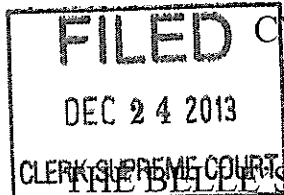


BEFORE THE IOWA SUPREME COURT
No. 13-1972

BELLE OF SIOUX CITY, L.P.,	)	Polk County Nos. CV 9254
	)	CV9316
Petitioner-Appellee,	)	CV9383
	)	CVCV045760
v.	)	
	)	
IOWA RACING AND GAMING	)	
COMMISSION,	)	
	)	
Respondent-Appellant.	)	
	)	
	)	
SCE PARTNERS, L.L.C.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
THE DISTRICT COURT FOR POLK	)	
COUNTY,	)	
	)	
Respondent.	)	
	)	



CONSOLIDATED
RESISTANCE TO
APPLICATION FOR
APPEAL IN ADVANCE OF
FINAL JUDGMENT,
PETITION FOR WRIT OF
CERTIORARI, AND
MOTIONS FOR STAY
AND/OR IMMEDIATE
RELIEF

Petitioner Belle of Sioux City, L.P. (“the Belle”) respectfully submits this consolidated resistance to the Application for Appeal in Advance of Final Judgment filed by Respondent Iowa Racing and Gaming Commission (“IRGC”), the Petition for Writ of Certiorari and Request for Immediate Relief filed by Petitioner SCE Partners, LLC

(“SCE”), and the IRGC’s Motion for Stay and/or to Vacate and Motion for Temporary Stay, as follows.¹

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¹ The Belle refers to the IRGC’s Application as “IRGC App.”; to SCE’s Petition as “SCE Pet.”; to SCE’s Brief as “SCE Br.”; to the IRGC’s stay motion as “IRGC Mot.”; to the Belle’s Brief in Support of Motion for Stay in the district court (attached as Ex. 2) as “Belle D. Ct. Mot.”; to the IRGC’s resistance brief in the district court (attached as Ex. 3) as “IRGC D. Ct. Resist.”; to the Belle’s reply brief in the district court (attached as Ex. 4) as “Belle D. Ct. Reply”); and to the Belle’s Exhibits submitted at the Hearing on Motion to Stay IRGC Actions Pending Judicial Review (attached as Ex. 5).

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PRELIMINARY STATEMENT

The IRGC’s and SCE’s multi-prong attack on the district court’s stay order is premised on demonstrably untrue allegations—including that SCE and other interested parties purportedly had *no “notice or opportunity to be heard”* before the stay issued, when in fact they were present every step of the way and simply chose not to assert their interests until now. Even if this Court were to consider the new

arguments and evidence advanced by the IRGC and SCE that were not in the district court record, and it should not, neither the IRGC nor SCE provides any grounds for this Court to disrupt the district court's reasoned stay analysis, let alone on an emergency basis.

As the district court found following extensive briefing and oral argument, the Belle made a "substantial showing" that the process that led to the *unprecedented* revocation of the gaming license it has held in Woodbury County for more than 20 years was flawed, illegal, and violated the Belle's constitutional rights and the plain language of Iowa's gaming laws. The Belle also amply showed that absent a temporary stay of the gaming licenses issued by the IRGC to SCE and its co-licensee, Missouri River Historic Development ("MRHD"), for the development of the Hard Rock casino that is slated to replace the Belle's Argosy Casino in Sioux City, the Belle stands to lose its *entire business*. That loss, which would include hundreds of jobs, all the goodwill the Belle has accrued from decades of business, and an investment worth more than \$150 million, would occur without the due process to which the Belle is entitled. The district court's stay protects the Belle's due process rights and ensures that if the Belle ultimately prevails on the merits, the Belle will not be deprived of an effective remedy.

The deprivation of that remedy is exactly what SCE, and perhaps the IRGC as well, intends. Certainly aware of the Belle's numerous legal challenges to the IRGC's course of conduct in this matter, SCE upon receiving its license on April 18, 2013 has pursued a strategy of developing and building the Hard Rock casino in Sioux City as rapidly as possible in the hope that, by creating a large sunk cost, it could spend and build this and any other Court out of an opportunity to exercise meaningful review over the actions of the IRGC. The parade of horrors cited by SCE (and parroted by the IRGC) seems to be an early execution of that strategy. The movants' apparent hope is that by the time the district court renders a decision in the judicial review proceedings below, the Hard Rock casino will already be developed and possibly open, while the Argosy Casino waits to be closed, with no opportunity to recover its losses, after a pre-ordained contested case hearing takes away its license. Undoing the district court's stay order is all part of this plan. This Court should not allow its rarely-used interlocutory and certiorari procedures to be manipulated in this way.

Each pending request for relief should be denied. ***First***, the IRGC makes ***no showing*** that it satisfies any of the three factors that justify interlocutory relief. Indeed, it hardly addresses these factors, but instead

rehashes arguments it made about the merits in the district court, with reference to evidence that was not in the record and may not be considered now. An interlocutory appeal is not an opportunity to seek reconsideration of a district court's ruling. The IRGC's failure to satisfy the requirements for interlocutory relief is dispositive of its application.

Moreover, even if this Court were to look ahead and consider the merits of the district court's stay ruling, the IRGC fails to show that the district court abused its considerable discretion. The district court applied the four-factor test for staying administrative actions and was well within its discretion in issuing this stay. Indeed the record before the district court amply supports its conclusion that the Belle has a "substantial possibility" of success on the merits below and that the likely harm to the Belle's long-standing business and constitutional rights absent a stay outweighs any harm to the IRGC or the public from the potential delay in the opening of a new casino that remains in its early stages of construction.

Second, SCE's petition for writ of certiorari should be denied because it is premised on the misrepresentation that SCE had no notice or opportunity to be heard in the district court. In fact, SCE has known of the Belle's legal challenges to the development of the Hard Rock

casino from the moment they were initiated in 2012 (SCE intervened in the Belle's related lawsuit against MRHD more than a year ago), and it indisputably has had notice of the Belle's stay request since the day it was made on September 16, 2013. Indeed, SCE's lawyers sat in the courtroom during the hearing on that motion. After SCE decided to stay on the sidelines until after the district court issued an unfavorable ruling, the Court should not exercise its discretion to permit SCE to assert improper and belated arguments for the first time now. SCE also lacks standing to bring a non-party writ petition because its rights are not directly affected by the stay order; rather, as the IRGC itself has recognized, SCE is in no different position now than before the stay issued because it remains free to continue its construction efforts in Sioux City *at its own "risk [that] this Court [may] ultimately rule that IRGC improperly awarded a gaming license to the Hard Rock project."* (IRGC D. Ct. Resist. at 19.) Finally, as a matter of fact and law, SCE fails to show that it was an "indispensable" party to the stay proceedings in the district court, or that even if it were, the district court's stay order issued in SCE's absence is void for lack of jurisdiction.

Third, even if the Court were to entertain the IRGC's interlocutory appeal or SCE's petition, the district court's stay order

should remain in effect during such proceedings. Putting aside their unsupported and hyperbolic arguments—such as the IRGC’s claim that the stay will cause “permanent and irreparable catastrophic collateral damage”—in fact the worst “collateral” effect the stay may have is to temporarily delay the opening of the Hard Rock casino until after the Belle’s judicial review petitions are resolved. The speculative, temporary losses in gaming revenues that could result pale in comparison to the extreme economic harms and due process violations the Belle stands to suffer absent a stay, and do not come close to justifying the “emergency” relief the IRGC and SCE seek. Moreover, even a temporary stay of the district court’s order would effectively nullify the benefits of that order altogether by preventing the Belle from obtaining fair process—based on a level playing field in which SCE and MRHD are not already licensed to build their casino to replace Argosy Casino—while the Belle fights for its ability to remain a gaming licensee in Woodbury County, including as it will do in the contested case proceeding scheduled by the IRGC to commence in March 2014. This plain due process violation can be remedied only by staying the licenses during the course of these proceedings, as the district court has done. The district court’s stay order should not be disturbed or stayed.

RELEVANT BACKGROUND

The Belle's History in Sioux City and Woodbury County. The Belle has operated Argosy Casino continuously from December 1, 1994 through the present.² Through the years, the Belle has invested substantial time and resources in promoting the success of Argosy Casino and maintaining the continuity of lawful gaming in the region. The Belle has invested more than \$100 million in Argosy Casino, and the business enterprise has an estimated value of more than \$150 million. Argosy Casino currently employs approximately 310 people, the majority of whom are residents of Iowa, and the vast majority of Argosy Casino's patrons live nearby. Over the years, more than \$14 million of the Belle's revenues have been distributed to local charities and organizations, and more than \$110 million have been paid in taxes.

The Belle's Relationship with MRHD. Iowa Code Chapter 99F (the "Act") authorizes the operation of gaming facilities in Iowa. The Act permits a license to be issued to a qualified non-profit entity, acting as a "qualified sponsoring organization" (the "QSO"), that distributes a

² Except as otherwise noted, the factual statements in this resistance concerning the Belle's operating history and the effects of the IRGC's actions on the Belle's operations are set forth in the Affidavits of Lance George and Carl Sottosanti, submitted in the district court in support of the Belle's motion for stay and attached hereto as part of Exhibit 2.

portion of a gaming facility's revenues to charity. *See* Iowa Code § 99F.5. The Act likewise authorizes licensure of an operator of a gaming facility, including on an excursion boat. *See id.* For the entirety of its existence, the Belle's QSO has been MRHD, a non-profit board in Sioux City that is intended to serve as a "pass-through" for the portion of the Belle's revenues that is distributed to charities. MRHD, itself, has no business operations, employees or offices, and has never invested any capital in or participated in the operations of Argosy Casino in any manner. At the same time, as a result of MRHD's significant charitable giving over the past two decades (using revenues generated solely by the Belle), MRHD has come to wield substantial clout in the Sioux City community, and several of its Board members have been elected to local public offices.

The IRGC's Unlawful Actions. Until 2012, the IRGC had renewed the Belle's license to operate Argosy Casino without incident. This is unsurprising, as the IRGC's implementing regulations provide that renewal of an existing gaming license is essentially a formality, and that when the IRGC considers a renewal application, it need not even consider any of the enumerated criteria that are relevant to the IRGC's

initial licensing determination unless “an applicant has demonstrated a deficiency.” Iowa Admin. Code r. 491-1.7 (99D, 99F).³

In December 2011, the Belle applied for the renewal of its annual license to operate Argosy Casino. At that time, the Belle and MRHD were in the process of negotiating an extension of the operating agreement that had governed their respective rights and obligations relating to the operation of Argosy Casino since the inception of their relationship, which was set to expire on July 6, 2012. Also around that time, certain representatives of MRHD were actively (yet covertly) soliciting interest from gaming companies other than the Belle to partner with MRHD to develop a new, land-side casino in Woodbury County that would replace Argosy Casino.⁴ Unbeknownst to the Belle at the

³ Indeed, the Belle is not aware of any situation in which the IRGC has ever declined to renew an operator’s license other than a single incident in 1994 when the IRGC found that operations at a specific facility would no longer be viable. *See* IRGC meeting minutes regarding license of National Cattle Congress and Waterloo Greyhound Park, available at <http://www.iowa.gov/irgc/Jan%20Dec%201994%20Min.pdf>.

⁴ The Belle has filed a related lawsuit against MRHD, also pending in the district court. *Belle of Sioux City, L.P. v. Missouri River Historical Development, Inc.*, Polk County Case No. CL 126161 (“Belle v. MRHD”). In that case, the Belle claims that MRHD breached the parties’ operating agreement—which indisputably was in effect at least until July 2012—by failing to use its contractually-required “best efforts” to ensure that the Belle remained the exclusive gaming licensee

time, MRHD was in regular contact with the IRGC during this time and was clear about its desire to develop a land-based casino in Woodbury County with an operator *other than* the Belle—which is something that could be accomplished *only* if the IRGC were to divest the Belle of its license to operate Argosy Casino.

To begin to pave the way for MRHD's casino development, in March 2012 the IRGC declined to approve the Belle's renewal application, *contrary to what it had done each year for decades*, purportedly because the Belle and MRHD had yet to extend their operating agreement. Then, on June 7, 2012, the IRGC, without explanation, declined to consider the Belle's proposal to explore replacing MRHD with another suitable QSO that could distribute the Belle's revenues to charity to the same extent as MRHD had been doing. Instead, over the Belle's strenuous objections, the IRGC announced its intention to accept applications from all interested parties to build and operate a new land-based casino in Woodbury County. The IRGC made

in Woodbury County, and instead engaging in acts (beginning long before July 2012) to ensure that the Belle *loses its license* to operate Argosy Casino so that MRHD could develop a new casino. The relief the Belle seeks against MRHD is independent of the relief it seeks against the IRGC.

this decision even though the Belle's operating agreement with MRHD had yet to expire.

By the time of the next IRGC meeting on July 12, 2012, MRHD and the Belle had both signed an extension of their operating agreement through March 2015. Remarkably, the IRGC refused to approve this fully-executed contract even though it was precisely what the IRGC had publicly asked the Belle and MRHD to agree to for months and, in substance, it simply extended the terms of their previous operating agreement. On the same day, the IRGC adopted a timetable and procedures for interested parties to submit applications for the new land-based casino.

On August 23, 2012, the IRGC again refused to approve the Belle's three-year extension agreement with MRHD, purportedly because MRHD, which had prepared and signed that agreement just weeks before, no longer wanted to be bound by it. At the same meeting, the IRGC announced its intention to adopt a timetable to formally non-renew, and thus effectively revoke, the Belle's license to operate Argosy Casino based on the Belle's alleged lack of an approved operating agreement with MRHD.

The IRGC's repeated refusals to approve the Belle's contract with MRHD and its decision to open up the Woodbury County zone for a new license left the Belle with no choice but to participate, under protest, in the IRGC's open bidding process in an effort to protect its rights and its investment in Woodbury County. In November 2012, the Belle submitted applications to develop and operate a land-based casino either in Salix or in downtown Sioux City. SCE and MRHD likewise submitted an application for a new land-based casino. A third operator, called Warrior Entertainment, applied as well. Because MRHD had chosen to abandon the Belle and instead team with SCE, the Belle partnered with a different QSO, called Greater Siouxland Improvement Association. While the applications were pending after the final submission deadline, the IRGC allowed SCE, and SCE alone, to modify material portions of its applications, including its financing structure, contrary to the IRGC's rules. On April 18, 2013, the IRGC awarded the Woodbury County licenses to SCE and MRHD by a 3-2 vote.

At the IRGC's meeting on August 15, 2013, the IRGC finally took action on the Belle's December 2011 application for renewal of its license by summarily rejecting that application. The IRGC provided the Belle with only a few days' notice before this meeting, at which there

was no hearing conducted or evidence received. The IRGC's decision was purportedly based solely on the Belle's failure to have "enter[ed] into an operating agreement with a qualified sponsoring organization licensed to conduct gambling games at an approved location." At the same meeting, the IRGC nonetheless conceded that the Belle has a "good regulatory record up to this point in the State of Iowa on par with other Iowa operators."

On August 27, 2013, the IRGC, in a letter to the general manager of Argosy Casino, restated its view that the Belle is not "statutorily eligible" to operate Argosy Casino because it purportedly lacks an approved operating agreement with a QSO, and further stated that the Belle has the right to appeal this decision. The Belle submitted its request to appeal the IRGC's decision on September 26, and on November 27, the IRGC scheduled a contested case proceeding to commence on March 5, 2014.

The Belle's Motion for Stay and SCE's Notice Thereof. Each step of the way during the IRGC's illegal course of conduct leading to the revocation of the Belle's license, the Belle has taken whatever steps it could to protect its rights. This includes formally asking the IRGC to reconsider its adverse decisions and then, after the IRGC invariably

declined to act on or rejected the Belle's requests for reconsideration, filing four separate petitions for judicial review of those decisions that have been consolidated into the case pending below. The Belle also has continuously asserted its rights at public IRGC meetings.

Notwithstanding the Belle's lengthy, vigorous, and highly publicized efforts to assert its rights and the illegality of the licenses issued to SCE and MRHD, SCE has elected to construct the Hard Rock casino in Sioux City. The groundbreaking for Hard Rock casino occurred on August 16, 2013, and SCE has stated that it intends to open the casino by July 2014.

On September 16, 2013, shortly after the Hard Rock casino broke ground, the Belle moved the district court for a stay of the licenses granted to SCE and MRHD by the IRGC. The Belle's motion was supported by affidavits of Lance George, the General Manager of Argosy Casino, and Carl Sottosanti, the Vice-President and Deputy General Counsel of the Belle's parent, Penn National Gaming, who attested to the course of conduct that has required the Belle to seek relief and the harm it has suffered, and will continue to suffer, absent a stay. On the same day the Belle filed its motion, counsel for SCE requested copies of the Belle's moving papers, and the Belle's counsel promptly

provided them. Affidavit of Mark E. Weinhardt (“Weinhardt Aff.”) ¶ 3 (attached hereto as Exhibit 1.). The IRGC filed its resistance to the stay motion on October 4, 2013, supported by a 124-page appendix of evidence.

On October 10, 2013, the district court held a hearing on the motion. The Belle submitted additional evidence at that hearing. (*See* Exhibit 5.) Two lawyers for SCE attended the hearing but neither entered an appearance. (Weinhardt Aff. ¶ 7.)⁵ On December 10, 2013, the district court granted the Belle’s motion for a stay, ruling that:

[The Belle’s] motion for stay is GRANTED and the issuance and effectiveness of the licenses granted to Sioux City Entertainment, Inc. and nonprofit entity Missouri River Historical Development, Inc. for the development and operation of a land-based casino in Woodbury County, Iowa, and all other actions by respondent Iowa Racing and Gaming Commission in furtherance of the foregoing are hereby stayed pending final resolution of the instant consolidated actions for judicial review.

(December 10, 2013 Order (“Order”), at 5.)

The Stay Has Not Halted Construction of the Hard Rock Project. To date, at least, the stay has not had any effect on SCE’s construction efforts in Sioux City. Indeed, both the IRGC and the City

⁵ A photograph showing those two lawyers at the hearing is attached to the Weinhardt Aff. as Exhibit D.

of Sioux City have publicly taken the position that the stay *does not and should not* require construction of the building to halt.⁶ And, in fact, there is no evidence in the record, including in the newly-submitted Warner Affidavit, suggesting that construction has stopped or even slowed down since the stay issued, or that SCE intends to halt construction during the stay.

ARGUMENT

I. THE IRGC’S APPLICATION FOR INTERLOCUTORY APPEAL SHOULD BE DENIED.

A. The IRGC Fails To Satisfy The Three Required Factors Necessary To Obtain Leave.

Under Rule 6.104(2) of the Iowa Rules of Appellate Procedure, a party seeking leave for review of an interlocutory order must satisfy a

⁶ For example, the IRGC’s administrator reportedly stated that under the stay, the “Hard Rock could proceed with construction, but could not open as scheduled next July.” (http://siouxcityjournal.com/news/local/a1/judge-issues-stay-of-hard-rock-sioux-city-license/article_39bf73bf-ff7f-5486-953d-465086e4b53c.html.) Likewise, the City Manager of Sioux City has stated that “he expects work on the project to continue as scheduled.” (<http://www.kscj.com/local-news/4420-hard-rock-construction-continues>.) Similarly, an article available at <http://www.kscj.com/local-news/4387-city-hopes-for-quick-resolution-to-casino-battle> reported that Sioux City Mayor Bob Scott “thinks construction of the building should be able to continue while the legal issues between Penn National Gaming, Sioux City Entertainment, the State Racing and Gaming Commission and MRHD are resolved.”

three-factor test: “(1) that the court’s order involves substantial rights; (2) the order will materially affect the final decision; and (3) that a determination of its correctness before trial on the merits will better serve the interest of justice.” *In re Marriage of Denly*, 590 N.W.2d 48, 51 (Iowa 1999) (citing Iowa R. App. P. 6.104(2).) Because of the extraordinary nature of the relief sought in an interlocutory appeal, ***all three factors must be met in order for review to be granted.*** *See id.* at 52 (denying leave where petitioner “fails to satisfy at least one of the necessary requirements for granting interlocutory appeal.”); *see also, e.g., River Excursions, Inc. v. City of Davenport*, 359 N.W.2d 475, 478 (Iowa 1984) (“We need not decide whether the trial court’s decision meets the first two criteria, ‘involves substantial rights’ and ‘will materially affect the final decision.’ The ruling . . . does not meet the final test, ‘a determination of its correctness before trial on the merits will better serve the interests of justice.’”). Thus, the “party seeking to appeal at an early stage of the district court proceedings has the heavy burden to show that the likely benefit to be derived from early appellate review outweighs the likely detriment and therefore satisfies the requirement that the interests of justice be served.” *Id.*

In light of this “heavy burden,” this Court has repeatedly admonished that the interlocutory appeals will be permitted “only sparingly,” *id.*, and it is only in “exceptional cases” that permission will be granted. *Banco Mortgage Co. v. Steil*, 351 N.W.2d 784, 787 (Iowa 1984); *see also Mason City Prod. Credit Ass’n v. Van Duzer*, 376 N.W.2d 882, 886 (Iowa 1985) (“[O]ur court has traditionally been parsimonious about allowing interlocutory appeals.”); *Banco Mortgage*, 351 N.W.2d at 787 (noting the “disfavor with which we view the granting of applications for interlocutory appeal”). As this Court has noted, “[t]hese situations usually involve a pretrial determination of a controlling issue of law as to which there is a substantial basis for a difference of opinion and immediate appellate resolution of the issue will materially advance the progress of the litigation.” *Banco Mortgage*, 351 N.W.2d at 787.

The IRGC has failed to meet its “heavy burden” to demonstrate that its application for leave should be granted. Indeed, the IRGC gives no more than lip service to the three required Rule 6.104(2) factors. It does not explain why any of the factors is met. The IRGC’s failure even to attempt to meet its burden on the three factors is dispositive, and leave should be denied on that basis alone. *See, e.g., Denly*, 590 N.W.2d at

51; *River Excursions*, 359 N.W.2d at 478; *In re Marriage of Manders*, 2006 WL 3018469, at *3 (Iowa Ct. App. October 25, 2006).

The closest the IRGC comes to addressing one of the relevant factors—its argument that “the substantial rights of parties not involved in these judicial review proceedings” were “clearly affect[ed]” because “the district court’s stay order unexpectedly upended the *status quo*”—is without merit. First, there was nothing “unexpected” or out-of-the-blue about the district court’s stay order—the relief requested was the relief granted. Second, the IRGC has waived its right to make this argument—that the order suffers from some procedural deficiency because it affected a non-party to the proceedings because it failed to raise that argument in the district court. *See DeVoss v. State*, 648 N.W.2d 56, 59 (Iowa 2002) (Court will “not decide a case based on a ground not raised in the district court.”). In any event, the IRGC’s argument fails on the merits because for purposes of Rule 6.104(2), “substantial rights” are involved only where the district court has ruled on an issue of law “materially affecting” the district court’s final decision. *See, e.g., Beuchel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735-36 (Iowa 2008) (holding that dismissal of one defendant affected substantial rights and supported judicial efficiency because the dismissal would affect

relative liability as between all defendants); *Hitachi Sales Corp. of Am. v. Commercial Trust & Sav. Bank of Storm Lake*, 342 N.W.2d 889, 891 (Iowa Ct. App. 1983) (holding that plaintiff's substantial rights were affected by district court's order that plaintiff was statutorily precluded from maintaining action due to violation of permit requirement: "Whether Hitachi can go forward with this action at all depends on whether or not it was required to obtain a permit under section 494.9. Therefore, this interlocutory ruling does involve substantial rights that will affect the final decision.").

Plainly, the district court's stay order reflects no ruling on a controlling issue of law that will "materially affect" its final decision regarding whether the IRGC's revocation of the Belle's license and whether the related issuance of licenses to SCE and MRHD was unlawful. Nor does it preclude SCE from seeking to intervene in this action before the district court.⁷ As the stay order "has no more effect on the final decision than if [it] had not been issued," permission to appeal

⁷ Indeed, SCE intervened in the Belle's related lawsuit against MRHD when that case was less than a month old. *Belle v. MRHD*, Motion to Intervene (filed by SCE), October 19, 2012.

should be denied. *Lambert v. James*, 2001 WL 23086, at *2 (Iowa Ct. App. Jan. 10, 2001).

B. The IRGC Fails To Show Reversible Error.

This Court's inquiry should end here, as the IRGC has failed to meet the "heavy burden" required for this Court to entertain an interlocutory appeal. However, even if this Court were at this stage to consider the IRGC's arguments about the merits of the district court's stay ruling, the IRGC's position still would fail because it ignores the deference to which that ruling is entitled. This Court reviews a "district court's decision whether to stay agency action" for "abuse of discretion." *Glowacki v. State Bd. of Med. Examiners*, 501 N.W.2d 539, 541 (Iowa 1993). "An abuse of discretion occurs when the court's decision is based on a ground or reason that is clearly untenable or when the court's discretion is exercised to a clearly unreasonable degree." *See, e.g., Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 160 (Iowa 2004). The IRGC has not come close to showing it could meet this standard as to any aspect of the district court's ruling.

1. The District Court's Order Is Sufficiently Detailed.

As a threshold matter, the IRGC argues that the stay should be reversed because the district court's order "lacks sufficient specificity or

elaboration.” (IRGC App. at 12.) This argument is belied by the order itself, in which the district court summarized the detailed factual and evidentiary record before it, accurately stated the relevant legal standards, and then stated its conclusions regarding each element of that test, with references to the evidence and the legal standards. *See* Order at 1-5. The IRGC may disagree with the outcome the district court reached, but it fails to show that the district court’s conclusions were “clearly untenable” because they were not explained in sufficient detail.

The IRGC’s authorities do not support its position either. To the extent *Osthus v. Whitesell Corp.*, 639 F.3d 841 (8th Cir. 2011), applies at all, even though it relied on Federal Rule of Civil Procedure 52(a), it supports the sufficiency of the district court’s order because it recognized that in “granting or refusing an injunction, the judge need only make brief, definite, pertinent findings and conclusions upon the contested matters; there is no necessity for over-elaboration of detail or particularization of facts.” 639 F.3d at 845 (quotation omitted). The district court’s order more than meets that standard. *In re Mazzeo*, 167 F.3d 139 (2d Cir. 1999), is similarly distinguishable because there, the bankruptcy court failed to even “mention” the appropriate test or “any

doctrinal framework” at all. *Id.* at 143. The district court’s reasoned decision is in no way comparable.

2. The District Court Did Not Abuse Its Discretion In Granting A Stay.

The IRGC has failed to show that the district court abused its discretion in concluding that the four-factor test under Iowa Code § 17A.19(5)(c) favors a stay. As the district court recognized (Order at 3)—but both the IRGC and SCE omit—§ 17A.19(5)(c) is a balancing test, and does not require the Belle to demonstrate a particular showing for each factor, including any “particular degree of likelihood of success.” (Order at 3 (citing *Grinnell Coll. v. Osborn*, 751 N.W.2d 396, 402 (Iowa 2008).) Indeed, even a minimal showing for one or more factors may suffice, and “more of one factor excuses less of another factor.” *Grinnell*, 751 N.W.2d at 401.

Under this balancing test, the district court’s analysis regarding each factor of the stay test is legally sound, amply supported by evidence, and far from an abuse of discretion.

a. The Belle's Likelihood of Success Favors a Stay.

The analysis of this factor under § 17A.19(5)(c) is particularly flexible and worthy of this Court's deference. As this Court wrote in *Grinnell College*:

The first factor considers the “extent” the applicant for the stay “is likely to prevail when the court finally disposes of the matter.” Iowa Code § 17A.19(5)(c)(1). This factor does not describe the degree of likelihood of prevailing, but only requires the court to consider and balance the extent or range of the likelihood of success. *See generally* John W. Gotanda, *Emerging Standards for Issuing Appellate Stays*, 45 Baylor L. Rev. 809 (1993). Thus, the degree of likelihood of success require to be shown to obtain a stay will necessarily vary with the assessment of the other three factors. *Mohammed v. Reno*, 309 F.3d 95, 101 (3d Cir. 2002). A stay can be granted “where the likelihood of success is not high but the balance of hardships favors the applicant.” *Id.*

Grinnell, 751 N.W.2d at 402. Against this standard, the district court was amply justified in basing relief on its finding that the Belle has at least a “substantial possibility” of success in the ultimate litigation of this matter. The district court concluded, based on its review of the arguments and evidence before it, that the Belle had made “a substantial showing that [the IRGC's] actions to date relating to the granting and/or denial of its gaming license were illegal and/or that they were arbitrary and/or capricious and/or violative of petitioner's statutory rights

pursuant to Iowa Code Section 99F.7(2)(c) and/or its constitutional rights to due process.” (Order at 4.) This conclusion was amply supported by evidence and authorities (*see* Belle D. Ct. Mot. at 12-16) that were largely undisputed by the IRGC in the district court, and remain undisputed now. That is, the IRGC has violated a number of Iowa laws as well as the Iowa and U.S. constitutions, including as follows:

- The IRGC violated Iowa gaming law by licensing SCE and MRHD to develop the Hard Rock casino even though Iowa law plainly *forbids* the IRGC from issuing a new license for a *land-based casino* in Woodbury County while Argosy Casino, an *excursion gambling boat casino*, remains licensed. *See* Iowa Code § 99F.7(2)(c).
- The IRGC violated the Belle’s due process rights by licensing SCE to develop the Hard Rock casino, and announcing that the Hard Rock would replace Argosy Casino, before the IRGC even offered, let alone provided, the “process” to which the IRGC concedes the Belle is entitled before any final license revocation decision may be made. Moreover, unless the district court’s stay remains in place, the Belle is assured of *never* receiving fair process from the IRGC before Argosy Casino is ultimately closed—because as long as SCE’s and MRHD’s licenses remain in effect, the revocation of the Belle’s license is a foregone certainty, and any “process” the Belle receives from the IRGC, including in the contested case proceedings scheduled for March 2014, will be a sham.⁸

⁸ SCE’s petition, on this score, is jarringly ironic: Rather than challenge the Belle’s argument that it is entitled to due process before the license it has held for more than 20 years may be taken away, SCE itself argues that the potential deprivation of its newly-minted and legally tenuous

- The IRGC violated Iowa law by revoking the Belle's license on the purported grounds that the Belle is "statutorily ineligible" to operate a casino without an "operating agreement" with a QSO, because, contrary to the IRGC's position, there is no "statute" in Iowa that requires the Belle to have an operating agreement with a QSO. (*See Belle D. Ct. Reply at 4-7.*)
- The IRGC violated Iowa law and the Belle's rights by taking arbitrary and capricious actions during the application process that led to the IRGC's selection of SCE to develop the Hard Rock casino, including by permitting SCE to circumvent the IRGC's established application procedures by completely restructuring material aspects of its application, including its financing proposal, long after the express deadline for doing so.

If the Belle were to prevail on *any one* of the arguments stated above, it would be entitled to judicial relief. The IRGC has failed to show that the district court abused its discretion by concluding that the Belle has a "substantial possibility" of succeeding on at least one of these arguments. The IRGC seems to fault the district court for not making more conclusive and definitive rulings on all of the above-stated legal questions. In doing so, the Belle forgets that like a temporary injunction, a stay pending proceedings is not a final ruling, and the district court cannot and should make definitive rulings on the legal

license not only entitles it to due process, but is in effect "*an unconstitutional taking of property.*" (SCE Pet. at 4.) (emphasis supplied). This for a license to operate a facility that is not yet built. SCE's argument only underscores the severity of the potential deprivation of the Belle's rights at issue.

issues until the record is developed. In any event, just as it did in the district court, the IRGC *completely ignores* the Belle's due process arguments, which are fundamental to the Belle's requests for judicial relief and provide the Belle with its only avenue for preservation of its Sioux City gaming operations. For the IRGC to assert that the Belle's judicial review proceedings are irrelevant because the Belle's only remedy lies in its breach of contract case against MRHD (IRGC App. at 16.) misses the point. The Belle cannot save its license in a civil suit against MRHD, and MRHD cannot begin to pay the Belle's damages for loss of its license. The IRGC's attempt to avoid the impact of its own conduct, and to put the blame on MRHD, does not show that the district court abused its discretion.

b. The Belle's Likely Irreparable Harm Favors a Stay.

The district court likewise did not abuse its discretion in finding that the Belle had made a "substantial showing" of irreparable harm. (Order at 4.) In particular, the Belle showed that the IRGC's violations of the law and of the Belle's constitutional rights represented *per se* irreparable harm. (Belle D. Ct. Mot. at 18.) As the district court noted, the IRGC completely ignored this argument and the Belle's authorities that support it. (Order at 4.) The district court further found that, at the

“very least,” the Belle “has made a substantial showing that [the IRGC’s] actions will cause extreme damage to [the Belle’s] business, reputation, and/or goodwill and, thereby, [the Belle] will be irreparably harmed.” (*Id.*) Indeed, the IRGC can hardly dispute this, as it *conceded* in the district court that “the loss of Belle’s operator’s license . . . may result in Belle’s collapse.” (IRGC D. Ct. Resist. at 15.)

Before this Court the IRGC continues to ignore the *per se* irreparable harm of the violations of the Belle’s legal and constitutional rights. It also mischaracterizes the Belle’s evidence (IRGC App. at 18-19) by citing only to the Belle’s evidence showing that it has already suffered certain forms of harm as a result of the IRGC’s actions. That evidence is bad enough: The death sentence that the IRGC has handed down to the Argosy imposes an ongoing and incalculable harm on the Belle and the surrounding community. What the IRGC ignores, however, is the evidence of what will happen if Argosy Casino closes, as the IRGC is attempting to force it to do. The Belle will suffer a complete and extreme loss of the entirety of its more than \$100 million investment in Argosy Casino and all the goodwill and reputation the Belle has garnered from its more than 20 years in Woodbury County, as well as hundreds of local jobs. As the IRGC does not dispute, these are

recognized and established forms of irreparable harm. Indeed, SCE relies on nearly identical forms of alleged harm—albeit of a far more speculative nature and of a far less significant scope—to argue that it will be harmed by the stay. (SCE Br. at 6-8.)⁹

The IRGC also argues that the district court “inexplicably ignores the undisputed fact that the IRGC is permitting the Belle to operate a casino until these administrative proceedings run their course to final judgment.” (IRGC App. at 19.) This is wrong—the district court noted that the “IRGC has . . . allowed [the] Belle’s casino to continue operating pending resolution of the instant judicial review.” (Order at 3.) In any case, even if the Belle is permitted to operate until judgment

⁹ The IRGC’s argument that the Belle’s concerns about the imminent loss of the entirety of its 20-year business are mere “jitters in executive suites” that should be taken with “a fair amount of salt” is not only offensive to the Belle given the extent of its efforts to salvage its business over the past two years, but also is completely belied by the record showing that, unless the district court’s stay is maintained, the Belle’s losses are a *certainty*—not “jitters.” (IRGC App. at 19 (citing *Seaboard World Airlines, Inc. v. Tiger Int’l, Inc.*, 600 F.2d 355, 365 (2d Cir. 1979).) The IRGC’s argument also completely undermines SCE’s own claims of purported harm—on which both SCE and the IRGC rely substantially to argue that the stay must be overturned—which are premised on the mere prospect that if the stay is maintained, SCE *might* lose *some* of its financing and be required to *temporarily* cease construction of the Hard Rock pending the outcome of this suit. The IRGC’s and SCE’s double-standard should be rejected.

is entered in the district court (but before any appeals are concluded), the fact that the Hard Rock casino remains licensed and under development during that time ensures that the Belle will be deprived of fair process when the IRGC conducts the forthcoming contested case proceeding, and further makes it far more likely that if the Belle ultimately prevails on the merits, it will be deprived of an effective injunctive remedy because by then, the equities on which the IRGC and SCE attempt to rely so heavily now will surely skew further in their direction. The district court's stay therefore serves the additional purpose of preventing the IRGC and SCE from "running out the clock" on any potentially meaningful relief to the Belle.

c. The Equities Favor a Stay.

Finally, the district court did not abuse its discretion in finding the equities favor a stay. The district court considered the evidence before it—which consisted of the Belle's evidence showing the fatal impact on its business and the deprivation of its rights that would result from the IRGC's conduct absent a stay, but was devoid of any concrete evidence showing actual or likely harm to the IRGC or to the public—and concluded that, on balance, the likely harm to the Belle far exceeded any harm to the IRGC or to the public.

The IRGC fails to show any abuse of discretion. As it did in the district court, it continues to *concede* that it—the only other party to this proceeding—will *not be harmed by a stay*. While it argues that the district court “did not consider [the] uncontroverted harms” that would be imposed on “third parties, including SCE and the City of Sioux City” (IRGC App. at 20), this is false, as the district court noted in its order that SCE had broken ground on its casino in August 2013 and planned to open in July 2014. (Order at 3.) Apart from that information, there was no evidence in the record of any “uncontroverted harms” that SCE, the City of Sioux City or anyone else would suffer absent a stay. Recognizing this, the IRGC now attempts to bolster its claim to harm to third parties with reference to new evidence that was not before the district court. (*See* IRGC Mot., Exs. C and D; IRGC App. at 22 (speculating that the stay may cause “hundreds” of construction workers at the Hard Rock casino to “abruptly” be “thrown out of work”).) However, “[o]nly the original papers and exhibits filed in the district court . . . shall constitute the record on appeal.” Iowa R. App. P. 6.801. Because the record before the district court did not support the IRGC’s

arguments about harm to the public, the district court did not abuse its discretion by “failing to consider” evidence of such alleged harms.¹⁰

The IRGC also argues that the public may be harmed by a “disruption in gaming operations that may occur as a result of delays attributable to a stay.” (IRGC App. at 22.) This argument both speculates on hypothetical events and is disingenuous, because the IRGC indisputably has the authority to permit the Belle to continue operating Argosy Casino for as long as it would like—including until the point when the Hard Rock casino is ready to open, whenever that may be. Moreover, the Belle is more than interested in developing and operating a land-based casino in Woodbury County, suitably licensed by the IRGC. The Belle is not litigating here to prevent progress in gaming, but to avoid being run out of town in plain violation of the law.

¹⁰ Even if the new evidence submitted with SCE’s petition were considered, there remains no evidence of the number of construction workers who are presently employed by SCE and whose jobs are actually at stake, and in any case the actual cessation of construction is purely speculative as well (at most, SCE’s President, Mr. Warner, states that a stay places SCE’s construction financing in “danger”—*see* Warner Aff. ¶ 5). In light of the Belle’s countervailing evidence of the harm it will suffer absent a stay and the benefits to the public (and even to SCE) from the stay, SCE’s speculative showing of harm does not demonstrate that the district court’s ruling lacks a substantial basis on the equities.

While the IRGC asserts that the “equities do not favor Belle, which waited to seek a stay until well after these other parties suffered great prejudice,” (IRGC App. at 15.) that argument was considered, and rejected by, the district court. As a factual matter, the record shows that the Belle filed its motion for a stay within weeks of the groundbreaking of the Hard Rock casino. Since long before then, the Belle had been asserting its legal rights at every opportunity, including in court filings and in public IRGC meetings. Thus, the record is sufficient to show that the district court did not abuse its discretion in determining the relative equities. The Belle’s legal challenges are no surprise to anyone involved, all of whom—as the IRGC admits—have been willingly proceeding *at their own risk* that their efforts and expenditures will ultimately be for naught. (*E.g.*, IRGC D. Ct. Resist. at 19.)

II. SCE’S PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED.

“Certiorari review is discretionary,” *Sorci v. Iowa Dist. Ct. for Polk County*, 671 N.W.2d 482, 490 (Iowa 2003), and may only “lie[] where an inferior tribunal, board, or official, exercising judicial functions, has exceeded its proper jurisdiction or otherwise acted illegally.” *Stream v. Gordy*, 716 N.W.2d 187, 190 (Iowa 2006) (quoting *Waddell v. Brooke*, 684 N.W. 2d 185, 189 (Iowa 2004)). In an original

certiorari action, “[t]he burden of proving illegality rests on the party alleging it.” *State Public Defender v. Iowa District Court for Polk County*, 620 N.W.2d 268, 270 (Iowa 2000). SCE has failed to meet its burden to show that certiorari review is appropriate, and its petition should be denied.

A. SCE Is Not Entitled to Certiorari Review of the District Court’s Stay Order.

In petitioning for a writ of certiorari in this Court, SCE seeks to invoke this Court’s jurisdiction without having been a party to or otherwise sought to participate in the district court proceedings, despite having had notice at all material times of the Belle’s motion for stay and having had an opportunity to seek intervention in the district court. After declining to participate in the district court, SCE now asks this Court to entertain its challenge to the stay order as if a writ of certiorari allows it to make arguments it never presented to the district court based on allegations of fact that are not in the district court record. Certiorari is not available to SCE in these circumstances. Indeed, SCE has wholly misapprehended the nature and availability of the certiorari remedy, and its effort to invoke it should be denied.

The proceeding in this Court on a writ of certiorari is appellate in nature. As this Court has held, original jurisdiction does not lie in certiorari actions:

The granting of writs of certiorari by this court are original proceedings only in a very limited sense inasmuch as the function of the writ is to bring before this court for review in a particular manner a limited class or errors alleged to have been committed by inferior judicial tribunals, namely, those which result from such tribunals exceeding their jurisdiction or otherwise acting illegally What is accomplished, therefore, by means of the writ is the correction of a particular class of errors at law committed by inferior judicial tribunals.

Eden Township Sch. Dist.v. Carroll County Bd. of Educ., 181 N.W.2d 158, 165-66 (Iowa 1970) (citation omitted). A certiorari proceeding is not a forum for fact-finding; only questions of law are decided. *Adams v. Smith*, 250 N.W. 466, 468 (Iowa 1933).

Moreover, Iowa Rule of Appellate Procedure 6.301 requires a petitioner to state in its petition for certiorari whether the petitioner raised the issue in the district court. “This requirement does not exist merely to satisfy [the Court’s] curiosity; rather, the requirement parallels the oft stated maxim that [the Court] will only consider issues for which error has been preserved.” *Sorci*, 671 N.W.2d at 490. This requirement applies equally when, as in the present case, the party bringing the writ petition was not a party to the district court action yet had notice and

opportunity to be heard, and even when “the petitioner had no notice or opportunity to be heard in the district court.” *Id.*, at 491 (in all situations, “the district court should be offered the first opportunity to correct its mistakes”) (quoting *Iowa Dep’t of Transp. v. Iowa Dist. Ct. for Lyon County*, 546 N.W.2d 620, 623 (Iowa 1996)). This requirement exists because it is “fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider,” and further because it is “unfair to allow a party to choose to remain silent in the trial court in the face of error, taking a chance on a favorable outcome, and subsequently assert error on appeal if the outcome in the trial court is unfavorable.” *DeVoss*, 648 N.W.2d at 60 (citing 5 Am. Jur. 2d *App. Rev.* § 690, at 360-61 (1995)).

When SCE’s contentions in its certiorari petition are measured against these standards, the petition falls far short of establishing a basis for this Court to exercise its discretion in favor of granting review. SCE notably does not disclose in its petition that despite having notice and the opportunity to be heard, it did *not* present its present contentions to the district court. (*See Weinhardt Aff.* ¶¶ 2, 3 & 7.) It also does not acknowledge that the allegations of fact in its petition are *not* supported by the record made on the Belle’s motion. SCE’s attempt to invoke

certiorari for matters other than review of the district court's findings should be rejected.

Further, contrary to its repeated representations that it had no "notice or an opportunity to be heard" in the district court (SCE Pet. at 4), SCE actually was present at all material times, but simply chose to sit on the sidelines and watch the Belle and the IRGC make the record on which the ruling was made. It thus is clear that SCE made two decisions: (i) SCE would attempt to build a casino in Sioux City with deliberate speed notwithstanding the legal uncertainty that attached to its license, and (ii) SCE would make no attempt to participate in the judicial review proceedings concerning its license, *including the stay motion*. That SCE may regret these decisions now does not justify its attempt to seek certiorari. Rather, SCE's choice to "remain silent in the trial court in the face of error, taking a chance on a favorable outcome," only to "subsequently assert error on the appeal [because] the outcome in the trial court is unfavorable," provides sufficient basis in itself to *deny* SCE's petition. *See DeVoss*, 648 N.W.2d at 60.

B. SCE Lacks Standing To Petition This Court.

SCE's petition also should be denied because SCE is not a party to this action and does not have standing. SCE is not excepted from the

standing doctrine—as with any other litigant, it must establish that it was “injured” by the stay order. *See Alons v. Iowa Dist. Ct. for Woodbury County*, 698 N.W.2d 858, 864-65 (Iowa 2005). An injury that is merely anticipatory can “never” support standing to seek a writ of certiorari. *See id.* at 865 (“[T]he plaintiffs had suffered no injury at the time they filed their pleadings and asked to have the order set aside. They were simply anticipating some wrong or injury, and a writ of *certiorari* will never issue in such cases.” (quoting *Hemmer v. Bonson*, 117 N.W. 257, 259 (Iowa 1908))).

The district court’s stay order has not “injured” SCE because, as to SCE, it has not altered the status quo at all. SCE’s ability to conduct gaming in Sioux City was before the stay, and remains after the stay, in substantial doubt given the Belle’s ongoing legal challenges. Likewise, because the stay order is not directed to SCE, it does not prohibit SCE from continuing to do what it has been doing since August: construct a building that it may never be able to open as a casino if the Belle ultimately obtains judicial review. Nor has the stay affected SCE’s ability to open the Hard Rock casino during the course of the suit, because notwithstanding the stay, Iowa Code § 99F.7(2)(c) prohibits a land-based casino from opening in Woodbury County while the Argosy

Casino riverboat remains open, and the IRGC has now confirmed that it will permit Argosy Casino to remain open until judicial review proceedings (at least at the district court level) are complete. (IRGC App. at 19.) Because SCE has not been injured by the stay order, it cannot establish a basis for standing.

C. SCE's Petition Has No Merit.

Assuming it had standing, SCE fails to show that the district court “exceeded its proper jurisdiction or otherwise acted illegally.” *Sorci*, 671 N.W.2d at 490.

1. The District Court Did Not Exceed Its Jurisdiction By Failing To Join SCE As An Indispensible Party.

SCE's argument that the district court exceeded its jurisdiction by failing to join an indispensable party is simply wrong on the law, for several reasons.

First, SCE was not an indispensable party. Under Iowa R. Civ. P. 1.234(2), a party is indispensable if (i) “the party's interest is not severable” from other parties *and* “the party's absence will prevent the court from rendering any judgment between the parties before it”; or (ii) that “party's interest would necessarily be inequitably affected by a judgment rendered between those before the court.”

Plainly, SCE fails the first test. Nothing about SCE's presence or absence from the judicial review litigation will prevent the district court from rendering a judgment on the legality of the IRGC's decisions. SCE fails the second test as well. SCE is not unavoidably a victim of an inequitable decision but rather, to the extent it is affected by the district court's stay order at all, it is in a situation of its own making based on its choice to sink costs into the construction of a building that it knew the Belle was asserting in the courts and elsewhere cannot lawfully be opened as a casino. Because SCE created this situation and assumed the attendant risks, it is not a "necessary inequitable effect" of the stay order.

Second, as this Court has held, "[a]bsence of other parties does not go to the court's jurisdiction over the subject matter or the parties before it." *In re Damon's Guardianship*, 28 N.W.2d 48, 51 (Iowa 1947) (internal citations omitted) ("Even if the executor were not a party, the court would not, by reason thereof, be without jurisdiction."); *see also Stewart v. Hall*, 130 N.W. 993, 994 (Iowa 1911) ("Absence of other parties does not go to the court's jurisdiction over the subject-matter and the parties properly before it. The court may, nevertheless, proceed to a decree, and such a decree is not void as between the parties."). SCE cites to no Iowa law in support of this novel argument, which would put

an unprecedented burden on district courts to affirmatively seek out interested parties and forcibly join them into an ongoing litigation before exercising jurisdiction over a matter. Accordingly, even if SCE were an indispensable party to the district court's stay proceeding, that would not mean that the district court lacked jurisdiction to issue the stay. There is thus no issue concerning the district court's jurisdiction.

Third, SCE confuses Iowa R. Civ. P. 1.234, which addresses indispensable parties, with Iowa R. Civ. P. 1.407, which addresses the procedure for a non-party to intervene in a pending action. SCE's reliance on the former is misplaced. Rule 1.234, like its federal counterpart (Fed. R. Civ. P. 19), allows a *party* to pending litigation to assert *a defense* based on non-joinder of an indispensable party. *See Ditch v. Hess*, 212 N.W.2d 442, 450 (Iowa 1973) (defendant raised indispensable parties defense on appeal); 7 Wright & Miller, *Federal Practice & Procedure* § 1609 (addressing the defense of failure to join a party). Rule 1.234 is not a mechanism for a non-party to undo legal proceedings in which it feels it should have been involved. Here, the IRGC has *not* invoked a defense based on Rule 1.234, and therefore, the Court need not consider this defense. To the extent SCE believed it was a necessary party in the Belle's actions against the IRGC, the proper

mechanism was for SCE to request intervention under Rule 1.407—a request that SCE still has not made to this date.

2. The District Court Did Not Act “Illegally.”

SCE also fails to show that the district court acted “illegally” by entering the stay. “Illegality exists when the court’s findings lack substantial evidentiary support, or when the court has not properly applied the law.” *See Pfister v Iowa Dist. Ct.*, 688 N.W.2d 790, 794 (Iowa 2004).

As shown above, *supra* at pp. 23-35, the IRGC and SCE fail to show reversible error in the district court’s stay ruling. Rather than show that the district court acted “illegally” by granting a stay in light of the record, SCE improperly relies on evidence that was not before the district court—including a photograph, a newspaper editorial, and two sworn affidavits—to argue that the district court “erred” by failing to “fully analyze the public’s true interest in this matter.” (SCE Br. at 8.) That new evidence is not properly before this Court in a certiorari action. *Adams*, 250 N.W. at 468 (“[Q]uestions of fact will not be determined on certiorari.”). The only factual question before this Court is one of review—namely, whether the trial court’s findings of fact are supported by “substantial evidence.” *Ary v. Iowa Dist. Ct. for Benton County*, 735

N.W.2d 621, 624 (Iowa 2007) (citing *Amro v. Iowa Dist. Ct.*, 429 N.W.2d 135, 138 (Iowa 1988)); *Chiafos v. Mun. Fire & Police Ret. Sys. of Iowa*, 591 N.W.2d 199, 201 (Iowa 1999) (“Evidence is substantial when a reasonable mind would accept it as adequate to reach the same findings.”).

This Court should refuse to consider the new evidence SCE presents in its petition, and instead limit its review to facts in the record. SCE has failed to show, on the record before the district court, a lack of substantial evidence sufficient to establish “illegality” or that the district court committed any error of law. SCE’s petition should be denied for this reason as well.

III. THE DISTRICT COURT’S STAY ORDER SHOULD NOT BE STAYED PENDING APPELLATE REVIEW.

Even if the Court were to consider the IRGC’s interlocutory appeal or SCE’s petition for writ of certiorari, it should decline to stay the district court’s stay order pending those appeals.¹¹ A stay pending

¹¹ The IRGC also requests in its motion to stay to “vacate” the district court’s stay order. (Mot. at 1.) Such relief, which is effectively the same relief the IRGC seeks through the interlocutory appeal it moves to file, is not authorized by the temporary stay provisions under which the IRGC moves. The Court should reject the IRGC’s attempted end-run around the interlocutory appeal procedure and reject its request to “vacate” the stay order.

appeal requires a showing that “rights would be lost or greatly impaired by delay.” Iowa R. App. P. 6.1002(4). Such a stay may only be entered “for good cause shown and when the prejudice to the nonmoving party is not great.” Iowa R. App. 6.1002(7).

Neither the IRGC nor SCE can meet these rigorous standards.¹² Indeed, the IRGC identifies no harm at all it will suffer if the district court’s stay is not lifted. While it again speculates that the State may lose gaming revenues if the Belle’s license is revoked at the March 2014 contested case proceeding before the Hard Rock is ready to open, the IRGC ignores that it controls that outcome: It gets to decide when to require the Belle to cease operations. The IRGC’s argument also *assumes* that SCE will cease construction activities in the very near future if the stay is in place; not only is there no evidence that it will (it surely has not to date), but the IRGC and the City of Sioux City have

¹² Under federal law, which the IRGC argues is relevant to the standards applicable to the Belle’s request for stay of agency action (*see* IRGC App. at 11), a “party seeking a stay pending appeal must show (1) that it is likely to succeed on the merits; (2) that it will suffer irreparable injury unless the stay is granted; (3) that no substantial harm will come to other interested parties; and (4) that the stay will do no harm to the public interest.” *Fargo Women’s Health Organization v. Schafer*, 18 F.3d 526, 538 (8th Cir. 1994). Neither the IRGC nor SCE even attempts to show that these (or similar) standards are met here, and as shown, they are not.

publicly stated that SCE can and should continue construction even during the stay, so that the Hard Rock will be ready to open just as soon as these proceedings are resolved. (*See* n. 6, *supra* p. 18.) Further, the IRGC fails to address the Belle's argument that if the stay is *not* in place at the time of the contested case proceedings and SCE's license to develop and operate the Hard Rock casino remains in effect, then those proceedings would further violate the Belle's due process rights because they would be a sham. The deprivation of the Belle's due process rights far outweighs the IRGC's speculation about a gap in gaming that it has unfettered discretion to ensure never occurs.

The IRGC also asserts harm on behalf of SCE and the City of Sioux City. As with SCE's petition for writ of certiorari, the IRGC's argument is premised on the *false* argument that the stay was entered "without any opportunity whatsoever for the City of Sioux City, the license holders [MRHD and SCE], the construction companies and their employees as well as the people financing the project to have any input into the process." (IRGC Mot. at 8.) To the contrary, those purportedly interested third parties *chose* to sit on the sidelines until now while the Belle vigorously asserted its legal and due process rights.

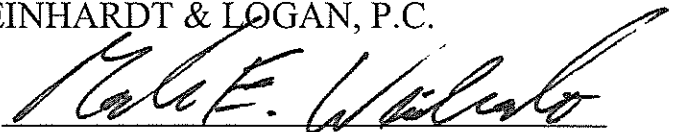
Finally, like the IRGC, SCE argues it will be harmed if it is forced to cease construction activities during the course of this Court's consideration of its petition for a writ of certiorari. However, it is entirely speculative that SCE would actually cease construction during the course of the stay, let alone that it would do so in the near future when its petition is pending. Further, the only harm SCE alleges it will suffer if it does cease construction is monetary loss resulting from the delay in its construction. As noted, however, to the extent SCE is harmed by its decision to construct in Sioux City while the Belle's legal challenges are pending, that is a risk it chose to bear, including when it stood idly by—including when its lawyers were inside the courtroom while the Belle's motion for stay was being argued—rather than assert its interests during the district court stay proceedings. Given SCE's assumption of risk with respect to the ongoing licensing dispute and the speculative nature of its alleged economic harms, SCE has failed to demonstrate that its rights would be lost or greatly impaired if the district court's stay order is not stayed during the pendency of any appeal. To the contrary, to the extent the district court's stay does cause SCE to halt construction, then, given the district court's findings on the Belle's likelihood of success, the stay will *benefit* SCE and its partners by

preventing them from suffering further “harm” by sinking more costs into a building that will never open as a casino.

CONCLUSION

For the foregoing reasons, the Belle respectfully requests that the Court deny in full the IRGC’s and SCE’s requests for relief from the district court’s stay order, and lift the temporary stay of the district court’s order entered by this Court on December 19, 2013.

WEINHARDT & LOGAN, P.C.

By 

Mark E. Weinhardt AT0008280

Holly M. Logan AT0004710

Danielle M. Shelton AT0007184

2600 Grand Avenue, Suite 450

Des Moines, IA 50312

Telephone: (515) 244-3100

Fax: (515) 288-0407

E-mail:

mweinhardt@weinhardtlogan.com

hlogan@weinhardtlogan.com

dshelton@weinhardtlogan.com

BELIN MCCORMICK, P.C.

By Mark McCormick
Mark McCormick AT0005111

666 Walnut, Suite 2000

Des Moines, IA 50309

Telephone: (515) 243-7100

Fax: (515) 558-0615

Email:

mmccormick@belinmccormick.com

OF COUNSEL:

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

Christopher Tayback

Daniel Posner

865 S. Figueroa Street, 10th Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

Fax: (213) 443-3100

E-mail:

christayback@quinnemanuel.com

danposner@quinnemanuel.com

ATTORNEYS FOR APPELLEE

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on

Dec 24, 2013 by

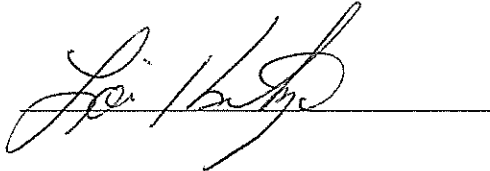
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Other |

Jeffrey C. Peterzalek
Assistant Attorney
General
Hoover Building, Second
Floor
Des Moines, IA 50319
jpeterz@ag.state.ia.us

John R. Lundquist
Assistant Attorney
General
Hoover Building, 2nd
Floor
1305 E. Walnut
Des Moines, IA 50319
jlundqui@ag.state.ia.us

Guy R. Cook
Patrick J. McNulty
Joseph F. Moser
Grefe & Sidney, P.L.C.
500 E. Court Avenue,
Suite 200
Des Moines, IA 50309
gcook@grefesidney.com
pmcnulty@grefesidney.com
jmoser@grefesidney.com

Signature: _____

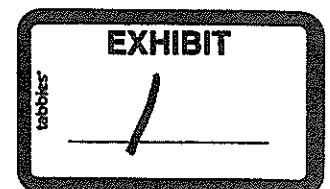


BEFORE THE IOWA SUPREME COURT
No. 13-1972

BELLE OF SIOUX CITY, L.P.,	)	Polk County Nos. CV 9254
	)	CV9316
Petitioner-Appellee,	)	CV9383
	)	CVCV045760
v.	)	
	)	
IOWA RACING AND GAMING	)	
COMMISSION,	)	AFFIDAVIT OF MARK E.
	)	WEINHARDT
Respondent-Appellant.	)	
	)	
	)	
SCE PARTNERS, L.L.C.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
THE DISTRICT COURT FOR POLK	)	
COUNTY,	)	
	)	
Respondent.	)	
	)	

Mark E. Weinhardt, having been duly sworn under oath, hereby states as follows:

1. I am one of the attorneys representing Belle of Sioux City, L.P. (“the Belle”) in the instant matters and in the consolidated judicial review proceedings captioned *Belle of Sioux City, L.P. v. Iowa Racing and Gaming Commission* pending in the Iowa District Court for Polk County (“the IRGC Cases”).



2. On September 16, 2013, in the IRGC Cases, the Belle filed The Belle's Motion for a Stay of IRGC Actions Pending Judicial Review and The Belle's Brief in Support of its Motion for Stay of IRGC Actions Pending Judicial Review (collectively, the "Stay Motion").

3. Shortly after 5:00 p.m. that evening, just a few hours after the Belle filed the Stay Motion, Guy Cook, one of the attorneys representing SCE Partners, L.L.C. ("SCE") in connection with the Sioux City casino matters, emailed me and told me that he had heard that the Belle had filed some motion in the IRGC Cases. Shortly thereafter I called Mr. Cook by phone. He asked me as a courtesy to send him copies of the papers the Belle had filed concerning the Stay Motion. A few minutes after our phone call, I emailed the Stay Motion papers to Mr. Cook. A copy of my email exchange with Mr. Cook is attached to this affidavit as Exhibit A.

4. On October 8, 2013, I wrote to the Iowa Racing and Gaming Commission ("IRGC") to request that the IRGC stay its actions regarding the Sioux City casino licenses. My request was parallel to the request for stay

contained in the Stay Motion. I asked that the IRGC hear the matter at its October 10, 2013 meeting. A copy of my letter is attached to this affidavit as Exhibit B.¹

5. On that same day, October 8, 2013, Brian Ohorilko, the administrator of the IRGC, sent an email in response to my letter. Mr. Ohorilko told me that the Belle's request for a stay would not be placed on the agenda for the October 10, 2013 IRGC meeting because the request was untimely and "does not give the Commission adequate time to notify all parties that may be impacted by such a request so that they may be able to address the Commission on the matter." Mr. Ohorilko told me, however, that the IRGC "can accommodate such a request at the next meeting on November 21, 2013." He allowed, however, that the Belle could address the IRGC in its public comment period on October 10th. A copy of Mr. Ohorilko's email to me is attached to this affidavit as Exhibit C.

6. On the morning of October 10, 2013, the IRGC held its monthly meeting in Dubuque. Christopher Tayback, another attorney representing the Belle, made a request to the IRGC during the public comment period that it stay its actions concerning the Sioux City licenses. The request tracked the Belle's request

¹ The letter is inadvertently misdated. Although the date at the top of the letter is September 4, 2013, it was in fact hand-delivered on October 8, 2013, as is shown by the "Received" stamp on the letter.

in my letter and the Stay Motion. The IRGC refused to take action on the Belle's request.

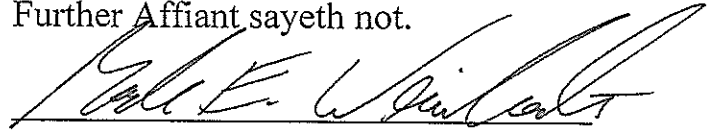
7. On October 10, 2013, I represented the Belle at the hearing on the Stay Motion in the Iowa District Court for Polk County. Two attorneys representing SCE, Guy Cook and Adam Zenor, attended that hearing on SCE's behalf. Attached to this affidavit as Exhibit D is a press photograph taken at the hearing. I am the person arguing in that photograph. The two men sitting immediately behind me, on the far right side of the photograph, are Mr. Cook and Mr. Zenor.

8. On November 6, 2013, I again wrote to Mr. Ohorilko to request that the IRGC stay its actions consistent with the relief requested in the Stay Motion and that the Belle's request be placed on the agenda for the IRGC's meeting on November 21, 2013. A copy of my letter containing that request, without impertinent attachments, is attached to this affidavit as Exhibit E.

9. The Belle's stay request was indeed placed on the agenda at the IRGC's November 21, 2013 meeting. Mr. Tayback presented that request to the IRGC at that meeting. The request again tracked the request in my letter and the Stay Motion. The Chair of the IRGC moved to deny the Belle's request, and the remaining Commissioners voted in favor of the Chairman's motion. Notably, no

one from SCE or the City of Sioux City made any comment or response to the Belle's request.

Further Affiant sayeth not.



Mark E. Weinhardt

Subscribed and sworn to before me this 23rd day of December, 2013.



Notary Public for the State of Iowa



Michele Baldus

From: Mark Weinhardt
Sent: Monday, September 16, 2013 6:38 PM
To: Guy Cook
Subject: RE: Belle/Penn recent legal action
Attachments: 2013 09 16 Belle's Motion to Stay (Hearing Requested) (02019108).PDF; 2013 09 16 Belle's Brief Support of Motion to Stay (02019109).PDF

Guy:

Per our phone call just now, here is what we filed today in the judicial review cases pending against the IRGC. Please let me know if you have questions.

--Mark



Mark Weinhardt / Weinhardt & Logan, P.C.
2600 Grand Avenue, Suite 450, Des Moines, IA 50312
Phone: (515) 564-5270
[E-mail](#) | [Bio](#)

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From: Guy Cook [<mailto:GCook@grefesidney.com>]
Sent: Monday, September 16, 2013 5:13 PM
To: Mark Weinhardt
Subject: Belle/Penn recent legal action

Dear Mark,

I am informed Penn/Belle may have taken some recent legal action against SCE. Please provide me with a copy of any filings.

Thank you.

Best regards,

Guy R. Cook
Grefe & Sidney, P.L.C.
500 East Court Avenue
Des Moines, IA 50309
(515) 245-4300



(515) 245-4452 (fax)



Double Board Certified Trial Lawyer, N.B.T.A.

WEINHARDT & LOGAN

MARK E. WEINHARDT

DIRECT PHONE | 515.564.5270

EMAIL | MWEINHARDT@WEINHARDTLOGAN.COM

September 4, 2013

RECEIVED

OCT 08 2013

VIA EMAIL AND HAND DELIVERY

IOWA RACING & GAMING COMMISSION

Brian J. Ohorilko, Administrator
Iowa Racing And Gaming Commission
1300 Des Moines Street, Suite 100
Des Moines, IA 50309-5508

Re: Request for Stay of Agency Action

Dear Mr. Ohorilko:

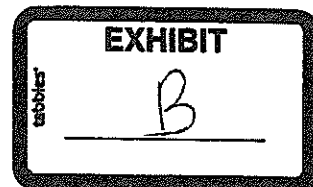
I write on behalf of our client Belle of Sioux City, L.P. (the "Belle"). The Belle hereby requests that the Iowa Racing and Gaming Commission ("IRGC"), pursuant to Iowa Code § 17A.19(5)(a), stay (1) the issuance and effectiveness of the licenses issued by the IRGC to Sioux City Entertainment, Inc. ("SCE") and Missouri River Historical Development, Inc. ("MRHD") for the development and operation of a casino in Woodbury County (the "Hard Rock Sioux City"), and (2) all other actions taken by the IRGC in furtherance of those licenses that authorize or facilitate the development of Hard Rock Sioux City.

As the IRGC knows, its actions taken on April 18, 2013, as well as earlier actions that led up to the April 18, 2013 actions, are the subject of consolidated judicial review petitions pending in the Iowa District Court for Polk County (*Belle of Sioux City, L.P. v. Iowa Racing and Gaming Commission*, Case Nos. CV 9254, CV 9316, CV 9383, and CVCV 045760). As the Belle has argued at length in those actions, the IRGC's grant of the licenses for the Hard Rock Sioux City violated Iowa Code § 99F.7(2)(c), which forbids the award of a license for a land-based casino in Woodbury County where the Belle already operates an excursion gambling boat. In addition, the IRGC's grant of the licenses for the Hard Rock Sioux City has effectively revoked the Belle's license to operate the Argosy Casino without affording the Belle constitutional due process protections to which any casino licensee is entitled. To the degree the IRGC has articulated a



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basis for revoking the Belle's license (that being the claimed absence of a contract with a Qualified Sponsoring Organization ("QSO")), that basis is manufactured by the IRGC and merely a pretext. Finally, the IRGC's selection of the Hard Rock Sioux City as the winning bid on April 18, 2013 violated Iowa law in multiple respects.

As the IRGC also knows, SCE is moving forward with the construction of the Hard Rock Sioux City now. It is doing so notwithstanding the fact that, if the Belle prevails in its pending judicial review actions, SCE will not be entitled to operate the Hard Rock Sioux City and MRHD will not be entitled to partner with SCE as its QSO. While the district court in Polk County considers the question of whether SCE and MRHD are entitled to build and operate a casino in Woodbury County, those entities should not enjoy the benefit of licenses from the IRGC and they should not build the casino on the strength of those licenses. The Belle and its many employees and constituents will be irreparably harmed by a situation in which SCE and MRHD attempt to oust the district court of the ability to decide this question on the merits by building a casino before the district court can rule. Moreover, the public interest, and particularly the interests of third parties in Woodbury County who are being affected by the current construction of the Hard Rock Sioux City, also argues in favor of a pause in that construction and a stay of the licensing decision until the district court in Polk County can sort this matter out.

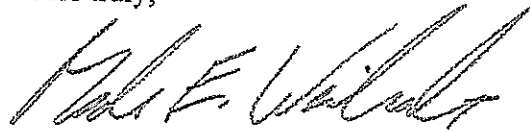
Accordingly, the Belle requests that the actions of the IRGC on April 18, 2013 and at meetings leading up to that date be stayed, the licenses issued on that date be held in abeyance, and the judicial branch of Iowa's government be permitted to decide this controversy during that stay. The Belle requests to be heard by the Commission at its meeting on October 10, 2013 regarding this request. Please let me know at your earliest convenience about modifications to the IRGC's agenda to permit the Belle to be heard.

In addition, the Belle notes that in Item 8.G. of the current agenda, SCE is seeking approval of five contracts pertaining to the construction and administration of the Hard Rock Sioux City. The Belle requests the opportunity to address the IRGC in opposition to the approval of those contracts.

Iowa Racing and Gaming Commission
October 8, 2013
Page 3

If you have questions or would like to discuss any aspect of this, please get in touch with me.

Yours truly,

A handwritten signature in black ink, appearing to read 'Mark E. Weinhardt', with a stylized, cursive script.

Mark E. Weinhardt

MEW/lak

cc: Commissioner Carl Heinrich
Commissioner Kristine Kramer
Commissioner Jeff Lamberti
Commissioner Dolores Mertz
Commissioner Greg Seyfer
Jeff Peterzelak
John Lundquist

Michele Baldus

From: Ohorilko, Brian [IRGC] <Brian.Ohorilko@iowa.gov>
Sent: Tuesday, October 08, 2013 5:57 PM
To: Lori Kreutzman; Mark Weinhardt
Cc: Lundquist, John [AG]; Peterzalek, Jeffrey [AG]
Subject: RE: Request for Stay of Agency Action

Lori, Mark-

Thank you for the letter.

I have reviewed the request and, unfortunately, will not be able to place this Request for Stay of Agency Action on the agenda for the October 10, 2013, Commission meeting. The request as made, less than 48 hours prior to the meeting, is not timely and would not comply with 491 IAC 1.2 and as noticed on the Commission website and during the announcements of each Commission meeting. In addition, the request does not give the Commission adequate time to notify all parties that may be impacted by such a request so that they may also be able to address the Commission on the matter. However, we can accommodate such a request at the next meeting on November 21, 2013. You may also address the Commission during the public comment portion of the meeting although it is possible, due to the before mentioned reasons, that the Commission will not be able to respond to such a request at this time.

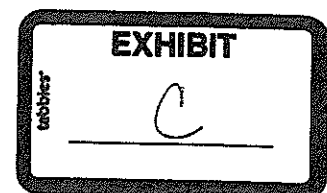
Feel free to contact me with any questions, and please advise as to if Penn would wish to appear with the request at the November Commission meeting.

Regards,
Brian

Brian J. Ohorilko
Administrator
Iowa Racing and Gaming Commission
1300 Des Moines St., Suite 100
Des Moines, IA 50309
Office: 515.281.7352

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From: Lori Kreutzman [lkreutzman@weinhardtlogan.com]
Sent: Tuesday, October 08, 2013 1:21 PM
To: Ohorilko, Brian [IRGC]
Cc: Lundquist, John [AG]; Peterzalek, Jeffrey [AG]
Subject: Request for Stay of Agency Action



Attached please find correspondence from Mark Weinhardt. A hard copy will be hand delivered.

--Lori

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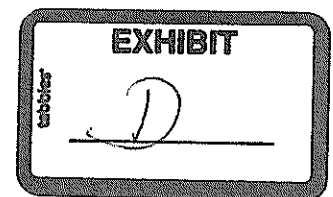
Lori Kreutzman / Weinhardt & Logan, P.C.<<http://www.weinhardtlogan.com/>>

2600 Grand Avenue, Suite 450, Des Moines, IA 50312

Phone: (515) 564-5272

E-mail<<mailto:lkreutzman@weinhardtlogan.com>>

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MARK E. WEINHARDT

DIRECT PHONE | 515.564.5270

EMAIL | MWEINHARDT@WEINHARDTLOGAN.COM

November 6, 2013

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IOWA RACING & GAMING COMMISSION

VIA EMAIL AND HAND DELIVERY

Brian J. Ohorilko, Administrator
(Brian.Ohorilko@iowa.gov)
Iowa Racing And Gaming Commission
1300 Des Moines Street, Suite 100
Des Moines, IA 50309-5508

Re: Request for Stay of Agency Action, Approval of Contract, and Agenda Items for
November 21, 2013 Meeting

Dear Mr. Ohorilko:

I write on behalf of our client Belle of Sioux City, L.P. (the "Belle"). The Belle requests two actions from the Iowa Racing and Gaming Commission ("IRGC") and asks that these items be placed on the agenda for the IRGC's meeting scheduled for November 21, 2013.

First, the Belle hereby renews its request, made in my letter delivered to you on October 8, 2013, that the IRGC, pursuant to Iowa Code § 17A.19(5)(a), stay (1) the issuance and effectiveness of the licenses issued by the IRGC to Sioux City Entertainment, Inc. ("SCE") and Missouri River Historical Development, Inc. ("MRHD") for the development and operation of a casino in Woodbury County (the "Hard Rock Sioux City"), and (2) all other actions taken by the IRGC in furtherance of those licenses that authorize or facilitate the development of Hard Rock Sioux City. The Belle further requests that the Belle be heard on its request at the November 21, 2013 meeting.

As the IRGC knows, its actions taken on April 18, 2013, as well as earlier actions that led up to the April 18, 2013 actions, are the subject of consolidated judicial review petitions pending in the Iowa District Court for Polk County (*Belle of Sioux City, L.P. v. Iowa Racing and Gaming Commission*, Case Nos. CV 9254, CV 9316, CV 9383, and CVCV 045760). As the Belle has

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argued at length in those actions, the IRGC's grant of the licenses for the Hard Rock Sioux City violated Iowa Code § 99F.7(2)(c), which forbids the award of a license for a land-based casino in Woodbury County where the Belle already operates an excursion gambling boat. In addition, the IRGC's grant of the licenses for the Hard Rock Sioux City has effectively revoked the Belle's license to operate the Argosy Casino without affording the Belle constitutional due process protections to which any casino licensee is entitled. To the degree the IRGC has articulated a basis for revoking the Belle's license (that being the claimed absence of a contract with a Qualified Sponsoring Organization ("QSO")), that basis is manufactured by the IRGC and merely a pretext. Finally, the IRGC's selection of the Hard Rock Sioux City as the winning bid on April 18, 2013 violated Iowa law in multiple respects.

As the IRGC also knows, SCE is moving forward with the construction of the Hard Rock Sioux City now. It is doing so notwithstanding the fact that, if the Belle prevails in its pending judicial review actions, SCE will not be entitled to operate the Hard Rock Sioux City and MRHD will not be entitled to partner with SCE as its QSO. While the district court in Polk County considers the question of whether SCE and MRHD are entitled to build and operate a casino in Woodbury County, those entities should not enjoy the benefit of licenses from the IRGC and they should not build the casino on the strength of those licenses. The Belle and its many employees and constituents will be irreparably harmed by a situation in which SCE and MRHD attempt to oust the district court of the ability to decide this question on the merits by building a casino before the district court can rule. Moreover, the public interest, and particularly the interests of third parties in Woodbury County who are being affected by the current construction of the Hard Rock Sioux City, also argues in favor of a pause in that construction and a stay of the licensing decision until the district court in Polk County can sort this matter out.

Accordingly, the Belle requests that the actions of the IRGC on April 18, 2013 and at meetings leading up to that date be stayed, the licenses issued on that date be held in abeyance, and the judicial branch of Iowa's government be permitted to decide this controversy during that stay.

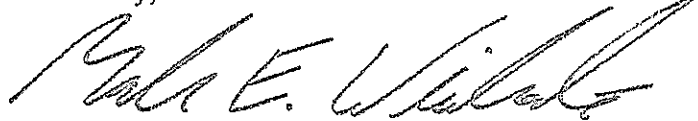
Second, the Belle has supplied with this letter a Request for Transaction Approval for an operating agreement between the Belle and Greater Siouxland Improvement Association ("GSIA"). The Belle submits the operating agreement for approval so that GSIA can serve as a qualified sponsoring organization ("QSO"). GSIA has already been found suitable by the IRGC

during the course of the proceedings leading to the IRGC's licensing decision dated April 18, 2013. Further, the IRGC found no issues with the operating agreement between the Belle and GSIA that the Belle submitted with its application for a land-based casino license in the process that led to the April 18, 2013 license award.

The attached agreement would permit GSIA to step into the role as the QSO for the Argosy Casino in the event that the agreement between the Belle and Missouri River Historical Development, Inc. is determined no longer to be in effect. The attached operating agreement contemplates that GSIA will act as the Belle's QSO during the time that the Belle continues to operate the Argosy Casino in Woodbury County. The Belle requests to be heard by the Commission regarding the approval of this operating agreement in the event the Commission does not intend to approve this operating agreement forthwith.

If you have questions or would like to discuss any aspect of this, please get in touch with me.

Yours truly,

A handwritten signature in black ink, appearing to read "Mark E. Weinhardt", with a stylized, cursive script.

Mark E. Weinhardt

MEW/lak

cc: Commissioner Carl Heinrich
Commissioner Kristine Kramer
Commissioner Jeff Lamberti
Commissioner Dolores Mertz
Commissioner Greg Seyfer
Jeff Peterzelak
John Lundquist

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BELLE OF SIOUX CITY, L.P.

Petitioner,

v.

IOWA RACING AND GAMING
COMMISSION,

Defendant-Respondent

Case No. CV9254

Case No. CV9316

Case No. CV9383

Case No. CVCV 045760

**THE BELLE'S BRIEF IN SUPPORT OF
ITS MOTION FOR A STAY OF IRGC
ACTIONS PENDING JUDICIAL
REVIEW**

Petitioner Belle of Sioux City, L.P. ("the Belle") hereby submits this brief in support of its separately-filed motion pursuant to Iowa Code § 17A.19(5)(c) for a stay, pending the outcome of this judicial review proceeding, of: (i) the issuance and effectiveness of the licenses issued by the Iowa Racing and Gaming Commission ("IRGC") to gaming company Sioux City Entertainment, Inc. ("SCE") and non-profit Missouri River Historical Development, Inc. ("MRHD"), for the development and operation of a casino in Woodbury County (the "Hard Rock Sioux City"), and (ii) all other actions taken by the IRGC in furtherance of those licenses that authorize or facilitate the development of Hard Rock Sioux City.

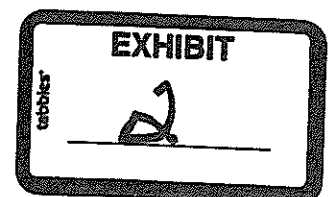


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PRELIMINARY STATEMENT

For more than two decades, the Belle has peacefully coexisted with both MRHD and the IRGC and has operated Argosy-Sioux City Riverboat Casino ("Argosy Casino") with an exemplary regulatory record. Through its decades of operation, the Belle has built strong ties to the community and has generated millions of dollars in revenues that have been distributed to community and charity organizations and to local and state governments. Also throughout its existence, the IRGC has renewed the Belle's annual operating license each year without incident.

In addition to benefitting the community and its employees, the Belle's operations have substantially benefitted MRHD. As the Belle's "qualified sponsoring organization" ("QSO") for the past 20 years, MRHD has existed solely to receive a portion of the Belle's revenues and distribute those revenues to charities. MRHD has had no role in the operation of Argosy Casino and has never put a single penny of its own funds at risk. Nevertheless, by using the Belle's revenues to finance its largess, MRHD has become a powerful political player in Woodbury County. In 2012, MRHD's focus changed from deciding how to best distribute the Belle's revenues to determining how it could divest the Belle of its license to operate Argosy Casino so that MRHD itself could develop a new land-based casino in Woodbury County.

To facilitate its plan, MRHD's powerbrokers began influencing the IRGC in early 2012 to commence a course of conduct that would lead to the revocation of the Belle's license and make way for MRHD's development of a new casino. MRHD's scheme gained momentum in June 2012, when the IRGC refused to renew the Belle's license to operate Argosy Casino for the first time in decades, and instead opened the Woodbury County license to bidding from any applicant. This application process culminated on April 18, 2013, when the IRGC selected an application submitted by MRHD and newly-formed gaming company SCE to develop Hard

Rock Sioux City. On August 15, 2013, MRHD secured the final step in its plan when the IRGC formally decided not to renew the Belle's license to operate Argosy Casino. The IRGC's decision to revoke the Belle's license was purportedly (and ironically) premised on the fact that MRHD had refused to renew its contract with the Belle for the distribution of charitable funds. Thus, MRHD both caused the IRGC to institute the steps that were necessary to replace Argosy Casino with Hard Rock Sioux City, and it provided the IRGC with the pretext it needed to do so.

In the course of displacing the Belle of its license in favor of MRHD and SCE, the IRGC violated a number of Iowa laws as well as the Belle's constitutional rights. In particular, by issuing licenses to develop and operate Hard Rock Sioux City (the "Hard Rock Licenses") at a time when the Belle remained licensed to operate Argosy Casino—as the Belle still does to this day—the IRGC violated the Iowa law that prohibits the IRGC from licensing a land-based casino in Woodbury County while the Belle is licensed to operate its riverboat casino. *See* Iowa Code § 99F.7(2)(c). This law is not mere formality; it exists as a means of protecting the Belle's substantial investment in Argosy Casino. The IRGC also violated a number of laws in the course of selecting the MRHD/SCE bid for the land-based casino license, including by disregarding its own rules to permit SCE to substantially revise its financing proposal (which was clearly deficient before the revision), well after the express deadline for doing so.

Standing alone, the IRGC's violations of Iowa law provide ample grounds for reversing the IRGC's issuance of the Hard Rock Licenses. However, the IRGC also has stated that it has "never" intended to permit Argosy Casino to operate simultaneously with a new land-based casino, and that Argosy Casino *will be closed* before Hard Rock Sioux City opens. In that respect, the IRGC's issuance of the Hard Rock Licenses is tantamount to the *de facto* revocation of the Belle's license to operate Argosy Casino without constitutionally-mandated due process of

law. While the IRGC has recently offered to provide the Belle with some “process” before it formally closes Argosy Casino, no process the Belle receives from the IRGC can be fair so long as the Hard Rock Licenses remain in effect—because in that case, any process would be a sham, as the ultimate closure of Argosy Casino will remain a certainty.

In addition to violating the law and the Belle’s constitutional rights, the IRGC’s actions have threatened the Belle with serious and irreparable harm that entitles the Belle to a stay of the IRGC’s actions. *First*, the harm resulting from the IRGC’s violations of the law and of the Belle’s constitutional rights constitutes *per se* irreparable harm. *Second*, absent judicial relief, the IRGC’s actions have assured that Argosy Casino will be closed, which will result in the loss of the Belle’s entire business, including hundreds of jobs, and further will cast aside 20 years of goodwill. *Third*, unless the Hard Rock Licenses are stayed, the Belle’s ability to obtain any meaningful relief for the IRGC’s unlawful acts will be severely prejudiced. The groundbreaking of Hard Rock Sioux City occurred on August 16, 2013, and demolition and construction activities are well underway (to the point where the exterior of the building is expected to be completed by December). To be sure, the more progress SCE makes in building its casino, the more vociferously SCE, MRHD, and the IRGC will claim that any action by this Court that prevents the completion of Hard Rock Sioux City will harm the “public interest” by wasting SCE’s construction investment and causing harm to third parties. Indeed, the Belle suspects that SCE is moving at breakneck speed to construct the casino precisely because it does not want this Court to have a meaningful opportunity to review, and reverse, the IRGC’s actions until it has already established a foothold in Sioux City.

Accordingly, a stay of the Hard Rock Licenses is the only way to prevent the Belle from suffering irreversible harm, to ensure that the Belle can obtain fair process *before* a decision is

made as to whether it must close Argosy Casino, and to protect third parties who might be adversely impacted by the construction of a new casino. In light of the Belle's 20-year operating history, the grave losses it will suffer if Argosy Casino is closed, and the serious legal challenges the Belle has raised, the Belle's request for a temporary stay to maintain the status quo pending judicial review is a modest request. The Belle respectfully requests such relief.

RELEVANT BACKGROUND

The Belle's History in Sioux City and Woodbury County. The Belle has operated Argosy Casino continuously from December 1, 1994 through the present time.¹ Through the years, the Belle has invested substantial time and resources in promoting the success of Argosy Casino and maintaining the continuity of lawful gaming in the region. The Belle has invested more than \$100 million in Argosy Casino, and the business enterprise has an estimated value of more than \$150 million. Argosy Casino currently employs approximately 310 people, the majority of whom are residents of Iowa, and the vast majority of Argosy Casino's patrons live nearby. Over the years, more than \$14 million of the Belle's revenues have been distributed to local charities and organizations, and more than \$110 million have been paid in taxes.

The Belle's Relationship with MRHD. Iowa Code Chapter 99F (the "Act") authorizes the operation of gaming facilities in Iowa. The Act permits a license to be issued to a qualified non-profit entity, acting as a "qualified sponsoring organization" (the "QSO"), and to an operator of a gaming facility, including on an excursion boat. See Iowa Code § 99F.5. For the entirety of its existence, the Belle's QSO has been MRHD, a non-profit board in Sioux City that is intended to serve as a "pass-through" for the portion of the Belle's revenues that are distributed to

¹ The factual statements herein concerning the Belle's operating history and the effects of the IRGC's actions on the Belle's operations are set forth in the Affidavits of Lance George and Carl Sottosanti, submitted herewith.

charities. MRHD, itself, has no business operations, employees or offices, and has never invested any capital in or participated in the operations of Argosy Casino in any manner. At the same time, as a result of MRHD's significant charitable giving over the past two decades (using revenues generated solely by the Belle), MRHD has come to wield substantial clout in the Sioux City community, and several of its Board members have been elected to local public offices.²

The IRGC's Unlawful Actions. Until 2012, the IRGC had renewed the Belle's license to operate Argosy Casino without incident. This is unsurprising, as the IRGC's implementing regulations provide that renewal of an existing gaming license is essentially a formality, and that when the IRGC considers a renewal application, it need not even consider any of the enumerated criteria that are relevant to the IRGC's initial licensing determination unless "an applicant has demonstrated a deficiency." I.A.C. 491-1.7 (99D, 99F).³

In December 2011, the Belle applied for the renewal of its annual license to operate Argosy Casino. At that time, the Belle and MRHD were in the process of negotiating an extension of the operating agreement that had governed their respective rights and obligations relating to the operation of Argosy Casino since the inception of their relationship, which was set to expire on July 6, 2012. Also around that time, certain representatives of MRHD, led by new member David Bernstein, were actively (yet covertly) soliciting interest from gaming companies to partner with MRHD to develop a new, land-side casino in Woodbury County that would

² For example, an article recently published in the Sioux City Journal discussed "well-deserved" criticisms of MRHD, including based on MRHD's lack of transparency, its partisan leanings and the longevity of its members. See http://siouxcityjournal.com/news/opinion/columnists/the-regulars-mrhd-needs-more-than-window-dressing-changes/article_e1ef6f2a-a6ad-53bb-9f06-93c8b9b53bee.html.

³ Indeed, the Belle is not aware of any situation in which the IRGC has ever declined to renew an operator's license other than a single incident in 1994 when the IRGC found that operations at a specific facility would no longer be viable. See IRGC meeting minutes regarding license of National Cattle Congress and Waterloo Greyhound Park, available at <http://www.iowa.gov/irgc/Jan%20Dec%201994%20Min.pdf>.

replace Argosy Casino.⁴ Unbeknownst to the Belle at the time, MRHD was in regular contact with the IRGC during this time and was clear about its desire to develop a land-based casino in Woodbury County with an operator *other than* the Belle—which is something that could be accomplished only if the IRGC were to divest the Belle of its license to operate Argosy Casino.

To begin to pave the way for MRHD’s casino development, in March 2012 the IRGC declined to approve the Belle’s renewal application, *contrary to what it had done each year for decades*, purportedly because the Belle and MRHD had yet to extend their operating agreement. Then, on June 7, 2012, the IRGC, without explanation, declined to consider the Belle’s proposal to explore replacing MRHD with another suitable QSO that could distribute the Belle’s revenues to charity to the same extent as MRHD had been doing (*see* June 7, 2012 IRGC Meeting Minutes at 4 (Sottosanti Aff. Ex. A))—even though the IRGC and its staff had previously suggested that the Belle should come up with a “Plan B” of this very sort. Instead, over the Belle’s strenuous objections, the IRGC announced its intention to accept applications from all interested parties to build and operate a new land-based casino in Woodbury County. *Id.* at 7. The IRGC made this decision even though the Belle’s operating agreement with MRHD had yet to expire.⁵

⁴ The Belle has filed a related lawsuit against MRHD, also pending before this Court. Case No. CL 126161. In that case, the Belle claims that MRHD breached the parties’ operating agreement—which indisputably was in effect at least until July 2012—by failing to use its “best efforts” to ensure that the Belle remained the exclusive licensee in Woodbury County, and instead engaging in a course of conduct (beginning long before July 2012) to ensure that the Belle *loses its license* to operate Argosy Casino so that MRHD could develop a new casino.

⁵ Evidence the Belle has recently obtained through document subpoenas confirms that the IRGC was under substantial political pressure to avoid taking any actions, such as approving an extension agreement between MRHD and the Belle, that would permit the Belle to continue operating Argosy Casino past the time when the IRGC intended to replace that casino with MRHD’s new land-based casino. For example, on May 19, 2012, just weeks before the IRGC announced that it would open the Woodbury County license for bidding, Lew Weinberg, a Sioux City businessperson who has been involved in gaming, advised Debi Durham, the head of Iowa’s Economic Development Agency and the person who is widely reported as being responsible for securing David Bernstein’s membership on MRHD’s Board, that she and her “political folks

By the time of the next IRGC meeting on July 12, 2012, MRHD and the Belle had both signed an extension of their operating agreement through March 2015. Remarkably, the IRGC refused to approve this fully-executed contract even though it was precisely what the IRGC had publicly asked the Belle and MRHD to agree to for months and, in substance, it simply extended the terms of their previous operating agreement. *See* July 12, 2012 IRGC Meeting Minutes at 3-5 (Sottosanti Aff. Ex. B). On the same day, the IRGC adopted a timetable and procedures for interested parties to submit applications for the new land-based casino. *Id.* at 10-11.

On August 23, 2012, the IRGC again refused to approve the three-year extension agreement, purportedly because MRHD, which had prepared and signed that agreement just weeks earlier, no longer wanted to be bound by it. At the same meeting, the IRGC announced its intention to adopt a timetable to revoke the Belle's license to operate Argosy Casino based on the Belle's alleged lack of an approved operating agreement with MRHD. *See* August 23, 2012 IRGC Meeting Minutes at 3-4 (Sottosanti Aff. Ex. C).

The IRGC's repeated refusals to approve the Belle's contract with MRHD and its decision to open up the Woodbury County zone for a new license left the Belle with no choice but to participate, under protest, in the IRGC's open bidding process in an effort to protect its employees, rights and its investment in Woodbury County. In November 2012, the Belle submitted applications to develop and operate a land-based casino either in Salix or in downtown Sioux City. SCE and MRHD likewise submitted an application for a new land-based casino. A third operator, called Warrior Entertainment, applied as well. Because MRHD had chosen to

need to weigh in and make sure Jeff [Lamberti] stays in place on IRGC and moves into the Chairmanship in June. That is, if you want to see the right outcome in the Sioux City casino dispute." Sottosanti Aff. Ex. G. Mr. Lamberti was, in fact, elevated to the chairmanship of the IRGC in June 2012, and MRHD ultimately obtained the "right outcome" from it.

abandon the Belle and instead team with SCE, the Belle partnered with a different QSO, called Greater Siouxland Improvement Association. On April 18, 2013, the IRGC awarded the Woodbury County license to SCE by a 3-2 vote (with one of the dissenting votes going to the Belle, and the other to Warrior Entertainment).

At the IRGC's most recent meeting on August 15, 2013, the IRGC finally took action on the Belle's application for renewal of its license by summarily rejecting that application. The IRGC provided the Belle with only a few days' notice before this meeting, at which there was no hearing conducted or evidence received. The IRGC's decision was purportedly based solely on the Belle's failure to have "enter[ed] into an operating agreement with a qualified sponsoring organization licensed to conduct gambling games at an approved location." *See* August 15, 2013 IRGC Meeting Tr. at 29 (Sottosanti Aff. Ex. D). At the same meeting, the IRGC stated that the Belle has a "good regulatory record up to this point in the State of Iowa on par with other Iowa operators." *Id.* The IRGC indicated that, in accordance with Iowa law, the Belle would remain licensed and would be able to continue to operate Argosy Casino "while any appeals of the commission's actions are pending." *Id.* at 27.

On August 27, 2013, the IRGC confirmed its non-renewal of the Belle's license in a letter to the general manager of Argosy Casino. *See* Sottosanti Aff. Ex. E. In that letter, the IRGC restated its view that the Belle is not "statutorily eligible" to operate Argosy Casino because it purportedly lacks an approved operating agreement with a QSO, and further stated that the Belle has the right to appeal this decision. On September 4, the Belle filed a written request for reconsideration of the IRGC's August 15 decision, in which the Belle explained, among other things, that the IRGC's purported position that the Belle is required by "statute" to have an operating agreement with a QSO is contrary to law. *See* Sottosanti Aff. Ex. F.

Each step of the way during the IRGC's illegal course of conduct leading to the revocation of the Belle's license, the Belle has taken whatever steps it could to protect its rights. This includes formally requesting that the IRGC reconsider its adverse decisions and then, after the IRGC invariably declined to act on or rejected the Belle's requests for reconsideration, filing petitions for judicial review of those decisions in this Court. The Belle's petitions for judicial review have been consolidated in this case.

SCE's Development of Hard Rock Sioux City. By all accounts, SCE's development of Hard Rock Sioux City has proceeded rapidly since its selection on April 18. On May 23, SCE announced that it had paid the first installment of a \$20 million licensing fee to the IRGC.⁶ On June 6, the IRGC approved more than 30 contracts relating to the development and construction of the Hard Rock casino. The groundbreaking for Hard Rock Sioux City occurred on August 16 and the facility is scheduled to be "under roof" within a few months. According to recent news reports (and as is readily apparent from visiting the site), significant demolition and construction work is underway.⁷ SCE has stated that it intends to open Hard Rock Sioux City by July 2014.

Argument

Under the Iowa Administrative Procedure Act, a court may grant a stay or other interim relief after considering and balancing the following factors: (1) the "extent to which the applicant is likely to prevail when the court finally disposes of the matter"; (2) the "extent to which the applicant will suffer irreparable injury if relief is not granted"; (3) the "extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings"; and

⁶ See http://siouxcityjournal.com/news/local/a1/hard-rock-developer-makes-st-payment-for-iowa-gaming-license/article_7aaca2aa-4f79-5056-887d-12904b1a75bb.html.

⁷ See <http://www.siouxlandnews.com/story/23151820/hard-rock-casino>; see also http://siouxcityjournal.com/news/local/preparation-for-hard-rock-moves-ahead/article_b292be68-6ed4-5340-908d-684998cd5375.html.

(4) the “extent to which the public interest relied on by the agency is sufficient to justify the agency’s action in the circumstances.” Iowa Code § 17A.19(5)(c). A motion for stay does not require a full consideration of the evidence on the merits of the case; “rather it contemplates a prompt decision based on the evidence submitted by the parties on the four statutory factors.” *Ryan v. Iowa Bd. of Nursing*, No. CV 7147, 2008 WL 5786276 (Iowa Dist. Ct., Polk County, July 25, 2008). Because it is a balancing test, § 17A.19(5)(c) does not require the Belle to demonstrate a particular showing for each factor. Indeed, even a minimal showing for one or more factors may suffice. *See Grinnell Coll. v. Osborn*, 751 N.W. 2d 396, 401 (Iowa 2008) (“In other words, more of one factor excuses less of another factor.”).

As discussed below, the Belle has satisfied each factor of the balancing test. A temporary stay of the issuance and effectiveness of the Hard Rock Licenses, and of any other actions by the IRGC taken in furtherance of those licenses, is therefore justified.

I. **THE BELLE IS LIKELY TO PREVAIL IN ITS REQUEST FOR JUDICIAL REVIEW**

The first factor of the stay inquiry is the extent to which the Belle is likely to prevail. *See* I.C. § 17A.19(5)(c)(1). “This factor does not describe the degree of likelihood of prevailing, but only requires the court to consider and balance the extent or range of the likelihood of success.” *Grinnell Coll.*, 751 N.W. 2d at 402. Thus, “the degree of likelihood of success required to be shown to obtain a stay will necessarily vary with the assessment of the other three factors.” *Id.* (citing *Mohammed v. Reno*, 309 F.3d 95, 101 (3d Cir. 2002)). A stay may be granted even when the “likelihood of success is not high,” so long as “the balance of hardships favors” the Belle. *Id.* (quoting *Mohammed*, 309 F.3d at 101).

The Belle will prevail in this proceeding if it demonstrates that it is entitled to judicial relief from the IRGC's challenged actions. Iowa Code § 17A.19(10) mandates that a court "shall" grant relief if it "determines that substantial rights of the person seeking judicial relief have been prejudiced" because the agency action was "in violation of constitutional or statutory authority, in violation of agency rules, made by unlawful procedure, or unreasonable, arbitrary, or capricious." *Iowans For WOI-TV, Inc. v. Bd. of Regents*, 508 N.W. 2d 679, 684-85 (Iowa 1993); Iowa Code § 17A.19(10). Thus, for purposes of this motion, the Belle is likely to prevail if it: (a) identifies one or more bases under § 17A.19(10) that entitle it to relief; and (b) shows that its "substantial rights" have been prejudiced. The Belle can amply make these showings.

A. The IRGC's Actions Implicate Numerous Bases For Judicial Review

The Belle is likely to prevail in showing that it is entitled to judicial relief on a number of grounds, any one of which is sufficient to support the Belle's request for a stay.

1. **The IRGC's grant of the Hard Rock Licenses was illegal.** Iowa law prohibits the IRGC from doing what it did: licensing someone other than the incumbent excursion boat operator to operate a land-based casino in Woodbury County:

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). This statute plainly *forbids* the IRGC from issuing a new license for a *land-based casino* in Woodbury County because Argosy Casino, an *excursion gambling boat casino*, already exists. The statute exists for a common-sense reason: It encourages casino operators to make substantial investments in their facilities knowing they will be protected from

competition from a different mode of casino gaming. In reliance on this protection, the Belle in fact made substantial investments in Argosy Casino and the community for many years.

The IRGC has publicly acknowledged that the Belle's license to operate Argosy Casino continues to be in full force and effect. *See, e.g.*, August 15, 2013 IRGC Meeting Transcript at 29 (Sottosanti Aff. Ex. D). Indeed, under Iowa law, because the Belle has applied for renewal of its license to operate Argosy Casino, its "existing license *does not expire*" until after its application has been "finally determined" by the IRGC following a contested case proceeding (which proceeding has not even been scheduled yet). Iowa Code § 17A.18(2) (emphasis added). Because the IRGC issued licenses for a land-based casino in Woodbury County while the Belle is licensed to operate Argosy Casino, the Belle is likely to prevail in showing that the IRGC's issuance of the Hard Rock Licenses violates § 99F.7(2)(c).

2. *The IRGC has violated the Belle's constitutional rights.* By its conduct beginning in March 2012 and culminating this summer, the IRGC has already *effectively* revoked the Belle's license to operate Argosy Casino by ensuring that Argosy Casino *will be closed* and Hard Rock Sioux City *will replace it*. While the IRGC has recently offered the Belle some contrived "process" before the revocation of its license becomes final, the undisputed facts show that the IRGC's decision to revoke the Belle's license was made long ago, before the IRGC had even offered to give the Belle any "process," let alone provided it.

The IRGC may not, however, revoke the Belle's license with a perfunctory wave of the hand. To the contrary, "[w]here the state confers a license upon an individual to practice a profession, trade, or occupation, such license becomes a valuable personal right which cannot be denied or abridged in any manner except after due notice and a fair and impartial hearing before an unbiased tribunal." *Gilchrist v. Bierring*, 234 Iowa 899, 912 (Iowa 1944) (quotation omitted)

(concluding that license to operate cosmetology school could not be revoked without notice and a hearing). Moreover, where, as here, a licensee has a reasonable expectation of renewal as a result of its investments made in reliance on the continuity of its licenses, and further because license renewals are granted as a matter of course, the due process rights that apply to license revocations apply comparably to license renewals. *See id.* at 914-15 (“The state cannot, by issuing only annual licenses, ingeniously thwart these precious rights.”); *Greater Duluth COACT v. City of Duluth*, 701 F. Supp. 1452, 1456 (D. Minn. 1988) (concluding that a gaming organization had a “reasonable expectation of the continuing receipt of the benefit conferred by [its] license,” thus entitling the licensee to due process rights in the renewal of its license, “as a result of [the licensee’s] investment and because the licenses are generally renewed ‘as a matter of course’” (quotation omitted)); *see also Bell v. Burson*, 402 U.S. 535, 539 (1971) (“Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood . . . In such cases the licenses are not to be taken away without that procedural due process required” by the Constitution).

Accordingly, the IRGC’s *de facto* revocation of the Belle’s license without due process has violated the Belle’s constitutional rights, and the Belle is likely to prevail on this aspect of its judicial review petition. *See Greater Duluth COACT*, 701 F. Supp. at 1458 (concluding that licensee had “demonstrated a likelihood of success on the merits [of its] due process claim” where it had shown that its gaming license had been non-renewed without due process).

Further, unless the Hard Rock Licenses are stayed, the Belle is assured of *never* receiving fair process from the IRGC before Argosy Casino is ultimately closed. “A fundamental requirement of due process” is that it be provided “*at a meaningful time and in a meaningful manner.*” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added). Here, any

“process” the Belle receives could be meaningful only if it affords the Belle with a full and fair opportunity to address any concerns the IRGC may have about the status of the Belle’s license and to demonstrate that its license should not be revoked. As long as the Hard Rock Licenses remain in effect, however, the revocation of the Belle’s license is preordained, and any “process” the Belle receives will be a sham. In these circumstances, the only way to ensure that the Belle will receive meaningful process is to “wipe[] the slate clean” by staying the Hard Rock Licenses as if they had never been issued, until the status of the Belle’s license is finally decided. *See id.* (where plaintiff showed that his due process rights had been violated because he was not given notice of adoption proceeding, the trial court should have “set aside the [adoption] decree and consider[ed] the case anew” before providing the plaintiff with process, because only that “would have restored the [plaintiff] to the position he would have occupied had due process of law been accorded to him in the first place”).

3. *The purported basis for the IRGC’s revocation of the Belle’s license is pre-textual and unlawful.* The stated basis for the IRGC’s revocation of the Belle’s license is that the Belle is “statutorily ineligible” to operate a casino in Iowa because it lacks an “operating agreement” with a QSO. However, as the Belle explained in detail in its recent letter to the IRGC (Sottosanti Aff. Ex. F), there is no “statute” or rule that requires the Belle to have an operating agreement with a QSO. And, even if there were such a statute, the only reason why the Belle would not be compliant with it is because the IRGC has refused to permit the Belle to have an approved operating agreement with either MRHD or a different QSO. The IRGC appears to have invented this “statutory requirement” and then prevented the Belle from complying with it to provide it with a pretext for revoking the Belle’s license—which it knows it cannot otherwise do because of the Belle’s exemplary 20-year operating history and its due

process rights in the renewal of its license. The Commission's decision to revoke the Belle's license on the sole grounds that the Belle is allegedly not compliant with a "statute" that does not exist violates a number of provisions of Iowa law and provides further grounds for judicial relief. *See, e.g.,* Iowa Code §§ 17A.19(10)(a)-(n)(requiring reversal of agency decisions that are unconstitutional, arbitrary and capricious, or inconsistent with the law).

4. **The IRGC's selection of the SCE/MRHD bid violated Iowa law.** The Belle has detailed in its petitions for judicial review additional grounds for review and reversal of the IRGC's challenged actions, including that (i) during the application process, the IRGC unfairly allowed SCE to circumvent the IRGC's established application procedures by completely restructuring material aspects of its application, including its financing proposal and composition, long after the purportedly inviolable and express deadline for doing so; (ii) the IRGC selected SCE over the two competing applicants even though SCE's proposal included a tax-increment financing arrangement with substantial detrimental effects on local taxpayers; and (iii) in selecting the SCE/MRHD application, the IRGC ignored substantial concerns about the suitability of various individuals associated with that application, including David Bernstein's clear violations of the Iowa gaming law that prohibits unlicensed individuals from acting on behalf of a licensed entity. *See* Petition for Judicial Review, May 17, 2013. The Belle is confident that discovery will further reveal that the IRGC's actions leading to its displacement of the Belle were motivated by improper considerations, and were unduly influenced by MRHD's politically-powerful leaders, and not grounded in rational decision-making.

B. The IRGC's Actions Have Harmed The Belle's "Substantial Rights"

There can be no question that the Belle has been harmed by the IRGC's actions. The Belle has invested more than \$100 million in Argosy Casino with the justifiable expectation that

its license would be renewed each year so long as it complied with the applicable laws and regulations, which it indisputably has. If the IRGC succeeds in displacing the Belle from Sioux City, the Belle will lose the full value of its investment in Argosy Casino (more than \$100 million in capital, with a sale value of more than \$150 million), as well as all the goodwill it has generated during two decades of operation, with no consideration to its due process rights.

Indeed, the threatened revocation of the Belle's license at the whim of the IRGC already has caused considerable distress to the Belle, including substantial losses in revenue (that are disproportionate to revenue losses at other Iowa casinos), the loss of key employees and the inability to replace them with qualified people because of the specter of closure, and a substantial loss in morale among Argosy Casino's employees and customers. The Belle also stands to incur harm to its corporate reputation and to that of its parent company, Penn National Gaming ("PNG") – which routinely applies for new licenses (most recently in Missouri and Massachusetts). Both the Belle and PNG operate in the highly-regulated gaming industry in which nothing is as sacrosanct as having a flawless operating history. Indeed, PNG already has been repeatedly questioned by a variety of state and federal regulatory agencies regarding the status of the Belle's license in Sioux City. The Belle's and PNG's substantial rights are clearly being prejudiced by the IRGC's unlawful course of conduct at issue in this judicial review proceeding.

II. **THE BELLE WILL SUFFER IRREPARABLE HARM WITHOUT A STAY**

Absent a stay, the Belle will be irreparably harmed in several respects.

A. **The IRGC's Violations of Law and of the Belle's Constitutional Rights
Constitute Irreparable Harm to the Belle**

The IRGC's grant of the Hard Rock Licenses plainly violates Iowa Code § 99F.7(2)(c). Where the government "action to be enjoined is unlawful, the unlawful act constitutes *per se* 'irreparable harm' for purposes of the preliminary injunction analysis." *Short On Cash.Net of New Castle, Inc. v. Dep't of Fin. Inst.*, 811 N.E. 2d 819, 823-825 (Ind. Ct. App. 2004) (upholding trial court's grant of preliminary injunction on the grounds that the defendant agency's issuance of consumer loans in violation of Indiana's usury laws constituted *per se* irreparable harm); *see also, e.g., Pennsylvania v. TAP Pharmaceutical Prods., Inc.*, 36 A.3d 1197, 1221 (Pa. Cmwlth. 2001) (noting that whenever a violation of a statute is found, such violation constitutes irreparable harm *per se*, and injunctive relief is appropriate).

Additionally, the IRGC's *de facto* revocation of the Belle's license without due process, and its actions that ensure the Belle will never receive due process so long as the Hard Rock Licenses remain in place, have deprived the Belle of its constitutional rights. It is well-established that when a government agency violates the constitutional rights of a citizen, the citizen has been irreparably harmed for purposes of injunctive relief. *See, e.g., Hughbanks v. Dooley*, 788 F. Supp. 2d 988, 998 (D.S.D. 2011) (plaintiff's "allegation that his due process rights are being violated by the current notice policy is sufficient to establish a threat of irreparable harm"); *KindHearts for Charitable Humanitarian Development, Inc. v. Geithner*, 676 F. Supp. 2d 649, 653 (N.D. Ohio 2009) (a "plaintiff demonstrates irreparable harm if the [plaintiff's] claim is based upon a violation of the plaintiff's constitutional rights"). Thus, "when reviewing a motion for a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, *a finding of irreparable injury is mandated.*" *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001), cert. denied, 534 U.S. 951, 122 S. Ct. 347 (2001) (citing *Elrod v.*

Burns, 427 U.S. 347, 373, 96 S. Ct. 2673 (1976) (emphasis added).⁸ Accordingly, the IRGC's unlawful and unconstitutional acts, in themselves, support a finding of irreparable harm sufficient to justify the issuance of a temporary stay.

B. Damage to the Belle's Business, Reputation and Goodwill Constitutes Irreparable Harm

The substantial and permanent losses the Belle will suffer if its license is revoked without due process further justify a finding of irreparable harm. Under Chapter 17A, a party's extreme business loss is grounds for irreparable harm. *See Grinnell Coll.*, 751 N.W. 2d at 402-403 (holding that "extreme circumstances of financial loss, even if recoverable could amount to irreparable injury"). Here, the Belle already has suffered substantial losses to its business just based on the IRGC's announced intention to revoke the Belle's license. The actual loss of the Belle's license and ability to operate Argosy Casino would surely result in more than an extreme loss of its business; it would be a *total and irreversible loss*. In *R & V, Ltd. v. Iowa Dept. of Commerce, Alcoholic Beverages Div.*, the Iowa court of appeals found that a 45-day suspension of a liquor-store owner's license amounted to sufficient irreparable harm to support the district court's decision to enter a stay of the agency action on the grounds that the license suspension

⁸ *See also, e.g., Small Hearts Daycare, II, LLC v. Quick*, 2010 WL 427766, *1-2 (E.D. Mo. Feb. 1, 2010) (granting TRO against non-renewal of plaintiffs' license to operate daycare: "Plaintiffs have yet to have a hearing, and have yet to have a determination of any shortcomings with respect to the daycare. The license has expired and they have been told they cannot operate the daycare. Clearly, these actions have deprived Plaintiffs of their property without due process, without an opportunity to be heard. A procedure which allows a hearing, but implements the penalties prior to the hearing is a farce and a nullity. This factor weighs heavily in favor of issuance."); *Mallen v. FDIC*, 667 F. Supp. 652, 657 (N.D. Iowa 1987), *overruled on other grounds*, 486 U.S. 230 (granting preliminary injunction and finding that "there is a threat of irreparable harm based on the threatened violation of the fundamental constitutional right to procedural due process"); *Jessen v. Village of Lyndon Station*, 519 F. Supp. 1183, 1189 (W.D. Wis. 1981) (granting preliminary injunction against termination of the plaintiff police chief and finding that irreparable harm was shown because the plaintiff's due process rights would be violated if he were terminated without pre-termination hearing).

would “act to close the business forever and damage would be irreparable.” 470 N.W. 2d 59, 62-63 (Iowa App. 1981). The IRGC’s effective revocation of the Belle’s license to operate Argosy Casino is no different in that it will cause Argosy Casino to close—though of course, the effects on the community of the closure of Argosy Casino, with its 325 employees, are likely to be far more substantial than the effects of the liquor store closure at issue in the *R&V* case.

The IRGC’s actions also have threatened severe and irreversible damage to the Belle’s goodwill and reputation, which the Belle has developed over the past twenty years. These losses too are grounds for finding irreparable harm sufficient to support a stay. *See, e.g., Medicine Shoppe Intern., Inc. v. S.B.S. Pill Dr., Inc.*, 336 F.3d 801, 804 (8th Cir. 2003) (“Loss of intangible assets such as reputation and goodwill can constitute irreparable injury.”).

Moreover, absent a stay, the losses the Belle stands to suffer may never be redressible. The Belle does not assert a claim for monetary relief in this judicial review proceeding under Chapter 17A. Thus, even to the extent the Belle’s losses are considered to be monetary losses, those losses may not be compensable through monetary damages at the conclusion of the case. Rather, the only potentially effective relief will be injunctive relief requiring the IRGC to revoke the Hard Rock Licenses and subsequently renew the Belle’s license. At the conclusion of the case, however, the Belle may be effectively precluded from obtaining such injunctive relief by the fact that, by then, Hard Rock Sioux City may be fully constructed and possibly even operational. At that point, with a nearly-completed facility to tout, the IRGC, SCE, MRHD and other affected parties surely will vigorously argue that equitable considerations such as harm to the “public” skew so sharply against any relief that would require the closure of Hard Rock Sioux City that such relief should not be issued, thus leaving the Belle with no remedy at all.

The Court should prevent the IRGC, SCE and MRHD from “running out the clock” on any potentially meaningful relief to the Belle by staying the Hard Rock Licenses now.⁹

III. A STAY WILL NOT PREJUDICE OR HARM THE IRGC IN ANY MANNER

The third factor in the stay analysis “requires the court to balance the extent that a stay would substantially harm . . . another party to the proceeding.” *Grinnell Coll.*, 751 N.W. 2d at 403. There is simply no way in which the IRGC will be substantially harmed by an order that temporarily maintains the status quo during the pendency of this proceeding. If a stay is granted, the Belle will continue to operate Argosy Casino just as it has for the past two decades, and, in the process, will continue to generate substantial revenues for the State and for the community. The Belle also will continue to provide gaming offerings and other related services for the Sioux City community and will do so consistent with its operating history that has been unblemished for two decades. The only difference is that the Belle will do so without the albatross hanging over it of the inevitable revocation of its license and closure of its business. Certainly this difference will result in no harm to the IRGC. This factor therefore favors a stay.

⁹ The Belle recognizes that in its pending lawsuit against MRHD, this Court previously concluded that the losses the Belle would suffer from the loss of its license did not support equitable relief under the Iowa R. Civ. P. 1.1502. *See* CL 126161, Ruling on Motion to Intervene and Motion for Temporary Injunction, October 29, 2012 (“MRHD Order”), at 10-11. That result is not controlling here. *First*, unlike in the Belle’s breach of contract action against MRHD, the IRGC’s violations of Iowa statutes and of the Belle’s constitutional rights constitute *per se* irreparable harm. *Second*, the Belle’s earlier request was for temporary relief under the Iowa Rules of Civil Procedure, not a stay of agency action under § 17A.19(5)(c). As noted above, the standard for stay requests under Chapter 17A is a more flexible balancing test pursuant to which the Belle need not make any requisite minimal showing of irreparable harm. *Third*, this Court concluded in the MRHD lawsuit that a temporary injunction “is not mandated where adequate redress can be afforded by a monetary award, even [if] the [harm] is clearly shown to exist” (MRHD Order at 12); here, the Belle has no claim for monetary relief from the IRGC. *Fourth*, the irreparable harm the Belle stands to suffer here is far more imminent than in the MRHD case now that the Hard Rock Licenses have actually issued and the construction of Hard Rock Sioux City is underway. Accordingly, the facts and circumstances here compel a different conclusion regarding the Belle’s irreparable harm than in the MRHD case.

IV. **A STAY WOULD SERVE THE PUBLIC'S INTEREST**

The final consideration in the balancing test is the “extent to which the public interest relied on by the agency is sufficient to justify the agency’s action in the circumstances.” Iowa Code § 17A.19(5)(c). This factor helps distinguish stays involving agency action from stays or injunctions involving purely private parties. *Rochester-Genesee Reg’l Transp. Auth. v. Bridgid Hynes-Cherin*, 506 F. Supp. 2d 207, 212-213 (W.D.N.Y. 2007); *Grinnell Coll.*, 751 N.W. 2d at 403. Under this factor, the interest of private litigants in agency action may need to ultimately yield to the greater public interest. *Id.* at 403.

This consideration likewise favors a stay. To be sure, the public has an interest in ensuring that the public bidding process that led to the displacement of the Belle’s long-standing license, the loss of hundreds of jobs and the selection of a significant new community development was fair and impartial. Nor would the Sioux City community be harmed in any way by an order that permits Argosy Casino to operate through the duration of this judicial review proceeding as it has for more than twenty years, without having to endure the spectacle of the construction of the casino that will ultimately replace it and suffer the related losses to its employees’ and customers’ morale and to its business. In fact, the community could *benefit* from a stay by ensuring that businesses are not disrupted (or even demolished) unnecessarily to make way for a casino development that may ultimately turn out to be unlawful. A stay also would serve the interests of Argosy Casino’s more than 325 employees, many of whom have worked at Argosy Casino since its inception and are approaching retirement age, by ensuring that their jobs will not be taken away from them until the legality of the actions that led to that event is finally decided. A stay would further ensure the continuity of the substantial benefits, both economic and otherwise, the Belle has conferred on the Sioux City community for decades.

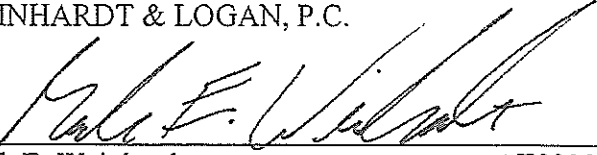
Nor will a temporary stay cause harm to the Sioux City community. Indeed, if the Belle ultimately obtains the relief it seeks, then such a delay will have *prevented* substantial harm to certain non-parties, including SCE and entities in the Sioux City community affected by SCE's development of Hard Rock Sioux City. In that event, SCE will have avoided the unnecessary expense associated with the development of the casino, just as others in the Sioux City community will have avoided the disruption from that development. A stay also would cause no harm to persons who might prefer to patronize Hard Rock Sioux City by requiring them to wait until this judicial review proceeding is complete before they know for certain whether that casino will be built, and certainly no harm that outweighs the grave harms that would inure to the Belle in the absence of a stay. Accordingly, the public interest supports a stay.

CONCLUSION

For the foregoing reasons, the Belle respectfully requests that the Court enter an order staying the issuance and effectiveness of the Hard Rock Licenses and of any actions taken by the IRGC in furtherance of those licenses, including the IRGC's approval of contracts between SCE and third parties relating to the construction and development of Hard Rock Sioux City, for the duration of this judicial review proceeding.

Respectfully submitted,

WEINHARDT & LOGAN, P.C.

By 

Mark E. Weinhardt

AT0008280

Holly M. Logan

AT0004710

Danielle M. Shelton

AT0007184

Todd M. Lantz

AT001016

2600 Grand Avenue, Suite 450

Des Moines, IA 50312

(515) 244-3100

mweinhardt@weinhardtlogan.com

hlogan@weinhardtlogan.com

dshelton@weinhardtlogan.com

tlantz@weinhardtlogan.com

OF COUNSEL:

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

Christopher Tayback

Daniel Posner

865 S. Figueroa Street, 10th Floor

Los Angeles, CA 90017

Telephone: (213) 443-3000

E-mail: christayback@quinnemanuel.com

danposner@quinnemanuel.com

ATTORNEYS FOR PETITIONER BELLE OF SIOUX
CITY, L.P.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on 9/16, 2013 by

- | | |
|---|---|
| ☐ U.S. Mail | ☐ FAX |
| ☐ Hand Delivered | ☒ Electronic Mail |
| ☐ FedEx/ Overnight Carrier | ☒ Other (EDMS) |

Jeffrey C. Peterzalek	Iowa Racing & Gaming Commission
John Lundstrom	Brian Ohorilko, Administrator
Assistant Attorney General	Commission
Hoover Building, Second Floor	717 E. Court Avenue, Suite B
Des Moines, IA 50319	Des Moines, IA 50309
jpeterz@ag.state.ia.us	
jlundqui@ag.state.ia.us	

Signature: _____

JBaldus

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BELLE OF SIOUX CITY, L.P. Petitioner, v. IOWA RACING AND GAMING COMMISSION, Defendant-Respondent	Case No. CV9254 Case No. CV9316 Case No. CV9383 Case No. CVCV 045760 AFFIDAVIT OF LANCE GEORGE
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Lance George, being duly sworn under oath, hereby states as follows:

1. I am the General Manager of the Argosy-Sioux City riverboat casino ("Argosy Casino") in Sioux City, Iowa, and have been General Manager since August 29, 2011.
2. The Belle's operation of Argosy Casino offers significant benefits to the State of Iowa, Sioux City and Woodbury County which would be lost if the Belle were to lose its license to operate Argosy Casino. Argosy Casino employs approximately 310 people, the majority of whom are Woodbury County, Iowa residents. Many of Argosy Casino's employees have worked here since at or around the time the facility opened more than twenty years ago and are nearing retirement age. Almost 90% of the Argosy Casino's rated revenue (meaning revenue deriving from customers who use an Argosy Casino customer loyalty card) comes from patrons who live within 90 minutes of the Argosy Casino.
3. Through the disbursements of portions of the revenues it generates, Argosy Casino has generated millions of dollars for Woodbury County non-profit organizations, and it has contributed to significant economic development, including by investing in capital improvements to its gaming facility. Over the years, more than \$110 million of the Belle's gaming revenues have been paid in taxes to local governments and the State of Iowa as well as

directly from the Belle and Argosy Casino, and more than \$14 million have been distributed to local community and service organizations through our distributions to MRHD as well as directly from the Belle and Argosy Casino.

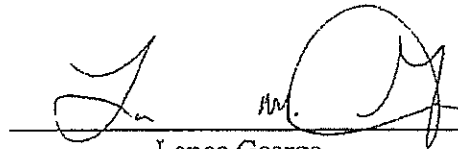
4. For example, in the year 2011, the Belle paid more than \$575,000 to Sioux City and Woodbury County. The Belle also paid local property taxes and city funds in excess of \$1.99 million. Moreover, pursuant to their Management and Operation Agreement (the "Agreement"), the Belle distributed three percent of its monthly gaming revenues to MRHD in 2011, totaling to more than \$1.8 million, most of which MRHD further distributed to community beneficiaries. The Belle also gave nearly \$150,000 in direct contributions to local charitable organizations, in addition to the money distributed through MRHD. These numbers add up to over \$4.5 million of local giving and taxes in 2011 alone. In addition, in 2011, the Argosy Casino paid more than \$13 million in taxes and fees to the State of Iowa.

5. Since the Iowa Racing and Gaming Commission's August 2012 announcement that the Belle's gaming license would not be renewed, Argosy Casino has suffered substantial losses of business and revenues that have exceeded losses suffered by other gaming facilities in Iowa. In August 2013, the Belle's revenues decreased more than 11% from its levels in August 2012, while Iowa casinos overall decreased only about 1%.

6. The IRGC's threatened revocation of the Belle's license to operate Argosy Casino also has had material adverse effects on the Belle's ability to conduct its business. The Belle has lost several employees over the past year, including management-level employees. In leaving, several of these employees have expressed concern about the stability of their jobs and their need to locate new employment before the inevitable closing of Argosy Casino. The Belle has also had difficulty finding qualified replacements for the employees who have left.

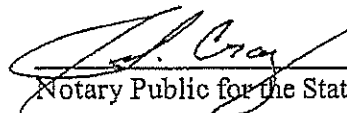
7. In addition to suffering tangible losses in employees, customers and revenues, the threatened closure of Argosy Casino has caused less tangible, yet equally damaging, harm to the morale of the customers and employees at Argosy Casino and to Argosy Casino's reputation and goodwill in the community. Employee morale has been low over the past year as the IRGC has continued to take actions that would inevitably lead to the closure of Argosy Casino. Obviously, the threat of the closure of Argosy Casino is terribly concerning to its hundreds of employees who rely on their employment at Argosy Casino to support their families. The employees of Argosy Casino also have been required to respond to repeated concerns raised by our customers about whether we will be able to continue operating into the future, and whether Argosy Casino has the community's best interests in mind. Based on these concerns raised by our customers, it is apparent that the uncertainty of Argosy Casino's future is well-known by the public, and that Argosy Casino's reputation and goodwill in the community have been diminished by the recent turmoil surrounding the Argosy's right to continue its operations.

Further affiant saith not.


Lance George

Subscribed and sworn to before me this 9-13-2013.




Notary Public for the State of Iowa

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BELLE OF SIOUX CITY, L.P. Petitioner, v. IOWA RACING AND GAMING COMMISSION, Defendant-Respondent	Case No. CV9254 Case No. CV9316 Case No. CV9383 Case No. CVCV 045760 AFFIDAVIT OF CARL SOTTOSANTI
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COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF BERKS)

Carl Sottosanti, being duly sworn under oath, hereby states as follows:

1. I am the Vice-President and Deputy General Counsel of Penn National Gaming, Inc. ("PNG"). PNG is the ultimate corporate parent of the Belle of Sioux City, L.P. ("the Belle"), which is the operator of Argosy-Sioux City riverboat casino ("Argosy Casino") in Sioux City, Iowa.

2. In my capacity as Vice-President and Deputy General Counsel of PNG, I periodically provide legal services to the Belle. I also have, on occasion, represented the Belle in its dealings with the Missouri River Historical District, Inc. ("MRHD"), the Iowa Racing and Gaming Commission (the "IRGC"), and other third parties with which the Belle interacts in the course of operating Argosy Casino. In that capacity, I am knowledgeable of the history of the Belle's operations in Iowa and the facts set forth herein.

3. On or about July 6, 1992, the IRGC licensed MRHD and non-party Sioux City Riverboat Corp. to operate gambling games on an excursion gambling boat at 100 Larsen Park

Road in Sioux City, Iowa, where Argosy Casino is located. Subsequently, the Belle, which was then a subsidiary of non-party Argosy Gaming Company, assumed all of Sioux City Riverboat Corp.'s rights and obligations under the Agreement as of that time.

4. On November 4, 1994, the IRGC licensed the Belle to conduct gambling games at Argosy Casino. The Belle began operating the Argosy Casino on December 1, 1994. The Belle has operated Argosy Casino continuously from December 1, 1994 through the present time, pursuant to licenses renewed annually by the IRGC without incident.

5. The Belle has invested substantial resources and time in ensuring the continuity of lawful gaming in Woodbury County and in enhancing and improving the casino facility. In 2004, the Belle replaced the existing vessel on which it conducts its gaming operations with a new and substantially-upgraded vessel, at a cost of more than \$17 million. In 2005, PNG acquired the Argosy Gaming Company's assets, including the Belle. Since then, the Belle has invested more than \$13 million in capital improvements to the casino. The Belle has invested more than \$100 million in the gaming facility. Moreover, if the Belle had been sold before this controversy arose, the sale price would have been approximately \$150 million (six to eight times EBITDA is a typical sales multiple in the gaming industry).

6. Throughout the Belle's operation of Argosy Casino, MRHD has served as the Belle's "qualified sponsoring organization" ("QSO") under Iowa law. To my knowledge, MRHD has no business operations, employees, or offices, and has never invested in or participated in the operations of Argosy Casino in any manner. MRHD essentially functions as a source of disbursement for the portion of the Belle's revenues that are distributed to charities and does not have any investment at risk.

7. On about December 27, 2011, in anticipation of the April 1, 2012 expiration of the Belle's license to operate the Argosy Casino, the Belle and MRHD filed an application for continuation of their licenses for the excursion season from April 1, 2012 to March 31, 2013. At that time, MRHD and the Belle were in the process of negotiating an extension of the operating agreement that had governed their respective rights and obligations with respect to the operation of Argosy Casino since the onset of their relationship. The operating agreement was set to expire on July 6, 2012.

8. On March 8, 2012, in light of the Belle's and MRHD's continued negotiations over an extension of their operating agreement, the IRGC renewed the parties' licenses only through June 7, 2012. This was the first time in the Belle's operating history that the IRGC has declined to renew the Belle's license for a full-year term.

9. At its June 7, 2012 meeting, representatives of the Belle notified the IRGC that the Belle and MRHD were continuing to negotiate an extension of their operating agreement. Nevertheless, the IRGC voted to begin accepting applications from gaming operators and QSOs for the future development and operation of a new land-based casino to be built in Woodbury County. Attached as Exhibit A is a true and correct copy of relevant portions of the minutes of the IRGC's June 7, 2012 meeting.

10. At the next IRGC meeting on July 12, 2012, the Belle and MRHD presented the IRGC with a fully-executed agreement to extend their operating agreement through March 2015. The IRGC declined to approve that agreement. Instead, the IRGC announced its plan to open the license for bidding by setting November 1, 2012 as the deadline for applications for the Woodbury County land-based gaming license. Attached as Exhibit B is a true and correct copy of relevant portions of the minutes of the IRGC's July 12, 2012 meeting.

11. At its next meeting on August 23, 2012, the IRGC again refused to approve the Extension Agreement, purportedly on the grounds that MRHD had disavowed the validity of the fully-executed Extension Agreement. At the same meeting, the IRGC announced its intent to adopt a timetable to revoke the Belle's license to operate the Argosy Casino based on the Belle's lack of an approved operating agreement with a QSO. Attached as Exhibit C is a true and correct copy of relevant portions of the minutes of the IRGC's August 23, 2012 meeting.

12. The Belle participated in the IRGC's open bidding process under protest in an effort to protect its rights and its investment in Woodbury County. In November 2012, the Belle submitted applications to develop and operate a land-based casino either in Salix or in downtown Sioux City. Because MRHD had abandoned the Belle and chosen to team with SCE to submit an application, the Belle partnered with a different QSO, Greater Siouxland Improvement Association, to submit its applications. SCE, a newly-formed entity controlled by Warner Gaming, partnered with MRHD to submit an application for a new land-based casino. Warrior Entertainment, a third operator, submitted an application as well.

13. In December 2012, the Belle submitted another application to renew its license to operate Argosy Casino for another year. The Belle gave the IRGC the option of renewing the Belle's license with either MRHD or Greater Siouxland Improvement Association. The IRGC took no action on the Belle's request.

14. On April 18, 2013, the IRGC awarded the Woodbury County license to SCE by a 3-2 vote. One of the dissenting votes went to the Belle, and the other to Warrior Entertainment.

15. At its most recent meeting on August 15, 2013, the IRGC voted to reject the Belle's renewal application. The IRGC provided the Belle with only a few days' notice before this meeting, and there was no hearing conducted or evidence received. Attached as Exhibit D is

a true and correct copy of relevant portions of the transcript of the IRGC's August 15, 2013 meeting.

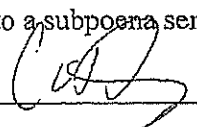
16. On August 27, 2013, the IRGC confirmed its non-renewal of the Belle's license in a letter to Lance George, the general manager of Argosy Casino. A true and correct copy of the IRGC's August 27 letter is attached as Exhibit E.

17. On September 4, 2013, the Belle sent to the IRGC a written request for reconsideration of the IRGC's August 15 decision. A true and correct copy of the Belle's request for reconsideration is attached as Exhibit F.

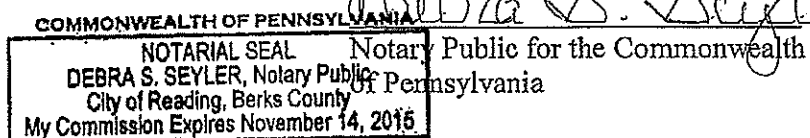
18. Both the Belle and PNG operate in the highly-regulated gaming industry. In the course of my job responsibilities for PNG and the Belle, my colleagues and I have been contacted on multiple occasions by representatives of various state and federal regulatory agencies concerning the status of the Belle's license to operate Argosy Casino. In the gaming industry, a company's loss of a license in one jurisdiction may have material adverse affects on its ability to obtain licensure in other jurisdictions and on the company's reputation. PNG presently owns 28 gaming facilities nationwide, in 18 jurisdictions. Until now, no gaming facility owned by PNG has ever had its license revoked.

19. Attached as Exhibit G is a true and correct copy of a document produced by the Iowa Economic Development Agency in response to a subpoena served by the Belle.

Further affiant saith not.


Carl Sottosanti

Subscribed and sworn to before me this 9/13/13.



**IOWA RACING AND GAMING COMMISSION
MINUTES
JUNE 7, 2012**

The Iowa Racing & Gaming Commission (IRGC) met on Thursday, June 7, 2012, at Stoney Creek Inn and Conference Center in Johnston, Iowa. Commission members present were Jeff Lamberti, Vice Chair; and members Carl Heinrich, Kris Kramer, Dolores Mertz and Greg Seyfer.

Vice Chair Lamberti called the meeting to order at 8:30 AM and welcomed the two newest members to the Commission, Kris Kramer and Dolores Mertz.

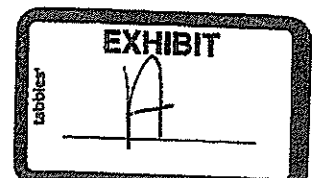
Vice Chair Lamberti moved to the approval of the agenda. Commissioner Heinrich moved to approve the agenda as presented. Commissioner Seyfer seconded the motion, which carried unanimously.

Vice Chair Lamberti moved to the approval of the minutes from the April 19, 2012 Commission meeting. Commissioner Seyfer moved to approve the minutes as submitted. Commissioner Kramer seconded the motion, which carried unanimously.

Vice Chair Lamberti called on Brian Ohorilko, Administrator of IRGC, for announcements. Mr. Ohorilko provided the following information regarding upcoming Commission meetings:

- July 12, 2012 – Prairie Meadows Racetrack & Casino, Altoona, IA (Submission due by June 27, 2012)
- August 23, 2012 – Riverside Casino & Golf Resort, Riverside, IA (Submissions due by August 9, 2012)
- September 27, 2012 – Hotel Julien, Dubuque, IA (Submissions due by September 13, 2012)
- October, 2012 – No Commission Meeting

Vice Chair Lamberti called on Horseshoe Casino-Bluffs Run Greyhound Park/Iowa Greyhound Association (IGA) regarding the audit report of the escrow account for calendar year 2011. Jim Quilty, legal counsel for the IGA, noted that the escrow account was created as a result of an Arbitration Decision between the IGA and Bluffs Run Greyhound Park. He noted that arbitration occurs on an annual basis if the parties cannot come to an agreement regarding the amount of purses. Mr. Quilty stated that the fund was created in the mid-1990's and is used to supplement purses, and interest from the fund is used to promote greyhound racing and other expenses as approved by the Commission.



IRGC Commission Minutes
June 7, 2012
Page 3

Vice Chair Lamberti called on Penn National Gaming (Penn) and Missouri River Historical Development (MRHD). He noted that while the agenda noted a request for the approval of an Operating Agreement and an item pertaining to the license, the issue is much more complicated than that. In order to give everyone an opportunity to address the Commission and maintain some kind of structure, he called on Penn for their remarks.

Carl Sottosanti, VP of Legal Affairs for Penn, advised that Steve Snyder, Sr. VP of Development, Karen Bailey, Director of Public Affairs; Lance George, General Manager of the Sioux City facility; and Lorraine May, outside counsel, were also present. He thanked the Commission members for their patience in working through this matter, which he indicated has been more difficult than he imagined. Mr. Sottosanti stated that the Commission directed Penn to focus on two particular matters: 1) work out a business relationship and resolution with MRHD; and 2) to come back to the Commission with some alternatives for consideration. He advised that Penn heard the Commission loud and clear; and believes that they have left no stone unturned on either front. Mr. Sottosanti stated that Penn believes MRHD has done everything within their power to replace them and disregard their exclusivity commitment rather than work with them.

Mr. Sottosanti addressed the presentations at the March meeting, and indicated that some of the parties in attendance today might become quite animated. He stated that Penn would not participate in a public spectacle or tawdry debate; that they have too much respect for the process, the Commission and their constituents to do so.

Mr. Sottosanti advised that Penn has spent hundreds of thousands of dollars exploring a downtown site that was suggested to them by both MRHD and the city. He further advised that a significant amount of time was spent putting together Memorandums of Understanding (MOUs) for both the city and MRHD, and then answering questions about the MOUs. Mr. Sottosanti stated that Penn believes the MOUs demonstrated that MRHD's aggregate dollars would increase by up to 30%; that the city would be made whole; and that the MOU would benefit the county and the schools as a result of new property revenue. He noted that both the city and MRHD reluctantly told the Commission at the April meeting that the downtown site would work; however, Penn received a letter advising that the site was no longer available. Mr. Sottosanti stated that Penn, heeding the direction of the Commission and left without a site, suggested mediation to the city and MRHD; and proposed that Jack Ketterer, former Administrator of the Commission, serve as the mediator. Penn felt Mr. Ketterer would be an expert in the matter and that his integrity was beyond reproach. He stated that both parties rejected the mediation offer out of hand; again demonstrating to Penn MRHD's desire to replace them rather than work things out. Mr. Sottosanti stated that after MRHD was left with no other alternative after their recent legal wrangling failed; they offered Penn a 2½ year extension. He indicated that offer is misleading, noting that Penn promptly responded to MRHD and advised that without a dismissal of the lawsuit that MRHD has pending against Penn, that Penn could not see a partnership between the parties nor a stable base on which to move forward with any future investment. Mr. Sottosanti advised that Penn is still awaiting a response. He stated that without a dismissal of the lawsuit, Penn finds

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Page 4

themselves with a partner who is not committed to them. He stated that if all of the facts are reviewed objectively, MRHD had a plan to replace Penn and were frustrated that Penn did not capitulate and walk away from a \$100 million investment and has stopped at nothing to wriggle free of their contractual obligations since then.

Mr. Sottosanti stated Penn remains focused on their employees, their jobs and their families. He stated that Penn is the only answer to continuing the gaming operation in Sioux City. He advised that they are also focused on a near-term land-based development. Mr. Sottosanti, on behalf of Penn, requested that the Commission extend the license from the June date to the July date; and then renew their license but with a new qualified sponsoring organization (qso), Friends of Woodbury County, who shares their vision. He advised that their background information is ready to be submitted to the Division of Criminal Investigation; and that further details are ready to be reviewed by the Commission members and staff pending a license. Mr. Sottosanti stated that the new qso would not hurt the community; that the aggregate dollars would be at least the same or greater than what is currently provided to the existing qso. He turned the floor over to Mr. Snyder to discuss the proposed development.

Mr. Snyder advised that Penn had worked for 6-7 months developing a plan to build a new 110,000 square foot entertainment facility in downtown Sioux City that would be accompanied by a 1,500-stall parking ramp. It would include a sports bar, entertainment venue and room for up to 900 slot machines, 20 table games and a small poker room. He reiterated Mr. Sottosanti's comments that Penn has expended hundreds of thousands of dollars in resources in getting design work done in trying to plan for the downtown site; and then receiving the letter on April 27th indicating the site was no longer available. Mr. Snyder stated that Penn remains committed to investing in a new land-based facility in downtown Sioux City that will extend the current employment and increase the number of individuals who will have an opportunity to work at the facility by adding additional venues. He stated that Penn looks forward to a solid partnership with whoever is willing to accept their \$100 million investment to complete that facility; and hopes that it will be in Sioux City and be done relatively quickly. He advised that at this point in time, Penn has no clear guidance, and feels they are back to square zero. Mr. Snyder requested the Commission's support in facilitating an interim step that would allow them to build the facility in downtown Sioux City, extend employment and eliminate the cloud of uncertainty that hangs over the gaming operation – not just for 2½ years, but for a good long time to come. Mr. Snyder indicated that he would be happy to answer any questions.

Vice Chair Lamberti stated that the Commission would hear from MRHD first and then ask any questions that they might have.

Mark Monson, President of MRHD, advised that Dave Bernstein, MRHD member; and Curt Beason, legal counsel, were also present. He thanked the Commission for their time. Mr. Monson stated that given the current situation and time line, MRHD has accepted Penn's proposal for a simple extension to run until March 31, 2015, which the

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Board has approved and signed. He stated that a copy has been provided to the Commission. Mr. Monson stated that the agreement will protect Penn's employees from uncertainty as MRHD continues to work toward their goal of a top-notch land-based casino in Woodbury County. He requested the Commission's support on this issue.

Mr. Bernstein stated that Penn's perspective of the issues as expressed by Mr. Sottosanti and Mr. Snyder were interesting, and somewhat overly optimistic in the manner in which the negotiations were described. He advised that the negotiations between the parties over the last year have been incremental, and only when MRHD drew a line in the sand or did not agree to Penn's proposal would Penn consistently up their offer. Mr. Bernstein stated that MRHD believes Woodbury County, whether it is them or another qso, in any proposal accepted and built in Sioux City, should be at terms that are on par with the state-of-the-art in gaming in Iowa. He stated that MRHD should not be forced to accept terms for a land-based casino that are sub-par in percentage or property tax valuation, etc.; that ratcheting up gross gaming revenues and still applying the minimum 3% to those is not necessarily an incremental gain or something that the State or community benefits from which is why the parties have been unable to reach an agreement. Mr. Bernstein advised that the 2½ year extension did come about in the last meeting between the parties, and then in subsequent dialogue, Mr. Snyder raised the matter of MRHD dropping their lawsuit against Penn. He stated that the 2½ year extension was not fabricated; it was discussed at significant length with Mr. Snyder. Mr. Bernstein requested the Commission's consideration; that MRHD is committed to not having the facility shut down, the employees and Woodbury County. He indicated MRHD is willing to do whatever is necessary, but also feels there needs to be a fair proposal going forward that matches some of the other proposals that have recently been approved for the State.

Vice Chair Lamberti opened the floor up for comments, questions, or additional information. Commissioner Heinrich, noting that the parties have been negotiating for approximately one year, stated the two main issues he sees are the percentage paid to MRHD and the city and the facility location. Mr. Bernstein concurred. Commissioner Heinrich asked how much give and take has really taken place during the year; noting that Penn has held to 3% and staying on the river. He inquired as to what MRHD has proposed. Mr. Bernstein advised that MRHD indicated a desire to see the facility go land-based, at which time Penn directed MRHD members to their facility in Perryville, which is basically the same size and scope as the current Sioux City operation, but with a buffet and gift shop. MRHD advised Penn that they were looking for something more in Woodbury County; that they had seen other facilities in Iowa with more amenities. Mr. Bernstein noted that Penn has gradually moved along; at one point Penn proposed a land-based facility if the city would TIF the parking ramp and skyways for approximately \$35 million. This proposal was subsequently dropped. He stated that Penn has always held the percentage to MRHD at 3% and moved along incrementally with the city on property taxes. Mr. Bernstein stated that at one point Penn offered MRHD 3.25%; however, MRHD based the 3.25% on \$70 million. This offer was also retracted as a more elaborate facility came into play. Mr. Bernstein stated that the 3% payment is the main issue for MRHD.

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Commissioner Heinrich stated it is his understanding that the parties have essentially agreed to move to a land-based facility. Mr. Bernstein concurred.

Commissioner Heinrich asked what MRHD's original request was of Penn. Mr. Bernstein stated that MRHD felt it would be more prudent for Penn to submit a proposal to MRHD to review. Commissioner Heinrich stated that he is hearing that MRHD did not have a specific request for Penn. Mr. Bernstein indicated that was correct. He indicated that MRHD is also very aware of the various land-based facilities which have recently been built in Iowa. He referenced the Waterloo facility, which occurred in a competitive environment; the non-profit receives 6.75% plus the city receives property tax money. Mr. Bernstein stated that the parties have not approached that level in Sioux City, nor have they come anywhere close. He stated that the MRHD membership feels that what is being offered is many percentage points below what they feel they should be receiving.

Mr. Snyder stated that Penn has been aware of the Commission's desire to move from the riverboat facility to a land-based facility for several years. He advised that several years ago Penn looked at a location in Sioux City for the facility; however, for various reasons that didn't work out. Mr. Snyder stated that Penn has known throughout the negotiations, and has expected, to make a significant investment in a new facility in downtown Sioux City; that Penn has never had a preference to remain on the river on a permanent basis. He stated that principle negotiations have centered on how much capital Penn will invest in a new facility, what amenities will be included, and who will pay for them. He stated that if the parking ramp is going to be available for general parking purposes as well as for the facility, it is Penn's position that it should be a shared obligation. Mr. Snyder stated that the focus of the negotiations over the last six months has been more on the size, scope, dollar amount of investment and incremental jobs that would be created in Sioux City as a result of the investment in the downtown area. He stated that Penn has consistently reminded MRHD representatives that in return for the significant capital investment Penn could not also significantly increase operating costs in the form of higher payments to the qso. He advised that they have been relatively consistent at the 3% level; he noted they did offer 3.25% at one point based on incremental revenue in excess of \$70 million but have never offered that rate from dollar zero. Mr. Snyder stated that Penn views the process as trying to raise the tide of gaming, economic development and employment in Sioux City, and that everyone would benefit from a higher standard, higher scale, higher scope and higher employment. He stated that MRHD has never really asked for a specific percentage.

Commissioner Heinrich stated that he understood Penn was indicating that they did not feel they could successfully work with MRHD, leading them to request a new qso. Mr. Snyder advised that Penn does not feel they can successfully work with anyone that is suing them.

Vice Chair Lamberti noted that the Commission has been dealing with this issue for quite some time, and does not wish to rehash the merits on both sides, noting that he does

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believe there are merits on both sides. He noted that both parties have expended a significant amount of effort over the last several months trying to come to an agreement to achieve the Commission's ultimate goal of a land-based facility in Woodbury County. Vice Chair Lamberti noted that the goal has not changed, and the Commission is faced with a unique and difficult situation which the Commission has not previously faced where there is a license running and no operating agreement in place. He noted that at the last meeting the Commission stated that if no agreement was reached then all parties should be prepared to look at alternatives. He advised that the Commission as a whole has struggled with how to move forward with other alternatives given where the negotiations stand. Vice Chair Lamberti expressed his hope that both parties feel they have received a full hearing of the issues on both sides, and does not want to rehash them other than to note that both parties have worked very hard to try and reach an agreement. Having said that, Vice Chair Lamberti noted that it is now June 7th and the Commission has a license that is about to expire, and there is no new operating agreement. He stated that he believes the best way to move forward is to consider other alternatives, but that it needs to be broader than what has been proposed to this point. Vice Chair Lamberti moved to open up the Woodbury County license for new applications to build and operate a land-based facility in Woodbury County; and that the process be open to all interested parties. He directed staff to work on the process: application, time frame, etc.

Commissioner Seyfer noted there are a couple of issues that need to be addressed: one being that the Commission needs to be assured that the existing facility would remain open, and to that extent the Commission will extend the current license through the end of the license year, or March 31, 2013. The second issue would be an extension of the current operating agreement.

Vice Chair Lamberti stated his intention to make a second motion to grant the license through March 31, 2013, on the condition that the parties agree to extend the operating agreement through that time. He indicated that if the first motion passes, and given the understanding that the licensing process will take some time, and certainly beyond March 2013, that the Commission would be committed to doing whatever is necessary to keep the facility open until such time as the new facility opens so that the employees are not impacted. He again indicated that this would hinge on an extension of the operating agreement.

Vice Chair Lamberti stated that he felt the motions reasonably set forth what he would like to see happen. He requested a second to his original motion. Commissioner Mertz seconded the motion.

Commissioner Heinrich clarified that the motion would open up the licensing process to both parties. Vice Chair Lamberti confirmed that the process would be open to any potential operators and potential non-profits; that the process would be as open as it could be.

**IOWA RACING AND GAMING COMMISSION
JULY 12, 2012
MINUTES**

The Iowa Racing & Gaming Commission (IRGC) met on Thursday, July 12, 2012 at Prairie Meadows Racetrack and Casino (PMR&C), Altoona, Iowa. Commission members present were Jeff Lamberti, Vice Chair, and members Carl Heinrich, Kristine Kramer, Dolores Mertz, and Greg Seyfer.

Vice Chair Lamberti called the meeting to order at 8:30 AM and requested a motion to approve the agenda. Commissioner Mertz moved to approve the agenda as submitted. Commissioner Heinrich seconded the motion, which carried unanimously.

Vice Chair Lamberti called on Gary Palmer, General Manager of PRM&C, who welcomed the Commission to the facility, noting this was the first Commission meeting to be held at PMR&C. He expressed his hope there would be many more. He also introduced Lynette Rasmussen, Chair of the Board of Directors for PMR&C.

Vice Chair Lamberti moved to the approval of the minutes from the Commission's June 7, 2012 meeting. Commissioner Seyfer moved to approve the minutes as submitted. Commissioner Kramer seconded the motion, which carried unanimously.

Vice Chair Lamberti called on Brian Ohorilko, Administrator of IRGC, for announcements. Mr. Ohorilko provided the following information regarding future Commission meetings:

- August 23, 2012 – Riverside Casino & Golf Resort, Riverside, IA (Submissions due by August 9, 2012)
- September 27, 2012 – Hotel Julien, Dubuque, IA (Submissions due by September 13, 2012)
- October, 2012 – No Commission Meeting
- November 15, 2012 – Stoney Creek Inn, Johnston, IA (Submissions due by November 1, 2012)
- December, 2012 – No Meeting

Vice Chair Lamberti moved to the election of the Chair and Vice Chair for Fiscal Year 2013. Commissioner Mertz moved to elect Vice Chair Lamberti and Commissioner Seyfer to serve as Chair and Vice Chair respectively. Commissioner Heinrich seconded the motion, which carried unanimously. Vice Chair Lamberti and Commissioner Seyfer abstained from voting. (See Order No. 12-73)

Chair Lamberti called on Gaming Laboratories, International (GLI). Mr. Ohorilko introduced James Maida, President and founder of GLI, which tests gaming equipment in



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over 450 gaming jurisdictions. He advised that the Commission utilizes GLI for a number of regulatory functions including technology, certifying gaming equipment against technical standards, field staff training in the most up-to-date technology, network risk assessment and field testing.

Mr. Maida noted that he had been at PMR&C approximately ten years ago to provide some training, and was pleased to see the amount of change since that time. He advised that GLI has a unique numbering system for each file that comes in; the first two numbers represent the number of the client. Iowa is number seven. GLI currently has over 500 clients globally. Mr. Maida stated that GLI works for the regulators under rules set by the regulators, but are paid by the suppliers under rules set by the regulators. He indicated the company is backgrounded annually. Mr. Maida advised that the company has twenty offices globally, plus an office in Kansas City, Missouri. He stated that most of the gaming equipment utilized in Iowa is tested in the United States. He advised that GLI issues 120,000 gaming equipment certifications annually, has received ISO 17025 and 17020 accreditations, and support is available 24/7. With regard to GLI's relationship with the Commission, Mr. Maida stated that the parties have worked together since 1992; and there is almost daily communication on field issues, rule comments or new technology. GLI has certified in excess of 17,000 pieces of software for the Commission. Mr. Maida advised that an average of 4,000 items are submitted for testing in Iowa annually; they have also conducted five forensic examinations. He further advised they are continually improving their testing process, and in 2011 only 0.17% of certifications were revoked. GLI conducted on-site inspections at all of the Iowa properties in 2008, 2009 and 2010, as well as risk assessments at two of the properties in 2011. Mr. Maida briefly touched on the types of testing GLI performs globally and in Iowa; and the different "tools" that GLI has available to assist their clients. Mr. Maida congratulated the State of Iowa for writing a very forward-thinking, very specific paper on iGaming, and what would happen if it was legalized in Iowa. He stated that it was one of the first major white papers on iGaming. He stated that GLI sees iGaming; Social gaming; Play-for-Fun and Play-for-Money becoming more popular. Mr. Maida stated that GLI has no position on internet gaming, but do believe that it has to be secure to insure that players are not colluding or cheating. He provided brief descriptions on how the other future gaming options would function. Mr. Maida thanked the Commission for allowing him to appear before them.

Hearing no comments or questions for Mr. Maida, Chair Lamberti called on the Isle of Capri for an update on the negotiations for the sale of the Rhythm City property. Stacy Hall, legal counsel, advised that negotiations are ongoing, and have reached a point where the potential buyer is trying to enter into agreements with the city and the qualified sponsoring organization. Ms. Hall stated that IOC is hopeful those negotiations are going well.

Chair Lamberti called on Penn National Gaming/Missouri River Historical Development (Penn/MRHD) regarding their request for the approval of an extension to the Operating Agreement. Curt Beason, legal counsel for MRHD, advised that the MRHD Board has

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approved two different extensions of the Operating Agreement with Penn; one that expires on March 31, 2013 and the other on March 31, 2015. Mr. Beason stated that the agreement extension before the Commission for consideration is the one expiring on March 31, 2015. He stated that the Board would be meeting next Monday to discuss other matters regarding either extension.

Chair Lamberti called on a representative for Penn. Carl Sottosanti, VP of Legal Affairs, and Steve Snyder, Sr. VP of Development, were present to address the Commission. Mr. Sottosanti stated that Penn concurred with MRHD that the only contract before the Commission for consideration is the extension of the Operating Agreement to March 31, 2015; that they have not been offered an extension through March 31, 2013. He indicated the longer contract would provide some security for the employees.

Chair Lamberti stated that he didn't think the Commission's actions at the June meeting were unclear; however, based on the questions he has received, that apparently is not the case. He noted that at the March meeting the Commission stated that in order to continue moving forward certain conditions needed to be met. One of the top concerns for the Commission is to maintain the 300+ jobs at the facility. At the June meeting, the Commission opened the Woodbury County license up for a new land-based facility. They also indicated their desire to insure that the current facility remains open until the new land-based facility is ready to be opened; again the main concern being the preservation of the existing jobs. Chair Lamberti stated that the Commission has now been presented with a request to approve an extension of the Operating Agreement to March 31, 2015. He expressed concern over the date as he feels it is somewhat arbitrary; the licensing process is in its early stages and it is too early to determine when the land-based facility might open. Chair Lamberti reiterated the Commission's desire to keep the current facility open until the land-based facility is ready to open; they are hesitant to approve a date that appears to be arbitrary. He asked Penn and MRHD if they would agree and approve an extension of the Operating Agreement to March 31, 2013, which would tie the date to the license date; and everyone could revisit where the process is at that time.

Mr. Sottosanti stated Penn's preference for the March 31, 2015 date; indicating that the longer term contract will be beneficial to all of the constituents and provide some continuity for the employees. He stated that if for some reason the process should go slower or in a more expedited manner, then the Commission could use their regulatory discretion to adjust the ending date. Mr. Sottosanti reiterated their preference for the Commission to approve the extension of the operating agreement through March 31, 2015.

Chair Lamberti again asked if Penn would agree to sign off on an extension of the operating agreement to March 31, 2013 if that is the action taken by the Commission.

Mr. Snyder stated that Penn has not been tendered an offer to extend the operating agreement through March 31, 2013.

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Chair Lamberti advised that the Commission understood, but again questioned whether Penn would agree to an extension to March 31, 2013.

Mr. Snyder stated that the suggestion has been made that March 31, 2015 is an arbitrary date. He indicated that he feels March 31, 2013 is also an arbitrary date. He noted there are some employees who have worked at the property for 20 years; they are looking for security or an understanding of what the future holds for them. Mr. Snyder stated that the March 31, 2015 extension provides a reasonable time frame for the process to unfold. He reiterated that Penn has not been offered an extension of the operating agreement to March 31, 2013, nor have they been asked to consider one until today. Mr. Snyder requested that the Commission act on the agreement extension submitted for approval, which is March 31, 2015.

Chair Lamberti asked MRHD if they were willing to accept an extension of the operating agreement to March 31, 2013. Mr. Beason advised that MRHD has authorized an extension to March 31, 2013. He noted that if the Commission approves an extension to that date, no further action by MRHD would be necessary.

Commissioner Seyfer noted that Chair Lamberti had stated that the goal of the Commission is to make sure that there is an operation in Sioux City; and they are willing to do everything within their authority and power to do so. He again asked if Penn would agree to an extension of the operating agreement through March 31, 2013.

Mr. Snyder stated that the March 31, 2013 date would be a disservice to their employees. He stated that Penn has never been faced with managing a facility to closure or revocation. Mr. Snyder stated that Penn is not in a position today to accept a contract that has not been tendered to them. He stated they could not accept an extension to the operating agreement that would expire on March 31, 2013.

Commissioner Seyfer noted that licenses are renewed on an annual basis; this is no different than where the parties are at every year. He again requested a "Yes" or "No" answer from Penn with respect to whether they would accept a March 31, 2013 date. Mr. Snyder answered "No".

Chair Lamberti stated that what they are requesting is difficult and unprecedented in terms of where the process is at; however, the Commission has clearly indicated their desire to preserve the jobs and will create new extensions if necessary in order to keep the current facility open until the new land-based facility is ready to open in Woodbury County. He stated that the Commission has done everything within their power today. Chair Lamberti stated that the facility will not close on March 31, 2013 or any other day due to any action taken by the Commission today. He noted that the Commission has started the application process and doesn't have any idea of the timeline for construction, opening date, etc. Chair Lamberti stated that what he is hearing from Penn is that the operating agreement has to be extended to March 31, 2015 or nothing.

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Mr. Sottosanti stated that Penn is not suggesting that by approving the contract extending the operating agreement to March 31, 2015 that the Commission could not modify the closing or opening date; they are only saying that is the contract that should be approved. He stated that Penn agrees with the comments of the Commission that the licensee will follow its ordinary course in the discretion of the Commission in March 2013, the next March and the March after that.

Chair Lamberti moved to approve an extension of the operating agreement to March 31, 2013 pending an agreement of the parties within a reasonable timeframe following this meeting. Commissioner Heinrich seconded the motion, which carried unanimously. (See Order No. 12-74)

Mr. Snyder asked what message Penn should convey to their employees should they fail to enter into an agreement that goes through March 31, 2013.

Chair Lamberti advised that what they tell the employees is up to them; they have a decision to make between entering into an extension of the operating agreement through March 31, 2013 or not to enter into said agreement. He stated that if they do not enter into the extension of the operating agreement to March 31, 2013, they would not be in compliance with Iowa law. Mr. Snyder stated that he understood.

Commissioner Seyfer asked if the Commission needed to establish a reasonable timeframe for the parties to comply. Mr. Ohorilko advised they would have thirty days from the execution of the contract to seek Commission approval. Mr. Ohorilko asked Jeff Peterzalek, Assistant Attorney General for the Commission, if there was any date or time by which the parties needed to act, or if it could be taken up at the August Commission meeting. Mr. Peterzalek concurred that the Commission could take action at the August meeting, which would comport with the "reasonable timeframe". He suggested the Commission may want to clarify the order.

Chair Lamberti amended his previous motion to approve an extension of the operating agreement to March 31, 2013 pending an agreement of the parties by the August 23, 2012 Commission meeting. Commissioner Heinrich concurred with the amendment.

Chair Lamberti moved to the approval of the distribution of the Dog Racing Promotion Fund as authorized by Iowa Code §99D.12(2)C. Nick Mauro, legal counsel for the Iowa Greyhound Association, advised that they were the lone applicant for the funds. He stated that the application details how the funds received last year were used and how they are projected to be utilized in the next fiscal year.

Hearing no comments or questions concerning the application for the funds, Chair Lamberti requested a motion. Commissioner Seyfer moved to approve the distribution of the Dog Racing Promotion Fund to the Iowa Greyhound Association contingent upon the following conditions:

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Chair Lamberti advised that the Commission had received communication regarding the contract with Gitchi Gaming, Inc. for the purchase of gaming chairs, which advised that there is an Iowa company that has worked with PMR&C previously.

Mr. Palmer advised that the PMR&C Purchasing Office met with different groups prior to selecting this vendor. He noted that PMR&C utilizes Iowa vendors as much as they can.

Commissioner Seyfer noted that the contract indicates the product is not available from an Iowa vendor.

Ann Atkin, Vice President/COO, stated that the vendors brought in sample chairs prior to the selection. PMR&C had requested that a number of employees sit on the chairs to help determine which would be the most comfortable for patrons.

Hearing no further comments or questions concerning the contracts, Chair Lamberti requested a motion. Commissioner Heinrich moved to approve the contracts as submitted by PMR&C. Commissioner Mertz seconded the motion, which carried unanimously. (See Order No. 12-83)

Chair Lamberti moved to Public Comment. Wes Ehrecke, President of the Iowa Gaming Association, advised that Responsible Gaming Week will be held from July 30 – August 3. He noted that research indicates that 98% of individuals who go to the casinos are able to treat it as entertainment; however, there is 1-2% of the population who are problem gamblers and need assistance. Mr. Ehrecke stated that the treatment providers work very closely with the properties during this week to provide training to the staff, and make sure that information concerning treatment providers and other available programs is available at all of the facilities.

Chair Lamberti moved to Administrative Business and called on Mr. Ohorilko to discuss the application timeline for Woodbury County. Mr. Ohorilko advised that the timeline is similar to previous timelines when the Commission has gone through the application process. He noted that the Commission will not be soliciting a market study in this case; the market is Woodbury County. Mr. Ohorilko stated that the process will be fair and open; and that all meetings with the exception of the background investigation reports are open to the public. The timeline is as follows:

- July 2, 2012 – The application was made available on the Commission's website.
- November 1, 2012 – Applications are due in the Commission's office. Once the applications have been submitted, they cannot be amended. Additionally, the applicants will not be allowed to contact the Commission members directly. These policies do not prevent the Commission members from asking questions that may require supplement information to be submitted in order to clarify the application.

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- November 15, 2012 – The applicants will submit and make presentations concerning the financing of the proposed project. Firm commitments are expected by this date.
- January 10, 2013 – The applicants will be allowed 45 minutes to give a presentation about their proposed project. Commission members will not be asking questions at this time.
- March 6, 2013 – The Division of Criminal Investigation will present their suitability reports in executive session.
- March 26, 2013 – The Commission will visit the proposed sites of the applicants. The applicants will have 45 minutes to make a presentation to the Commission members at their respective sites. Following the tour of the sites, the Commission will hold a Public Hearing to receive comments from individuals not associated with the application process. The public hearing will be followed by a Question and Answer session from the Commission members.
- April 18, 2013 – The Commission will make a decision at their regularly scheduled meeting.

Mr. Ohorilko advised that the timeline would be posted on the Commission's website.

Commissioner Seyfer noted that the timeline as set forth is pretty much the same timeline as used in the past. Mr. Ohorilko stated that it mirrors the application process utilized in 2004 and 2009.

Hearing no further business to come before the Commission, Chair Lamberti requested a motion to adjourn. Commissioner Seyfer so moved. Commissioner Kramer seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

JULIE D. HERRICK

**IOWA RACING AND GAMING COMMISSION
MINUTES
AUGUST 23, 2012**

The Iowa Racing & Gaming Commission (IRGC) met on Thursday, August 23, 2012 at Riverside Casino & Golf Resort, Riverside, Iowa. Commission members present were Greg Seyfer, Vice Chair; and members Carl Heinrich, Kristine Kramer and Dolores Mertz. Chair Jeff Lamberti was absent.

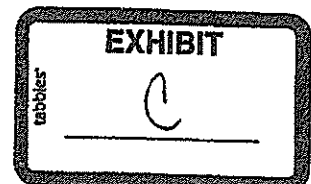
Vice Chair Seyfer called the meeting to order at 8:30 AM and requested a motion to approve the agenda. Commissioner Mertz so moved. Commissioner Kramer seconded the motion, which carried unanimously.

Vice Chair Seyfer called on Brian Ohorilko, Administrator of IRGC, for an explanation regarding Chair Lamberti's absence. Mr. Ohorilko advised that Chair Lamberti had undergone back surgery at Mayo Clinic as part of an ongoing treatment for staph infection. His doctor did not want him traveling at this time; however, he does expect to be at the September meeting.

Vice Chair Seyfer moved to the Welcome. On behalf of the 750 team members and 800 Iowa investors, Dan Kehl, CEO, welcomed the Commission to Riverside. He noted that the previous day was a great day for golfing, and that everyone had a good night at the casino as well. Mr. Kehl noted that the facility would be celebrating its sixth anniversary the following week. He stated that over that time period, Riverside has paid \$141 million in gaming taxes, regulatory fees and license fees to the State; \$11 million to Washington County, and \$10 million to Riverside. Mr. Kehl stated that gaming works in Iowa and is doing what it is supposed to do. He advised that the non-profit, Washington County Riverboat Foundation (WCRF), has received approximately \$19 million. He introduced Tim Putney, President of WCRF.

Mr. Putney also welcomed the Commission to Riverside. He stated that WCRF is administered by 15 members from various parts of Washington County. He noted that WCRF has received \$19.4 million, which has been distributed throughout Washington County. Mr. Putney stated that approximately 17% of the grants go to organizations outside of Washington County; in the counties of Linn, Muscatine, Louisa, and Henry. He advised that WCRF distributed \$100,000 to 53 different organizations last week. WCRF asks the smaller organizations to submit an application for funds of \$2,000 or less as they believe the funds can reach a greater number of people. Including the distribution last week, Mr. Putney stated that WCRF has distributed over \$20 million in grants.

Vice Chair Seyfer moved to the approval of the minutes. Commissioner Heinrich moved to approve the minutes from the July 12, 2012 Commission meeting as submitted. Commissioner Mertz seconded the motion, which carried unanimously.



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Vice Chair Seyfer called on Mr. Ohorilko for announcements: Mr. Ohorilko provided the following information regarding upcoming Commission meetings:

- September 27, 2012 – Hotel Julien, Dubuque, IA (Submissions due by September 13, 2012)
- November 15, 2012 – Stoney Creek Inn, Johnston, IA (Submissions due by October 31, 2012)
- December – No Meeting
- January 10, 2013 –Prairie Meadows Racetrack & Casino, Altoona, IA (Submissions due by December 26, 2012)

He recognized Sue Hansen and Scott Ditch, the Commission's Gaming Representatives at Riverside.

Vice Chair Seyfer called on Isle of Capri (IOC) for a review of the Fiscal Year 2011 financial audit. Laurie Fisher, Director of Finance at Lady Luck Marquette; Sally Rogers, Director of Finance at IOC Bettendorf (IOCB); Grant Gubbrud, Director of Finance at IOC Waterloo, and Ed Tomlinson, Director of Finance at Rhythm City, were available to answer any questions concerning the audit.

Vice Chair Seyfer advised that staff had prepared a listing of expenditures on capital improvements, noting that Rhythm City's total was 1.43% of total expenses. He stated that figure ties back into what the Commission has been trying to accomplish in Davenport. He requested an explanation for the low capital expenditures. Mr. Tomlinson advised it was a corporate policy decision; that the amount for the current fiscal year is \$2.1 million.

Hearing no further comments or questions concerning the financial audit, Vice Chair Seyfer moved to the update on the sale of the Rhythm City Casino. Michael Fries, Vice President of Legal Affairs, stated that he had been advised that the City of Davenport and Riverboat Development Authority (RDA) are in talks with the buyer, and recently learned that the talks had progressed significantly. He stated that IOC had received comments from the buyer on the purchase agreement. IOC immediately responded, and is now waiting to hear back from the buyer.

Vice Chair Seyfer asked if there was any time frame for a response from the buyer. Mr. Fries answered in the negative. Vice Chair Seyfer stated he was hearing that the next move is in the buyer's court. Mr. Fries answered in the affirmative.

Vice Chair Seyfer called on Penn National Gaming (Penn)/Missouri River Historical Development (MRHD). He noted that the agenda lists "Request for Approval of Operating Agreement". He advised that there are a couple of additional items that need to be addressed as part of that agenda item; the first being Penn's Request for Reconsideration of July 12, 2012 Commission Action.

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Carl Sottosanti, Vice President of Legal Affairs for Penn; Steve Snyder, Sr. Vice President of Development; Karen Bailey, Director of Public Affairs; Lance George, General Manager of Argosy Casino Sioux City, and Lorraine May, Regulatory Legal Counsel, were present to address any questions.

Mr. Sottosanti thanked the Commission for continuing to work on the issues. He advised that Penn had several possible alternatives and facts relevant to the discussion today, and believes they are uncontested as well. Mr. Sottosanti set forth the following facts:

- MRHD sent Penn an Operating Agreement extension through March 31, 2015. The extension was signed by one of the MRHD Board members.
- On June 7, 2012, a Penn Officer signed the agreement and promptly returned it to MRHD.
- At the July Commission meeting, Curt Beason, MRHD legal counsel, reiterated MRHD's approval of the March 31, 2015 extension agreement.

Mr. Sottosanti, on behalf of Penn, requested that the Commission approve the extension of the Operating Agreement between Penn and MRHD through March 31, 2015. He stated that it was essentially the same contract that the Commission has approved for 20 years. Mr. Sottosanti stated that the approval of the extension would be in the best interests of the constituents of gaming in Sioux City – the State, City, MRHD, Penn and the 300+ employees and their families. He advised that the approval would insure stability as the parties continue to work toward land-based gaming in Sioux City. Mr. Sottosanti stated the previously cited facts were compelling reasons to approve the agreement extension; however, in the interest of moving the resolution forward, he indicated that he had an alternative to present to the Commission.

Vice Chair Seyfer stated that he would like to address the Motion for Reconsideration before Mr. Sottosanti continued. Mr. Sottosanti requested permission to continue with his comments. Vice Chair Seyfer granted the request.

Mr. Sottosanti stated that the Commission can approve the signed extension agreement, but can do so through March 31, 2013 as the Commission has the authority to impose a duration condition on the extension agreement before them. He cited IAC 5.4(8)d which states in part, "The commission shall approve all qualifying agreements ... and may impose conditions on an approval. ..." The condition would be that the length of the contract would be amended to March 31, 2013. Mr. Sottosanti thanked the Commission for their consideration.

Vice Chair Seyfer called on MRHD. Mr. Beason advised that MRHD was present at the last Commission meeting and heard the Commission's concerns. MRHD made modification to the previously submitted extension agreement approved by the Board last month. Mr. Beason stated that the MRHD Board is comfortable that the Commission's decision at the July meeting was correct and proper.

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Vice Chair Seyfer asked Mr. Beason if MRHD felt there was a signed agreed upon extension agreement. Mr. Beason answered in the negative.

Vice Chair Seyfer returned to Penn's Request for Reconsideration of the Commission's action at the July Commission meeting. He called for a motion regarding the Request for Reconsideration. The Request for Reconsideration died due to the lack of a motion.

Vice Chair Seyfer recapped the situation: There is no agreed upon extension agreement, which means there is not an effective Operating Agreement. Without an effective Operating Agreement, the Commission cannot issue a license to conduct gambling games. He stated it is his reading, and he believes it to be the reading of Chair Lamberti and Jeff Peterzalek, Assistant Attorney General, that the situation is now governed by Iowa Code Section 17A.18 dealing with licenses. Iowa Code Section 17A.18 states in part that when a licensee has made an application for the renewal of a license, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking judicial review of the agency order or a later date fixed by order of the agency or the reviewing court. Vice Chair Seyfer stated that this means that the license will continue by operation of the law, and will continue until a hearing has been set by the Commission to show cause why the license should not be continued. He stated that the Commission needs to consult with the Chair and legal counsel. Vice Chair Seyfer indicated his plan is for the Commission to provide an outline at the September meeting of how and in what event a show cause hearing would be held to determine if the license should be denied. He summarized his comments by reiterating that the license will continue under operation of law until the Commission takes action.

Mr. Sottosanti stated that Penn understood that the Request for Reconsideration is denied due to the lack of a motion. He asked about the extension agreement. Vice Chair Seyfer advised that it was denied as well.

Hearing no further comments or questions, Vice Chair Seyfer called on Boyd Gaming Corporation (Boyd) for their presentation on the acquisition of Peninsula Gaming, LLC. Keith Smith, President and CEO, introduced Bill Boyd, Executive Chair of the Board and co-founder of the company; and Marianne Boyd Johnson, Executive Vice President, Chair of the Board and Chief Diversity Officer for the company. Mr. Smith stated that in May Boyd Gaming announced their intent to acquire Peninsula and seek the necessary regulatory approvals to provide additional growth for their company. He noted that Peninsula is a good company with a strong leadership team. Additionally, Peninsula operates in markets where Boyd currently does not have any operations.

Mr. Smith advised that Boyd is a 37-year old company founded in 1975 by Sam Boyd and his son, Bill. They opened their first casino in downtown Las Vegas that year. They are now one of the largest and most experienced operators in the industry with 17 properties in six states with 23,000 team members. Mr. Smith stated Boyd has six properties in the Las Vegas area; three in Louisiana, two in Mississippi, and one each in

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ROUGH TRANSCRIPT

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IRGC MEETING

7

AUGUST 15, 2013

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8:00 A.M.

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RIVERSIDE CASINO & GOLF RESORT

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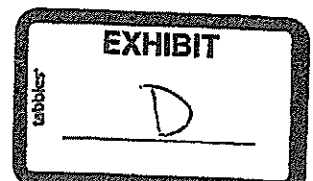
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1 Do you want to address them together?

2 All right. That's it for pen, then.

3 All right. We'll take pen national.

4 I will move to make a motion. I will
5 second.

6 Any further questions? All in favor
7 say aye.

8 My partner Tina, I would be happy to
9 answer any questions you have. I think also
10 self explanatory.

11 As she said, I can answer any questions
12 hopefully with regard to Boyd if you have any.

13 Any questions?

14 I move approval.

15 Second. All in favor say aye. Moving
16 is yellow, seconding is other lady.

17 The next item is Belle Sioux City
18 action regarding operating license. Do you
19 have a comment on this, Brian?

20 Brian: Thank you chair, vice chair,
21 members of the commission. Staffs reviewed the
22 request by the Belle of Sioux City LP for
23 renewal of the its operating license regarding
24 it's casino in Sioux City, Iowa. By looking at
25 the contents of the renewal application,

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1 reviewing the applicable rules and regulations
2 regarding licensing and discussing with the
3 agency counsel, Belle, albeit has a good
4 regulatory record up to this point in the state
5 of Iowa on par with other operators, they do
6 not have an operating agreement with the
7 qualified sponsoring organization licensed to
8 conduct gambling games at the Argsey location
9 as required by Iowa code.

10 Due to the lack of an operating
11 agreement, staff has come to the conclusion
12 that Belle's unable to hold an operator's
13 license in the state of Iowa. The Iowa code
14 does not allow for an operator to be licensed
15 to conduct gambling games on its own. Only a
16 qualified sponsoring organization may conduct
17 gambling games. Pending final action on
18 Belle's pending renewal application, the
19 Arguesy has been able to remain open only by
20 operation of law, since Belle's operating
21 agreement with Missouri River Historical
22 Development expired on July 6 of 2012.

23 As demonstrated in its December 2011
24 renewal application, Belle was aware that its
25 operating agreement with Merck faced imminent

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1 expiration. The commission articulated the
2 importance of both parties reaching an
3 agreement as the March 2012 commissioning to
4 allow the parties additional time to negotiate
5 an acceptable extension.

6 The commission subsequently authorized
7 Belle to operate the Argey until July 6, 2012.
8 Despite encouragement by the commissioning
9 members of staff in the ensuing months that the
10 parties resolve their differences, the
11 commission was faced with an unprecedented
12 situation where an operating agreement for an
13 existing Iowa casino expired.

14 As a result of the impasse, the
15 commission deemed it necessary to solicit
16 applications for a new gaming license in
17 Woodbury County. In April of 2013 the
18 commission awarded a new gaming license in
19 Woodbury County to Sioux City Entertainment and
20 Merck. The recent application process in
21 Woodbury County has unequivocally established
22 that Belle's former associated qualifying
23 sponsoring organization, MRHD, has no present
24 intentions to reaffiliate with Belle for
25 purposes of conducting gambling games in

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1 Woodbury County.

2 Should the commission decide to deny a
3 renewal of Belle's operating license, this
4 action, when final, will have the effect on
5 terminating the current gaming operations at
6 the Argosy Casino in Sioux City. The Belle,
7 however, may continue operating while any
8 appeals of the commission's actions are
9 pending. Regardless if needbe Belle should be
10 given adequate time to appropriately close its
11 Argosy operation, conduct an external audit of
12 operations, comply with other ICRG and IRA's
13 regulations and so its employees can plan
14 accordingly.

15 In summary, the Iowa Code requires an
16 entity to enter into an operating agreement
17 with a qualified sponsoring organization
18 licensed to conduct gambling games at an
19 approved location. Belle does not meet this
20 test, and therefore is not statutorily able to
21 hold an operator's license in the state of
22 Iowa. It is staff's recommendation to deny
23 Belle's application for renewal of its
24 operating license. Staff would therefore
25 request that the commission entertain a motion

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1 to deny Belle's Sioux City LP's application to
2 renew its operator's license for the Argosy
3 Casino in Sioux City, Iowa, because Belle is
4 statutorily ineligible to hold such a license,
5 and the absence of an operating agreement with
6 the qualifying sponsoring organization that is
7 conduct gambling games to at that location.

8 Furthermore, as part of that motion,
9 the commission should instruct staff to prepare
10 and serve written notice of the commission's
11 decision upon Belle Sioux City LP. Such
12 written notice would include the stated reasons
13 for the commission's actions and the Belle's
14 appeal rights.

15 All right. We have a recommendation.
16 Do we have a motion?

17 Skype: I will make a motion, and I
18 know we will give Belle an opportunity to
19 respond, but to get this out on the table I
20 will make a motion to deny Belle of Sioux City
21 LP's application to reknew its operators
22 license for the Argosy Casino in Sioux City
23 based upon the fact that Belle was statutorily
24 eneligible to hold a license in the absence of
25 an operating agreement with a qualified

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1 sponsoring organization. And that the motion
2 will further instruct the staff to prepare and
3 serve written notice of the commission's
4 decision upon Belle of Sioux City LP. That
5 would be the motion.

6 Is there a second?

7 MS. DELORES: I will second.

8 Is there a response or question?

9 Yes. Commissioners my name is Chris
10 Tayback, I'm a lawyer and I represent Belle in
11 connection with its pending lawsuit against
12 MRHD and its judicial review of the various
13 actions taken by this body, all of which arise
14 from what this commission has now recognized,
15 exprezly, I believe at Mr. Ohorilko's comments,
16 and implidly throughout the last year is its
17 unprecedented actions with respect to the
18 Argosy Casino.

19 In moving to deny renewal today of the
20 Belle's license to operate the Argosy, this
21 commission is continuing what I cannot describe
22 in any other way except to say a pattern of
23 trampolling just about every procedural and
24 substantive right that a licensee has in the
25 state of Iowa under Iowa law, under the U.S.

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1 Constitution.

2 Ignoring Iowa law, some of which
3 Mr. Ohorilk cited, some of which he did not,
4 regarding the commission's responsibilities for
5 licensing and frankly making a mockery of any
6 sort of due process that a licensee should have
7 prior to a non-renewal or a revocation of any
8 license.

9 The fact is I don't say that lightly.
10 But this body has made up its mind and made up
11 its mind when it issued an illegal second
12 operator's license in Woodbury County for a
13 land-based casino to Sioux City Entertainment.
14 Whatever process this commission is purporting
15 to now provide, with respect to formally
16 nonrenwing or revoking the Belle's license, is
17 nothing more than a pretense. Because the
18 result, as we know, is forordained.

19 It was only I think yesterday that
20 Commissioner Lamberty was quoted in the paper
21 saying it was never the commission's intent to
22 have two licensees in Woodbury County. It can
23 be nothing else then that this commission has
24 already decided, and decided long ago before
25 whatever is happening today and whatever this

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1 commission might purport to do with respect to
2 the non-renewal process that its talking about
3 employing, that it is already decided it is not
4 going to renew the Belle's application.

5 But the Belle, like any other holder of
6 a state license, is entitled to more than that.
7 And it's shameful that it has to go to court
8 and has had to go to court to enforce its basic
9 rights to process, its basic rights to a fair
10 and impartial hearing where the result isn't
11 foreordained in the interest of its investment,
12 which is in excess of one hundred million
13 dollars, and the interest of its hundreds of
14 employees.

15 Now, there was reference to the basis
16 being noncompliance with the requirement,
17 statutory requirement of having an operating
18 agreement with the QSO. But that as a basis,
19 as a defect, is frankly nonexistent. The
20 evidence is, as this commission is no doubt
21 aware, there was a signed contract between MRHD
22 and Belle, and it was in fact, presented to
23 this commission. And the commission can't make
24 that not exist simply by virtue of the fact
25 that it chose not to approve it, in what was

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1 itself an unprecedented action. Because for
2 20 years, and over 20 years now in Woodbury
3 County, and throughout its existance in every
4 other gaming jurisdiction in this state and
5 frankly in any other state as we have looked at
6 the other states, this body has routinely
7 approved contracts between QSOs and the gaming
8 operators. Whether those contracts are one
9 year, five years or twenty0 years.

10 The entire record at issue shows that
11 this commission is using the Belle's purported
12 lack of a QSO as a pretext to belatedly
13 nonrenew or revoke the Belle's license. And as
14 this commission also knows that the question of
15 whether there's a contract or not between MRHD
16 and the Belle is an issue that is and has been
17 pending before a court of competent
18 jurisdiction in the state of Iowa. But today's
19 action shows that this commission evidently has
20 no intention of waiting until that issue, the
21 issue of whether there is a contract or not, is
22 actually decided by a competent court. Because
23 it has, as I have said and as its actions
24 continue to indicate, predetermined the
25 outcome.

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1 The Belle's license won't be renewed no
2 matter what the facts show. And as we know
3 from this commission, and what it has done, we
4 know from the fact that this commission has
5 allowed the Belle to operate for the past 10 or
6 11 or 12 months or more. And the fact that it
7 apparently and now expressly intends to allow
8 it to operate until it decides no not let it
9 operate, whenever, and whenever that might be.

10 The existence of the Belle's contract
11 with any particular QSO is not in and of itself
12 a material fact, a material basis upon which to
13 nonrenew the license. And I say that because
14 to be clear, MRHD, in this instance, and any
15 QSO, is a pass through entity that receives
16 revenues from the Belle and hands out checks to
17 worthy, worthy causes. And any legitimate
18 renewal procedure of any license, especially a
19 license for an ongoing operation with the level
20 of investment that the Argosy has had, and the
21 number of employees at all locations and
22 reputation in the community for two decades
23 that it has had, any legitimate removal
24 procedure would allow the operator procure any
25 such reported noncompliance with its QSO. And

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1 in fact, the Belle has an alternative QSO
2 ready, willing and able to step in to do what
3 MRHD apparently does not want to do with the
4 Belle.

5 And this commission does not seem to
6 care about mitigating facts, about
7 opportunities to to cure, about having a
8 hearing where the result is not forordained.
9 Because that kind of a hearing would require
10 fairness and a process, and even for a 20-year
11 licensee with hundreds of employees whose jobs
12 are at stake, this commission has made it clear
13 that it's deciding that it is going to require
14 the Belle to go to court in order to enforce
15 those rights, in order to protect those
16 interests. And on behalf of the Belle, I think
17 that's a shame. But it is where we are at.
18 And I object to the commission's actions today
19 on behalf of the Belle.

20 MR. HEINRICH: Any question or further
21 discussion?

22 MR. JEFF: I don't have anything
23 further to add. Obviously this has been a
24 difficult process we have gone through and
25 obviously there's court matters pending, but

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1 from my motion and the position of the
2 commission at this point in time, a fundamental
3 absence of an operating agreement is why I am
4 making the motion to deny the application and
5 that's really all I have to add at this point
6 in time.

7 MR. HEINRICH: Any other comments?

8 We have a motion before us to deny the
9 application. All in favor say aye?

10 Aye.

11 Opposed say no.

12 Contract approvals. Riverside?

13 MR. RIVERSIDE: Good morning,
14 commissioner, staff, friends, general manager of
15 Riverside Casino and Golf Resort. I have three
16 contracts before you today for your approval.
17 I am happy to answer any questions. 36 are
18 there any questions?

19 MS. DELORES: Move the contracts.

20 Woman: Second.

21 All in favor say aye?

22 Aye. Opposed no?

23 Thank you.

24 Diamond Joe. I'm Wendy Rundy, the
25 general manager at diamond Joe in Dubuque. We