Jessica Mazour, supporting Sierra Club’s Motion to Intervene be stricken, pursuant to Iowa Rule of Civil Procedure 1.434.
2. Rule 1.434 states that improper or unnecessary matter in a **pleading** can be stricken. Pleadings include only petitions and answers. Iowa Rule of Civil Procedure 1.401. Therefore, Sierra Club’s Motion to Intervene is not a pleading, and certainly Ms. Mazour’s affidavit is not a pleading. So, a motion to strike is not available to challenge a motion or affidavit.
3. Furthermore, the official comment to Rule 1.434, on which Wolf relies, makes it clear that the current application of Rule 1.434 is that “the better rule seems to be that on such a motion [to strike] the court should merely determine whether there are ultimate issues to be tried, and should not try the issues at that time,” citing *In re Primary Road No Iowa 141*, 253 Iowa 1130, 114 N.W.2d 290 (1962).
4. Wolf is simply raising a factual dispute with Ms. Mazour’s statement in here affidavit. That is not a proper subject for a motion to strike.

WHEREFORE, Sierra Club Iowa Chapter requests that the Court deny Wolf's Motion to Strike.

/s/ *Wallace L. Taylor*

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