IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MIDAMERICAN ENERGY COMPANY, BLACK HILLS/IOWA GAS UTILITY COMPANY, LLC d/b/a BLACK HILLS ENERGY, IOWA ASSOCIATION OF ELECTRIC COOPERATIVES, INTERSTATE POWER AND LIGHT COMPANY, and IOWA ASSOCIATION OF MUNICIPAL UTILITIES,	:	Case No. CVCV064145
Petitioners,	:	**RESPONSE TO RESISTANCE TO PETITIONERS' MOTION TO STAY BOARD ORDER**
v.	:	
IOWA UTILITIES BOARD, A DIVISION OF THE DEPARTMENT OF COMMERCE,	:	
Respondent.	:	

COME NOW the Petitioners, MidAmerican Energy Company, Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy ("Black Hills Energy"), Iowa Association of Electric Cooperatives, Interstate Power and Light Company, and Iowa Association of Municipal Utilities, and in response to the Resistance to Petitioners' Motion to Stay Board Order filed by the Iowa Utilities Board ("Board"), state as follows:

1. In support of its position that Petitioners are unlikely to succeed on the merits, the Board argues that "a legislative intent 'to incrementally reduce funding levels to the [Iowa Energy Center ("IEC")]' . . . is supposition." Petitioners respectfully disagree – it is well grounded analysis that takes into consideration all parts of the statute *together*, and that is in accord with the State of Iowa's own analysis, as expressed through no less than three state agencies:

a. The Office of Consumer Advocate, which represents Iowa consumer's interests in utility matters, filed a statement that agreed with Petitioners' analysis and supported Petitioners' objection to the May 2, 2022, assessment.[1]

b. Immediately after the 2018 amendment to section 476.10A, which carved out an increasing appropriation to the general fund from the 85% otherwise allocated to the IEC over state fiscal years 2019 to 2022, the Fiscal Services Division of the Legislative Services Agency published a NOBA ("Notes on Bills and Amendments") that set forth and explained the 2018 amendment and predicted the effect of the amendment would be to incrementally decrease allocations to the IEC. Specifically, the Fiscal Services Division predicted the following allocations to the IEC as the required allocations to the general fund increased each year:

i. FY 2020: $2,852,301
ii. FY 2021: $1,222,301
iii. FY 2022: $632,301[2]

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[1] *See* "Statement in Lieu of Brief," *In Re Objection to May 2, 2022 Iowa Code § 476.10A Assessment*, Iowa Utilities Board Docket No. SPU-2022-0003 (filed by the Office of Consumer Advocate June 20, 2022).

[2] "Standing Appropriations Bill House File 2502, Notes on Bills and Amendments (NOBA)," Fiscal Services Division, Legislative Services Agency, p. 34 (May 5, 2018), available at: https://www.legis.iowa.gov/docs/publications/NOBA/965880.pdf (last viewed June 16, 2022). Specifically, the NOBA stated:

CODE: Specifies that of the 85.00% of the 0.10% of the total gross intrastate public utilities operating revenue from gas and electric utilities that would otherwise be dedicated to the Iowa Energy Center each year, the following amounts are to be transferred to the General Fund as follows:

- FY 2020: $1,280,000
- FY 2021: $2,910,000
- FY 2022: $3,500,000

DETAIL: The assessment and the Iowa Energy Center are repealed July 1, 2022 (FY 2023). Assuming the amount equal to the 85.00% remains at the FY 2017 level of $4,132,301, the following amounts will be available for the Iowa Energy Center established in Iowa Code section 15.120 as follows:

- FY 2020: $2,852,301
- FY 2021: $1,222,301
- FY 2022: $632,301

c. The IEC itself, in its 2020 Annual report to the Iowa legislature, likewise predicted incrementally decreasing annual allocations to the IEC as allocations to the general fund increased under the 2018 amendment: The IEC specifically predicted the following:

i. FY 2020: $3,410,497

ii. FY 2021: $1,340,000

iii. FY 2022: $720,000[3]

Among the published positions taken by the state or its agencies regarding the intended effect of the 2018 amendment, the Board's stands alone as suggesting the legislature had no intent or care as to the impact of the 2018 amendment to IEC funding, or in fact intended an erratic result in which funding to the IEC decreased, spiked, and then decreased again, according to the Board's decision to push two yearly assessments into one fiscal year.

2. The Board also argues that a stay is not warranted because the general fund has been deprived of its remittance for fiscal year 2022 "as required by Iowa Code § 476.10(A(1)(c)(1)(d)," which requires a final allocation to the general fund of $3.53 million in FY2022. However, that alleged deprivation does not lie at the feet of Petitioners or Petitioners'

[3] Iowa Energy Center 2020 Annual Report, p. 4 (Jan. 15, 2021), available at: https://www.legis.iowa.gov/docs/publications/DF/1212658.pdf (last viewed June 13, 2022). The IEC's 2020 Annual Report specifically stated:

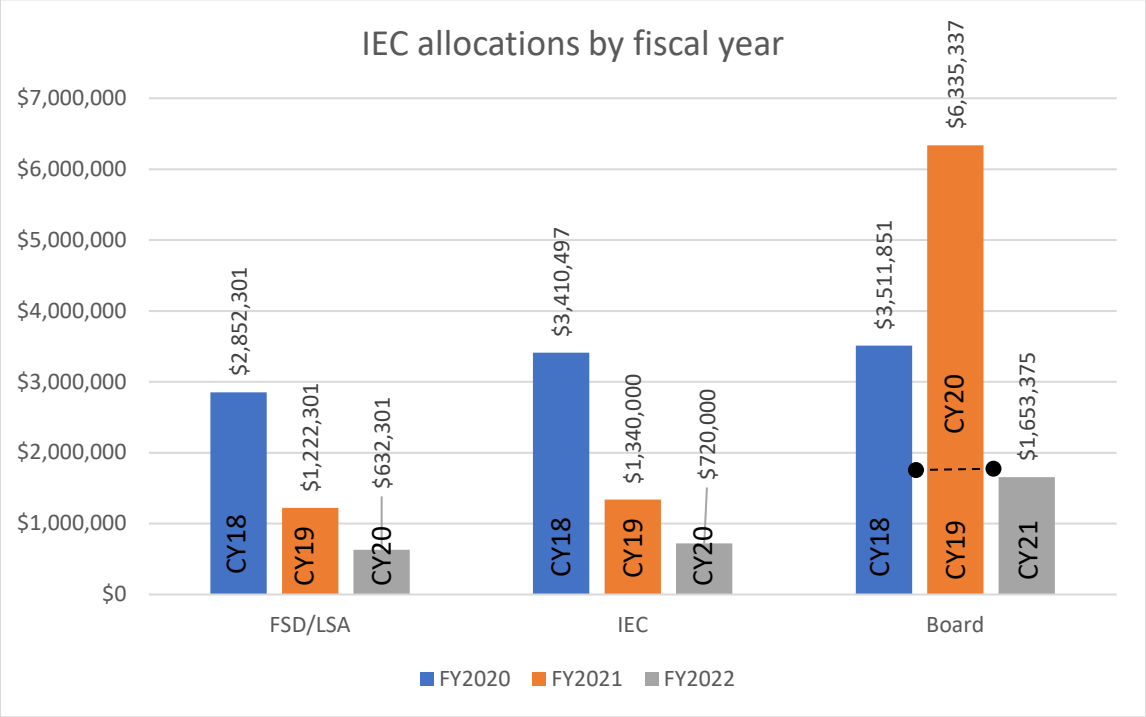
NOTES:

1) Funding for IEDA programs under the Iowa Energy Center sunsets as of June 30, 2022, per 2017 Acts, Chapter 169 Section 37.
2) Per 2018 Acts Chapter 1172 Section 91, some of the funding available for Iowa Energy Center programs is transferred to the General Fund of the State as outlined below (assumes a IUB transfer of $4.25 million each year).

PROGRAM FUNDING SCHEDULE:

	IUB Transfer	To General Fund	To IEDA
FY2020	$4,690,497	$1,280,000	$3,410,497
FY2021 (Estimated)	$4,250,000	$2,910,000	$1,340,000
FY2022 (Estimated)	$4,250,000	$3,530,000	$720,000

request for stay. It lies at the feet of the Board and resides in the very spike in allocations to the IEC that the Board's method of assessment and allocation created. The following depicts the spike the Board created, compared against the performance predicted by the Fiscal Services Division and the IEC:



"CY" entries within each bar indicate the calendar year revenues the fiscal year assessment from which the allocation was drawn were based on. Fiscal Services Division, Legislative Services Agency (FSD/LSA) figures are forecasted amounts based on estimated utility revenues for each calendar year as of May 5, 2018; Iowa Energy Center ("IEC") figures are actual amounts for FY2020 and estimated amounts for FY2021 and FY2022, based on estimated utility revenues as of January 15, 2021. The Board's figures are actual amounts as reported by the Board in the document marked as Petitioners' Exhibit C.

The orange bar representing the Board's FY2021 IEC allocations represents the sum of the Board's October 2020 allocation to the IEC of $1,790,370.29 (drawn from the August 2020 assessment based on CY19 revenues) and the Board's June 2021 allocation to the IEC of $4,544,967.18 (drawn from the April 2021 assessment based on CY20 revenues), all as shown in Petitioner's Exhibit C. The dashed line crossing the bar shows that portion of the total FY2021 allocation attributable to each of these amounts, with the first amount represented by that portion of the bar below the dashed line, and the second amount represented by that portion of the bar above the dashed line.

As the Board's own records confirm, the Board collected the revenues it should have for FY2022 in the full-year assessment levied in the spring of 2021 but failed to remit any of those funds to the general fund. The "missing" 2022 general fund allocation is in the Board's second FY2021 allocation to the IEC based on CY20 revenues, which appears in the spike – that part of the orange

bar depicting the Board's FY2021 allocations that is above the dashed line. The Board allocated the entire 85% of that assessment to the IEC without any offset to the general fund, which means the state has the funds due to the general fund for FY2022, it is just holding them in the wrong account. [4]

3. Iowa taxpayers should not be required to protect the state against a harm the state itself created. Petitioners agree that there is a strong public interest in favor of a sound tax system, but a sound tax system should be based on sound reading of those laws implementing the tax in question and should not burden taxpayers with taxes that were not clearly intended by the legislature. The public interest in this circumstance weighs heavily in favor of maintaining the status quo until the legality of the Board's May 2022 assessment is finally determined.

WHEREFORE, Petitioners pray the Court grant a stay as requested in their Motion to Stay filed August 29, 2022.

Respectfully submitted,

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[4] *See* Petitioner's Exhibit B, p.1 ("Because the IUB has already transferred the remittances covering calendar year 2019 during state fiscal year 2021, the State General Fund has received its statutorily required amount of $2,910,000. Of the remittances covering calendar year 2020, 85 percent is to be sent to IEC and 15 percent is to be sent to CGRER."); *see also* Petitioner's Exhibit C (line 9 of the Board's "476.10A History and Schedule", which shows a full calendar year assessment split between the IEC and CGRER, with "$0.00" distributed to the state general fund in June 2021.

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