

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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IN RE: CEDAR FALLS UTILITIES	)	
Franchise No. 17613	)	
Bert Schou and Diane Schou,	)	No. CV-5994
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
Iowa Utilities Board,	)	
	)	
Respondent.	)	
	)	<b>CEDAR FALLS UTILITIES'</b>
Cedar Falls Utilities,	)	<b>MOTION TO STRIKE EXHIBITS</b>
	)	
Appearing to Intervene	)	
and Move to Strike	)	
Petitioner's Petition and	)	
Impose Sanctions	)	
	)	

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COMES NOW Cedar Falls Utilities and states:

1. Cedar Falls Utilities (CFU) is a municipal utility serving the City of Cedar Falls, Iowa.
2. CFU was a party to the proceedings before the agency and was granted Franchise No. 17613 by the Iowa Utilities Board pursuant to and in full accordance with the administrative process mandated by Iowa law and administrative rules and has an interest in this action because it is the holder of the franchise in controversy. CFU has been allowed to intervene.
3. By letter dated April 18, 2006, counsel for Petitioners' Schou directed correspondence to the Polk County District Court purporting to file Petitioners' "First Application For Leave to Present Evidence", "Affidavit of Mailing", and attached subpoena (Exhibit 1-A) and MAPP 2005 Update to the 2004 Regional Plan (Exhibit 1-B).

4. The Iowa Utilities Board conducted proceedings and a hearing was held in full compliance with the administrative process as set forth in Iowa Code chapter 478 and the record before the Board is closed. Iowa Code §474.4 (2005).

5. Any person aggrieved by the action of the Utilities Board may seek judicial review in accordance with the terms of the Iowa Administrative Procedure Act. Iowa Code §478.32.

6. Iowa Code §17A.19(7) provides:

... in proceedings for judicial review of agency action in a contested case, however, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by Constitution or statute to the agency in that contested case proceeding. Before the date set for hearing a petition for judicial review of agency action in a contested case, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the contested case proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. ...

Hearing date -  
6/30  
Done #1  
#2 & #3 to follow

7. Based on the record, the Petitioner has bypassed the provisions of Iowa Code §17A.19(7) and has directly filed additional evidence with the Court without seeking leave to present evidence and without a hearing to establish to the satisfaction of the Court that the additional evidence is indeed material and that there were in fact good reasons for failure to present it in the contested case proceeding before the Agency. As a matter of law, the Exhibits attached to the Petitioners' First Application should be stricken and should not be considered by the Court until such time as the Plaintiffs have taken the appropriate steps under Iowa Code §17A.19(7) to seek leave to present additional evidence and a hearing is held to determine whether or not the Court will grant Petitioners' permission to do so and, if so, upon what conditions to be determined by the Court.

WHEREFORE, CFU prays that the Court strike Exhibits I-A and I-B attached to  
Petitioners' First Application For Leave to Present Evidence.



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Original filed.  
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PROOF OF SERVICE

THE UNDERSIGNED CERTIFIES THAT THE FOREGOING INSTRUMENT WAS SERVED UPON ALL PARTIES TO THE ABOVE CAUSE TO EACH OF THE ATTORNEYS OF RECORD HEREIN AT THEIR RESPECTIVE ADDRESSES DISCLOSED ON THE PLEADINGS ON

4-24 2005  
BY  U.S. MAIL  FAX  
 HAND DELIVERED  PRIVATE CARRIER  
SIGNATURE Carrie Pennington

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