

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

Attachment 1

IN RE: BLACK HILLS/IOWA GAS UTILITY COMPANY, LLC d/b/a BLACK HILLS ENERGY	DOCKET NOS. SPU-2015-0039 TF-2015-0352
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MOTION TO STRIKE NORTHERN NATURAL GAS COMPANY’S BRIEF

COMES NOW the Iowa Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, who, pursuant to Iowa Code chapter 475A (2017), represents the interests of consumers and the public in proceedings before the Iowa Utilities Board (Board), and hereby submits this Motion to Strike pursuant to 199 IAC rules 7.2. In support of this Request, OCA states the following:

1. OCA, as a party to a contested case proceeding, is entitled to an evidentiary hearing and all of the rights for a fair hearing that come with the entitlement to due process. Iowa Code Section 17A.2(5) (2017); *Strickland v. Iowa Board of Medicine*, 764 N.W. 2d 559, 561-562 (Ct. of App. 2009). Northern Natural Gas Company (Northern), after no participation since being granted intervention, filed a brief raising new factual issues. Northern’s brief violates OCA’s due process rights and OCA’s ability to fairly and justly represent the ratepayers of Black Hills in this proceeding.

2. On January 11, 2016, Northern filed a Petition to Intervene.

3. The Iowa Utilities Board (Board) granted intervention on February 10, 2016.

4. Between February 10, 2016, and February 21, 2017, Northern did not participate in the proceeding. Northern issued no discovery, did not participate in any of the joint filings,

provided no pre-filed testimony, filed no responses to the Board's requests for additional information, and did not participate in the hearing.

5. On February 22, 2017, Northern filed a Post Hearing Brief.

6. Northern's filing contains an agreement of two pages dated December 20, 1985, between Northern and Utilicorp United Inc., a two page affidavit of Keith Peterson dated May 4, 2016, and nine pages of brief.

7. The two page agreement dated December 20, 1985, between Northern and Utilicorp United Inc., is not in the record. No foundation for the document has been provided, the parties were not provided the opportunity to object, cross-examine or rebut the document. 199 IAC 7.23. The document has not been admitted into the record and should be struck.

8. The two page affidavit of Keith Peterson dated May 4, 2016, is not in the record. No foundation for the document has been provided, the parties were not provided the opportunity to object, cross-examine or rebut the document. 199 IAC 7.23. The document has not been admitted into the record and should be struck.

9. The nine page brief is not a brief on the legal merits which is what would be expected from an intervenor that does not participate in the proceeding. Instead, it is nine pages of argument based on facts not in the record before the Board, for example the two page agreement dated December 20, 1985.

10. Northern was an Intervenor and could have participated in this proceeding and pre-filed testimony and exhibits. Northern chose not to participate and is not allowed through the briefing process to add to the record. This violates OCA's due process rights to a fair and just hearing. *Strickland v. Iowa Board of Medicine*, 764 N.W. 2d 559, 561-562 (Ct. of App. 2009).

11. OCA asks that the Board strike the Post Hearing Brief and attachments filed by Northern on February 22, 2017, because of the extensive inclusion of argument and exhibits outside the record in this proceeding.

12. If Northern is allowed to file a new brief based on the record before the Board, OCA would ask the Board for an opportunity to file a rebuttal brief. Since Northern did not participate in the proceeding, OCA had no opportunity to include in its brief any response to positions of Northern as they were not known as of the date of the post-trial brief filing.

WHEREFORE, the Office of Consumer Advocate respectfully requests the Board strike the document filed by Northern on February 22, 2017, because of the extensive inclusion of argument and documents outside the record in this proceeding. OCA further requests the Board grant OCA an opportunity to file a rebuttal brief if Northern is allowed to file another brief based on the record before the Board.

Respectfully submitted,

/s/ Mark R. Schuling

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OFFICE OF CONSUMER ADVOCATE