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Via Hand Delivery

IOWA RACING AND GAMING COMMISSION
Commissioner Carl Heinrich
Commissioner Kristine Kramer
Commissioner Jeff Lamberti
Commissioner Dolores Mertz
Commissioner Greg Seyfer
Brian J. Ohorilko, Administrator
1300 Des Moines Street, Suite 100
Des Moines, IA 50309-5508

Re: Request for Reconsideration of April 18, 2013 Commission Action

Dear Commission, Commissioners, and Mr. Ohorilko:

We write on behalf of Belle of Sioux City, L.P. d/b/a Argosy Casino (the "Belle") to request that the Iowa Racing and Gaming Commission (the "Commission") reconsider—and reverse—its April 18, 2013 decision granting a license to operate a land-based casino in Woodbury County to Sioux City Entertainment ("SCE"). As a result of this decision, the Commission has now taken an action unprecedented in Iowa (and to our knowledge, in all gaming jurisdictions nationally): the *de facto* revocation of a gaming company's license without cause, in the absence of any suitability or financial issues, and further despite an impeccable 20-year operating history. There is no other rational conclusion to draw from these circumstances other than that the Commission's action is arbitrary and capricious, not supported by the facts, and contrary to Iowa law and the United States and Iowa Constitutions. Indeed, the Commission's action is the culmination of a year-long saga that has destroyed the Belle's substantial investments in its gaming operation and in the Sioux City community.

As the Belle has explained in its prior requests for reconsideration dated June 27, 2012, July 27, 2012, and in its Petitions for Judicial Review dated July 6, 2012, August 10, 2012, September 21, 2012, and which the Belle incorporates herein by reference, the Commission's actions taken over the past year leading to its April 18 decision have violated the Belle's

constitutional rights as well as many Iowa laws, including Iowa Code §§ 17A.19, 99F.3, 99F.4(1), 99F.4D(2), 99F.7(1), 99F.7(2)(c), 99F.7(8)(a)-(c), 99F.7(9), and Iowa Admin. Code §§ 491-1.7, 491-4.5, and 491-5.4(8). As addressed in more detail below, the Commission's April 18 action is contrary to law and in violation of the Belle's rights, including for the following reasons:

1. The Commission's decision to issue a new license for a gambling structure in the same county in which the Belle is a licensed operator of a gambling boat unambiguously violates Iowa Code § 99F.7;

2. The Commission's decision to grant a license to SCE/Missouri River Historical District, Inc. ("MRHD") and its announcement that Argosy Casino will close upon opening of SCE's new casino constitute a *de facto* revocation of the Belle's gaming license, which occurred without constitutionally-required due process and in violation of Iowa statutes and the Commission's own rules;

3. The Commission violated its own selection procedures by allowing SCE to restructure material aspects of its application, including its financing proposal, the composition of the applicant, and its hotel proposal, long after the Commission's established deadline to submit and finalize applications;

4. The Commission ignored substantial criticisms, concerns and unresolved questions concerning the qualifications of SCE's principals and MRHD to hold a gaming license; and

5. In selecting SCE, the Commission ignored significant defects in SCE's application not present in the Belle's application, including SCE's use of tax-increment financing, which are highly detrimental to Sioux City, the taxpayers of Woodbury County and the State of Iowa.

In light of these issues, the Belle requests that the Commission reconsider and reverse its April 18, 2013 action granting a license to SCE to establish a land-based casino in Woodbury County.

The Commission Violated Iowa Law by Issuing a New License for a Gambling Structure in Woodbury County While the Belle Is a Licensed Excursion Gambling Boat

For the reasons addressed in the Belle's previous letters to the Commission, the Commission's request for proposals for a land-based casino, its review process, and ultimately its decision to award a license were illegal from the start. Chapter 99F encourages casino operators to make substantial investments in their facilities. One way it does that is by prohibiting the Commission from awarding a "new license" in a county where a gaming facility exists, unless the new license is "operated at a substantially similar facility as any other excursion gambling boat or gambling structure" in that county. The relevant statute reads as follows:

> A person awarded a new license to conduct gambling games on an excursion gambling boat or gambling structure in the same county as another licensed excursion gambling boat or gambling structure shall only be licensed to operate an excursion gambling boat or gambling structure that is located at a similarly situated site and operated as a substantially similar facility as any other excursion gambling boat or gambling structure in the county.

Iowa Code § 99F.7(2)(C). The "similarly situated site" and "substantially similar facility" language means that if the Commission wants to issue a new license in a county with an excursion boat, it can license only another boat. The statute prohibits the Commission from issuing a license to a new landside gambling structure in a county with an existing boat.

The Commission's decision to request proposals for the issuance of a license for a land-based casino, and now its actual issuance of a license for a land-based casino in Woodbury County, unambiguously violated this section. The Belle is licensed to operate an excursion gambling boat in Woodbury County. As the Commission has acknowledged, the most recent license issued to the Belle continues to be in full force and effect pursuant to Iowa Code § 17A.18(2). The clear implication of Iowa Code § 99F.7(2)(C) is that the Commission cannot award a new license *to anyone* for a land-based casino in Woodbury County. It violated Iowa law by doing so anyway.

The Commission's Unprecedented Course of Conduct Is Tantamount To a *De Facto* Revocation of the Belle's License Without Due Process

As the Commission is aware, the Belle has operated Argosy Casino for almost 20 years as a licensed boat operator under Chapter 99F of the Iowa Code. Argosy Casino has been an integral member of Sioux City's community during these past two decades. Argosy Casino

provides more than 300 jobs in Sioux City, and the City receives millions of dollars in tax revenue from the Belle every year. Consistent with its expectation and vision that the Belle would be a long-term partner with the City, the Belle has invested more than $100 million in connection with the Argosy Casino operation and the retention of its gaming license, including more than $150,000 in supporting a successful 2010 referendum that approved continued gaming in Woodbury County. The Belle also has spent substantial amounts to support the community during difficult times, such as during the 2011 flood.

All of the Belle's investments and actions have been taken with the justifiable expectation that the Belle's license to operate Argosy Casino would be renewed each year as long as it complied with the applicable laws and regulations. As explained in the Belle's June 27, 2012 letter to the Commission, this expectation is eminently reasonable because, under Iowa law, "[a]fter the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency." Iowa Admin. Code § 491-1.7. Thus, revocation or non-renewal of a gaming license, absent material wrongdoing or an otherwise incurable deficiency, is *unauthorized by law*.

To be sure, to date the Commission has never found a deficiency with respect to the Belle's operation of its casino facility in accordance with the Commission's procedures for making such a determination. Specifically, under section 491-4.5 of the Iowa Administrative Code, "whenever the [gaming] board has reasonable cause to believe that a licensee [has] committed an act or engaged in conduct which is in violation of statute or commission rules," the gaming board is required to conduct an informal hearing that is "investigative in nature." If reasonable cause is found, the gaming board must then provide the licensee with notice and a hearing before a license may be revoked or a licensee may otherwise be penalized. In this instance, the Commission has never even conducted such a hearing, let alone found any reasonable cause, with respect to the Belle's license.

Nevertheless, over the past year, the Commission, SCE and MRHD (as well as others in the community) have pursued a campaign to trample the Belle's rights and destroy its license, its investment and its reputation, culminating in the Commission's selection of SCE and MRHD to operate a new, land-based gambling facility in Woodbury County, ostensibly to replace Argosy

Casino.[1] The Belle addressed these actions, and the reasons why they are unlawful and in violation of the Belle's rights, in more detail in its prior letters to the Commission.

In summary, since the early 1990s, the Belle's QSO has been MRHD. In 2012, after MRHD had spent almost a year "shopping" for other operators to replace the Belle (notwithstanding MRHD's contractual obligation to use its best efforts to ensure that The Belle remained the exclusive operator of a gaming facility in Woodbury County), the Commission improperly refused to approve an extension of the contract between the Belle and MRHD and further refused to consider the Belle's request that it be permitted to replace MRHD with another suitable QSO. Instead, the Commission implemented procedures and set forth a timeframe for interested parties to build and operate a single land-based casino in Woodbury County. By doing so, the Commission effectively revoked the Belle's license, in violation of section 491-4.5 of the Iowa Administrative Code and without the evidentiary hearing required by Chapter 17A of the Iowa Code and the due process provisions of the Iowa and federal Constitutions.

Moreover, now that the Commission has licensed SCE to develop and operate a landside gambling structure in Woodbury County and announced that Argosy Casino will close when the new casino opens, the Commission has ensured that any "process" it may subsequently choose to give the Belle before final revocation of the Belle's license would be a sham. Rather, by its actions, the Commission has already decided that the Belle's license will be revoked.

The Commission's April 18 Action Is In Further Violation of the Belle's Constitutional and Statutory Rights

Although the Belle vehemently objected to the open bidding process initiated by the Commission in violation of the Belle's rights as a licensee, the Belle was left with no choice but to participate in that process so as to mitigate its damages and attempt to protect its substantial investment in Woodbury County. As the Commission well knows, the Belle submitted two proposals for land-based casinos in Woodbury County: one for a facility in Salix, and a second

[1] As an indication of the severity of the impact of the Commission's actions on the Belle's parent company's financial condition, on April 23, 2013, Penn National Gaming, Inc. noted in a Form 8K filing that "the fair value of its Sioux City reporting unit will be less than its carrying amount and expects to record a goodwill and other intangible asset impairment charge of between $65 million and $80 million in its results for the second quarter."

for a facility in downtown Sioux City. The Belle submitted these proposals with its proposed QSO, Greater Siouxland Improvement Association.

Notwithstanding the Belle's objectively superior proposals and the fact that the development of a land-based casino by any operator other than the Belle would be unlawful, the Commission nevertheless selected the SCE/MRHD proposal and granted them a license to operate a land-based casino in Woodbury County. The Commission's decision to license another gaming company to operate a land-based gaming facility in Woodbury County is yet a further step in its extraordinary campaign to deny the Belle its rights to continue to operate Argosy Casino. *See* Iowa Admin. Code § 491-1.7 (describing the factors the Commission must consider in granting and renewing licenses, including the "impact on existing licensees").

Even apart from the effect its action has on the Belle's existing rights to operate the Argosy Casino, however, the Commission's April 18 action violates Iowa law for several reasons. In selecting SCE, the Commission (1) violated its own selection procedures by permitting SCE to make wholesale untimely amendments to its application, (2) ignored concerns about the fitness of SCE and its QSO, MRHD, to hold a license, and (3) selected a project with taxpayer-financing and other material deficiencies that were not present in the Belle's proposals.

1. ***Improper Allowance of Amendments to SCE's Application.*** The Commission violated its own selection procedures by improperly allowing SCE to completely restructure its financing proposal and other material aspects of its application. The Commission issued its selection procedures and a timeframe for interested parties to build and operate a land-based casino in Woodbury County on approximately July 12, 2012. The Commission set forth a specific timeline for applications to submitted. The original deadline for submission of completed applications was November 1, 2012, and was later extended to November 5, 2012. Importantly, the Commission's procedures stated that *"[o]nce applications are due, the applications cannot be amended"* (emphasis added). This prohibition was unambiguous and provided for no exceptions; the rules of engagement were akin to a sealed bidding process. The Commission instituted this deadline, of course, to create a fair and reasonable framework for all applicants, and to ensure that all criteria relevant to selection—among which was the economic viability of a proposal—were uniformly addressed.

Following the submission of applications, on November 15, 2012, SCE the Belle, and Warrior Entertainment made multiple presentations concerning the financing structure of their respective proposals. SCE's presentation generated substantial local criticism because of a lack of equity and the high cost and tenuous structure of its financing. Indeed, under Iowa law, the Commission cannot grant a license to an applicant who "has not demonstrated financial

responsibility sufficient to meet adequately the requirements of the enterprise proposed." Iowa Code § 99F.7(8)(b).

In sharp contrast, the Belle's presentation was simple and compelling. Because of its balance sheet and access to capital, no financing contingencies or municipal subsidies were needed. Thus, the Belle's proposals were certain to be funded and built.

On January 11, 2013—a full *67 days* after the application deadline—SCE submitted to the Commission proposed revisions to its application. Subsequently, both the Belle and Warrior Entertainment submitted separate letters to the Commission objecting to SCE's improper attempt to amend its application. The Commission, however, chose to consider the new financing, new applicants and new distribution of funds as part of SCE's submission, even after certain Commission members had previously expressed skepticism about SCE's financing at a public meeting, all without any findings that could justify a waiver of the Commission's established application procedure.

As explained in the Belle's February 19, 2013 letter to the Commission, SCE's belated revisions to its application were not limited to financing. In fact, SCE opportunistically revised additional material aspects of its application, including by creating a new legal entity to serve as the formal applicant for the gaming license, adding a new lender/equity holder, and changing management. In fact, later on in the process, SCE even amended its hotel construction and design plans.

SCE's improper amendments attempted to patch glaring weaknesses in its application, in particular its poor financing structure. While SCE's application remained deficient even in consideration of the amendments it proposed, it clearly is deficient in several respects absent consideration of the amendments, as SCE itself obviously recognized. The Commission's decision to consider SCE's application as revised in these material respects was arbitrary and capricious, inherently unfair, and violated numerous provisions of Iowa Code § 17A.19, including, but not limited to, the prohibition on an action that was taken "without following the prescribed procedure or decision-making process." Iowa Code § 17A.19(d).[2]

[2] As a further demonstration that the Commission's consideration of SCE's amendments was arbitrary and unfair, when Warrior Entertainment proposed an amendment to its proposal that was nowhere near as significant as SCE's proposed amendments, the Commission notified it

2. ***Criticisms of MRHD and SCE's History of Impropriety.*** In selecting the application submitted by MRHD and SCE, the Commission ignored substantial criticisms of MRHD and concerns about the reputation and character of SCE and SCE's principal, William Warner.

Iowa law prohibits a license from being granted to an applicant if there is substantial evidence that the applicant is not of good repute and moral character. Iowa Code § 99F.7(9). As the Commission is well aware, the Belle and MRHD are engaged in a legal dispute over the meaning and enforceability of an extension agreement they signed back in June 2012. There is no dispute that MRHD signed the extension agreement and that it requested the Commission to approve it in July 2012 but then disavowed it sometime after the July 2012 Commission meeting. In addition, despite its disavowal, on April 18, the date the award was made to SCE, MRHD cashed the Belle's checks for nearly $1 million in payments made under the extension agreement, while simultaneously attempting to maintain its position that the contract expired in July 2012. This disingenuous, bad faith conduct should not be ignored by the Commission.

In the April 18 meeting, Commissioner Seyfer made comments criticizing MRHD and questioning its behavior with respect to the Belle, concluding with the comment: "I question the integrity of MRHD." Commissioner Mertz followed those comments with her own criticisms of MRHD, expressing concerns over MRHD's active role in the daily routine business of running a casino, and stating: "I don't think that's the purpose . . . of the non-profit organization." Finally, Commissioner Heinrich, the most vocal critic of MRHD, stated: "I think the concern I have . . . has to do with a nonprofit, their QSO." He recited that he had received communications from community members during this process that were critical of MRHD. He specifically expressed concerns over MRHD members' longevity on the board, noting that many had life-long jobs there. He added recommendations on controlling the power that MRHD holds in the community, including by recommending term limits.

In contrast, none of the Commissioners criticized the Belle's QSO, Greater Siouxland Improvement Association.

Furthermore, MRHD member Dave Bernstein, who was the MRHD representative leading the charge on replacing the Belle with a new operator, acted on behalf of MRHD well

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that the amendment would not be approved. As a result, Warrior subsequently withdrew its request.

before he became a licensed member of MRHD. According to IRGC records, Mr. Bernstein was conditionally licensed by the Commission on August 27, 2011, pending the results of his background check, yet in July and August of 2011, before he was licensed, he met with gaming operators Dan Kehl, Jonathan Swain and Brent Stevens to discuss their interests in operating in Sioux City. Moreover, throughout June, July and August of 2011, before he was licensed, Mr. Bernstein participated in MRHD meetings and consulted with MRHD's gaming counsel Curt Beason about ending MRHD's relationship with the Belle. This conduct directly violates Iowa Admin. Code §§ 491-6.2(1) and 491-6.4(4).

Similarly, the Commission inexplicably ignored the questionable conduct in Missouri of SCE's principal, and the face of SCE's efforts in Iowa, William Warner. The Commission's rules contemplate consideration of a licensee's behavior in other states. *See* Iowa Code § 99F. (9); Iowa Admin. Code § 491-4.8 (99D, 99F) (the Commission is authorized to "honor rulings from other jurisdictions regarding license suspension or revocation or the eligibility of contestants").

In 2000, the Missouri Gaming Commission ("MGC") conducted an investigation into alleged improper conduct by licensees St. Charles Riverfront Station, Inc. and Kansas City Station Corporation ("SCRS and KCSC"), two Missouri casinos where William Warner was an employee. The investigation concerned the failure to report certain payments made by SCRS to its attorney, and the failure to supervise this attorney, who engaged in *ex parte* communications with the Chairman of the MGC in violation of MGC rules. In the course of the investigation, the MGC issued a subpoena for Mr. Warner and six of his colleagues to testify, but they all refused to appear—claiming that the commission had no authority to compel their appearance. Thereafter, the MGC proposed that the gaming licenses issued to SCRS and KCSC should be revoked. The attorney involved in the accusations pled guilty to three felony counts of fraud and was disbarred. The MGC settled the disciplinary proceeding case by allowing both casinos to be sold to another gaming company, and by requiring that both casinos along with their licensed executives surrender their Missouri gaming licenses. In addition, the MGC fined SCRS and KCSC $1 million. A civil suit was subsequently brought against SCRC by a casino applicant that had applied in competition with SCRC for the gaming license in Missouri. The suit alleged that SCRC had received an unfair advantage in the application process as a result of these

improper communications made by the lawyer it engaged. SCRC ultimately paid $38 million to settle these claims.[3]

The MGC's investigation into SCRC's and KCSC's activities in Missouri and William Warner has had long-lasting repercussions. Indeed, gaming companies are not even welcome to associate with Station Casinos in Missouri. Specifically, in 2012, Missouri regulators ordered the biggest investors in Caesars Entertainment Corporation (a gaming company) to divest their stakes in Aliante Station, an entity created during the 2009 bankruptcy of Station Casinos, Inc. (the former parent of SCRC and KCSC). They did so despite the fact that "Station no longer owns the property, its management contract there is expected to end in a few months[,] and Station hasn't done business in Missouri in a dozen years."[4] Two sources "confirmed [the divestment] was driven by the insistence of Missouri regulators that the largest owners of Caesars no longer do business with Station Casinos." Another "insider" stated simply that "Missouri doesn't like Station Casinos."[5]

Moreover, SCE's parent company, Warner Gaming, has also been accused of misconduct by members of one of the tribes for which it manages a gaming operation. In 2011, a New Mexico Native American tribe circulated a petition to remove Warner Gaming from management of the Inn of the Mountain Gods Resort and Casino. The petition organizers alleged that Warner had conspired to falsify financial documents concerning the casino's performance and "instituted

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[3] *See In re: St. Charles Riverfront Station, Inc.*, No. DC-00-096, Preliminary Order for Disciplinary Action (Sept. 6, 2000); *In re: Kansas City Station Corporation, St. Charles Riverfront Station, Inc., et al. v. Missouri Gaming Commission*, No. DC-00-95, Settlement Agreement and Waiver of Hearings Before the Missouri Gaming Commission/Settlement and Final Order, Nov. 29, 2000; D. Margolies, *Station Casinos to Pay $38 Million to Settle Gaming License Suit in Missouri*, The Kansas City Star, Feb. 11, 2004; *Station Casinos to Boycott Missouri Gaming Commission Hearing*, PR Newswire, Aug. 30, 2000.

[4] S. Green, Missouri Directs Caesars Owners to Sell Stake in North Las Vegas Casino, VegasInc, available at http://www.vegasinc.com/news/2012/jul/26/missouri-directs-caesars-owners-sell-stake-north-l/.

[5] *Id.*

harassment, intimidation[,] and belittling" of tribe members. Warner had signed the management agreement only the previous year.[6]

In granting a license to SCE, the Commission apparently ignored the multiple red flags relative to the behavior of people intimately involved in the SCE/MRHD application. It's doing so further demonstrates that the Commission's selection of SCE and MRHD was arbitrary and capricious and in violation of numerous provisions of Iowa Code § 17A.19, including, but not limited to, the prohibitions on an action that is "in violation of any provision of law" and on a "product of a decision-making process in which the Commission did not consider a relevant and important matter."

3. ***Deficiencies In SCE's Proposal.***

a. TIF/Financing. In selecting SCE, the Commission inexplicably favored a proposal that includes several features that render it materially inferior to the Belle's proposal. Among them, SCE's proposal requires a material subsidy from City of Sioux City, Woodbury County and Iowa taxpayers over the Belle's two other fully-funded proposals. Specifically, SCE's application employs a tax-increment financing scheme that will be detrimental to Sioux City and the taxpayers of Woodbury County and the State. As the Commission is aware, tax-increment financing ("TIF") is a highly unpopular scheme by which property taxes in a district are frozen at the time a property development is implemented. Taxes generated on any incremental increases in property value are directed towards paying the public debt generated by the property development rather than investments in infrastructure, police departments, fire departments, and or other critical government functions. SCE's application requires $22 million in TIF funds to be authorized by Sioux City. Such a scheme starves Woodbury County of much-needed tax revenue and commits Sioux City's own revenues to servicing significant debt. Moreover, other taxpayers in Woodbury County will be forced to shoulder heavier tax burdens in order to compensate for any shortfall caused by Sioux City's TIF scheme. These shortcomings come in exchange for minimal benefit to the public and at a time when Sioux City schools are considering a 29-person layoff due to budget issues.[7]

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[6] J. Kalvelage, Petitions Push for Change at Resort, Ruidoso News, http://www.ruidosonews.com/ruidoso-news/ci_18342222.

[7] *See* http://siouxcityjournal.com/news/local/state-and-regional/with-funding-unclear-iowa-teachers-sent-layoff-notices/article_74d7929f-adbb-594e-a70e-fbd24e10a075.html.

A growing number of academics, experts, and other commentators have criticized the detrimental effects of TIF. The Belle summarizes certain publications below as a representative sample of this negative commentary, the entirety of which would be far too voluminous to reproduce in this request for reconsideration:

- A research paper by two economists at Iowa State University[8] on the use of TIF in Iowa concludes that TIF had "virtually no statistically meaningful economic, fiscal, and social correlates" and that TIF's benefits "do not exceed the public's costs." Indeed, TIF has become a "*de facto* entitlement for new industry and housing development . . . with little to no evidence of overall public benefit[.]" TIF may even be a "direct transfer of resources from existing tax payers to new firms without yielding region-wide economic and social gains[.]"
- A number of publications and case studies by the Iowa Fiscal Partnership, a regional policy group, describe how TIF schemes shift tax burdens to taxpayers outside of the TIF district.[9]
- Numerous articles by a major Iowa newspaper[10] describe the tax burden-shifting problems that Iowa cities have encountered with TIF schemes.
- An Iowa think tank, Public Interest Institute, described "TIF (Tax Increment Financing) actions" as "evidence of 'crony capitalism' and unfair treatment."[11]

By selecting SCE's proposal, the Commission improperly ignored the significant detriment to Woodbury County presented by SCE's TIF scheme. The City of Sioux City likewise stands to receive less net revenues from SCE's proposal than it does from the Argosy

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[8] D. Swenson & L. Eathington, Do Tax Increment Finance Districts in Iowa Spur Regional Economic and Demographic Growth?, available at http://www2.econ.iastate.edu/research/webpapers/paper_4094_N0138.pdf.

[9] Publications available at http://www.iowafiscal.org/TIF.html.

[10] *See, e.g.*, D. DeWitte, Why Tax Increment Financing Works, and Why It's Causing Worry, The Gazette, available at http://thegazette.com/2012/07/29/why-tax-increment-financing-works-and-why-its-causing-worry/.

[11] See http://limitedgovernment.org/publications/pubs/studies/ps-12-4.pdf.

Casino today.[12] Moreover, the City of Sioux City had not yet approved a TIF for SCE's project at the time SCE was licensed on April 18. Because a TIF was a condition of project financing, the Commission's decision to grant the license to SCE while the City's approval of the TIF remained uncertain was arbitrary and capricious.

In contrast to SCE's application, the Belle's application does not employ TIF financing and would not subject Woodbury County to any associated fiscal detriment. Indeed, the Belle's proposals were backed by substantially superior financing arrangements than SCE's. In contrast to the flimsy financing presented by SCE, the Belle was prepared to literally write a check to construct the project.

b. Management and Development Experience. The management experience of the Belle's parent company, Penn National Gaming, Inc. ("Penn"), is also indisputably superior to SCE's. While Warner Gaming operates only two gaming facilities (see www.warnergaming.com), Penn presently operates twenty-nine facilities in nineteen jurisdictions, including Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, Texas, West Virginia and Ontario. Penn has opened six properties in the last six years alone, including three in 2012. In the aggregate, Penn-operated facilities feature approximately 34,800 gaming machines, approximately 850 table games, 2,900 hotel rooms and approximately 1.6 million square feet of gaming floor space. In addition, Penn has spent more than $2 billion developing new projects and improvements to existing projects in the past decade. Thus, in terms of relevant industry experience, there simply is no question that Penn is vastly superior to Warner Gaming.

The Commission's decision to select a far-less experienced operator whose proposal included a TIF and substantially inferior financing arrangements over the Belle's well-financed proposal that did not include a TIF was contrary to several provisions of Iowa law, including, but not limited to, Iowa Code §§ 17A.19 (10)(i), (j) and (n) and §§ 99F.7(8), 99F.7(9).

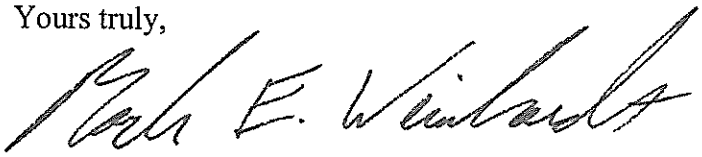
Conclusion

In sum, by participating in a course of conduct for more than a year with the intent of revoking the Belle's license to operate Argosy Casino without due process of law, and now by awarding a license to SCE's objectively inferior proposal that is rife with concerns over financial

[12] *See* http://www.hollywoodcasinosiouxcity.com/project-details/financials.

and suitability issues as well as industry experience, the Commission has violated numerous constitutional, statutory and administrative laws and procedures. The Belle's losses resulting from this unlawful, and unprecedented, course of conduct are tremendous, and include both financial and reputational harm. For the reasons set forth herein and in the Belle's prior letters to the Commission, the Belle respectfully requests that the Commission reconsider its most recent April 18 action and reverse its decision to grant a license to SCE.

Yours truly,



Mark E. Weinhardt

MEW/mmb

cc: Quinn Emanuel Urquhart & Sullivan, LLP
Penn National Gaming, Inc.