

# THE BOND BUYER

## University of Iowa asks court to dismiss P3 utility lawsuit

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The University of Iowa says sovereign immunity protects it from a closely watched federal lawsuit alleging breach of contract over a \$1.1 billion lease of its utility system.

As "an alter ego and arm of the state of Iowa," the university is protected from federal lawsuits by the Eleventh Amendment, according to its March [motion to dismiss](#), which says litigation should proceed in Iowa state court.

The [lawsuit](#) is further compromised because it fails to name the Board of Regents, which is a party to the high-profile concession, the university argued.



The University of Iowa campus in Iowa City. Kirk S. Murray/The University of Iowa

When the deal was [inked in 2019](#), the university was one of the first in the country to turn to the P3 model to upgrade and manage its utility system, following the Ohio State University's \$1 billion lease of its utility system to ENGIE and Axiom Infrastructure in 2017. Since then, several other universities have followed suit, making the higher ed-energy space one of the most active in the P3 sector.

The private consortium, dubbed the University of Iowa Energy Collaborative LLC and made up of Meridiam, ENGIE, and Hannon Armstrong, paid the university \$1.165 billion upfront to lease the university's steam, cooling, water and electricity systems.

In return, the university agreed to make annual payments starting at \$35 million, as well as various other payments for things like operating and maintenance and capital projects.

Problems began just months after the deal closed in March 2020, when the parties began to calculate the university's fee for fiscal year 2021, the [complaint](#) says.

UIEC accuses the university of "chipping away" at required payments as well as renegeing on capital commitments, and refusing to make insurance claims for needed repairs.

The litigation is being closely watched, P3 market participants said.

"Any time there are issues of controversy related to some of the larger, well-known projects, it's something everyone is paying attention to," said a P3 attorney.

The dispute illustrates one reason why so-called progressive, or predevelopment, P3s are becoming more popular, the attorney said. "There's a lot more room to make adjustments to priorities or manage some of the windfall risks that can potentially be problematic."

The lawsuit may influence future P3 contracts, said Greg Remec, senior director and head of North American Infrastructure at Fitch Ratings, which privately rates the deal.

"It could lead to increased scrutiny of P3 contracts and make it more difficult for public entities to secure P3 financing," Remec said in an email. "However, it could also lead to improvements such as more stringent and accurately defined contract terms and better risk management practices. It's difficult to say if the lawsuit is delaying the pace of new P3 deals coming to market, but market participants are watching closely to see which side prevails and apply any lessons learned in new transactions."

UIEC has until April 28 to respond to the university's motion to dismiss. The lawsuit, which was filed in the U.S. District Court for the Southern District of Iowa, came a month after Iowa Auditor Rob Sand released a [report](#) highlighting some of the P3's risks.

If the investments fail to generate expected returns, "Iowa taxpayers may be responsible for making up any shortfall," Sand warned. "This transaction has become the largest financial obligation ever held by Iowa taxpayers."