

Answers to Complaints4:20-cv-00073-SMR-SBJ Ames Municipal Electric System v. Iowa Utilities Board et al**U.S. District Court****Southern District of Iowa****Notice of Electronic Filing**

The following transaction was entered by Tack, Jon on 3/13/2020 at 11:41 AM CDT and filed on 3/13/2020

Case Name: Ames Municipal Electric System v. Iowa Utilities Board et al

Case Number: 4:20-cv-00073-SMR-SBJ

Filer: Iowa Utilities Board

Document Number: 6

Docket Text:

ANSWER to Complaint by Iowa Utilities Board. (Attachments: # (1) Certificate of Service)(Tack, Jon)

4:20-cv-00073-SMR-SBJ Notice has been electronically mailed to:

David Jay Lynch lynch@brownwinick.com, risewick@brownwinick.com

David L.D. Faith david.faith@usdoj.gov, bonnie.robinson@usdoj.gov, CaseView.ECF@usdoj.gov, davidfaith80@gmail.com, shelly.robertson@usdoj.gov, usaias.nefcivil@usdoj.gov

Jon C. Tack jon.tack@iub.iowa.gov

4:20-cv-00073-SMR-SBJ Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1077055697 [Date=3/13/2020] [FileNumber=2973545-0] [4d0915110f125a8c996169a8bf56c7957dbccd3f3b4ce45c604125c3faf492a2e970d6cc34d3627adc6b7c18de24f56b4c14831da45fb8a975e5c3fd65ae8d05]]

Document description: Certificate of Service

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1077055697 [Date=3/13/2020] [FileNumber=2973545-1] [30092ac420215b784231e41269a9d4c73bb7750a53d4a78d8bfc436204aa8694b504107aa0c5ba6bc09398ac46abd6cd6edb5d8ea010f2f86c93a9274c68f5b5]]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

<p>AMES MUNICIPAL ELECTRICAL SYSTEM,</p> <p>Petitioner,</p> <p>vs.</p> <p>IOWA UTILITIES BOARD,</p> <p>Respondent,</p> <p>UNITED STATES DEPARTMENT OF AGRICULTURE,</p> <p>Respondent.</p>	<p>CASE NO. 4:20-cv-00073</p> <p>RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES</p>
---	---

COMES NOW Respondent Iowa Utilities Board ("IUB"), by and through its undersigned counsel, and for its Answer and Affirmative Defenses, states:

ANSWER

1. Paragraph 1 constitutes Petitioner's characterization of this case, which requires no responsive pleading. In the event a responsive pleading is required, the allegations contained in Paragraph 1 are admitted.

2. It is admitted that to its Petition, Petitioners attached the "Order Modifying Exclusive Electric Service Territory and Directing Further Filings," issued on January 23, 2020, in the agency case captioned as: *In re: Interstate Power and Light Company and Ames Municipal Electric System*, Docket No. FCU-2018-0007.

3. The allegations contained in Paragraph 3 are admitted.

4. The allegations contained in Paragraph 4 are admitted.

5. The allegations contained in Paragraph 5 not admitted herein are denied. It is admitted that Petitioner was a respondent and participated in a contested formal complaint case before the IUB concerning Petitioner's exclusive service territory. It is further admitted that in the case, the IUB issues orders, which speak for themselves.

6. The allegations contained in Paragraph 6 are denied.

- a. The allegations contained in Paragraph 6(a) are denied.
- b. The allegations contained in Paragraph 6(b) are denied.
- c. The allegations contained in Paragraph 6(c) are denied.
- d. The allegations contained in Paragraph 6(d) are denied.
- e. The allegations contained in Paragraph 6(e) are denied.
- f. The allegations contained in Paragraph 6(f) are denied.
- g. The allegations contained in Paragraph 6(g) are denied.
- h. The allegations contained in Paragraph 6(h) are denied.
- i. The allegations contained in Paragraph 6(i) are denied.

WHEREFORE, Respondent Iowa Utilities Board respectfully request this Court deny the relief requested by Petitioner, affirm the decision of the agency, and tax costs of this action against Petitioner.

AFFIRMATIVE DEFENSES

7. Petitioner's Petition is premature because the IUB has not issued a final agency decision and has not taken final agency action.

8. Petitioner failed to exhaust all adequate administrative remedies.

9. In the event Petitioner contends the IUB's intermediate January 23, 2020 order is "immediately reviewable" under Iowa Code § 17A.19(1), then the Petition is impermissible

because all adequate administrative remedies have not been exhausted and review of the final agency action would provide an adequate remedy.

10. This Court lacks jurisdiction and/or authority to sit in appellate review of the underlying state of Iowa, executive branch decision.

11. This judicial review action against the IUB, in federal court is barred by the Eleventh Amendment to the United States Constitution.

12. Pursuant to Iowa Code § 17A.19(2), forum and venue rests only in the Iowa district court for Polk County and the Iowa district court for Story County.

13. Removal of this state-law action under 28 U.S.C. § 1442(a)(1) is impermissible.

14. IUB reserves the right to add additional affirmative defenses following further investigation and review.

Respectfully submitted,

/s/ Jon Tack
Jon Tack (AT0007738)
Iowa Utilities Board
1375 E. Court Avenue
Des Moines, IA 50319
Telephone: (515) 725-7333
E-mail: jon.tack@iub.iowa.gov

/s/ Matthew Oetker
Matthew Oetker (AT0005843)
Iowa Utilities Board
1375 E. Court Avenue
Des Moines, IA 50319
Telephone: (515) 725-7300
E-mail: matt.oetker@iub.iowa.gov

ATTORNEYS FOR RESPONDENT,
IOWA UTILITIES BOARD