

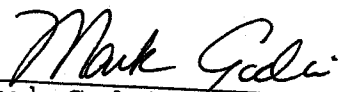


franchise fee has been imposed for at least five years. However, Plaintiff has not complained about the alleged illegality of the franchise fee until a recent increase in the franchise fee. Plaintiff's claim is precluded by the doctrine of laches.

5. Failure to join indispensable parties. Only the Iowa Utilities Board can approve utility billing rates. Only MidAmerican energy knows what customers were billed what amounts on what dates for what services. The City does not collect money from MidAmerican customers but from MidAmerican. There is no way Plaintiff or any member of the putative class can get adequate relief without the joinder of the Utilities Board and MidAmerican Energy as parties defendant. And, the failure to join them as parties defendant will be unfairly prejudicial to the City.

WHEREFORE, the City prays the Court dismiss Plaintiff's claim and for such other relief as is appropriate.

The City further prays the Court set this motion for argument, establish a briefing schedule, and for such other relief as is appropriate.



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**PROOF OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause in accordance with the attorneys of record herein at their respective addresses as

disclosed on the pleadings on 8-18-04

- By:  U.S. Mail       FAX  
 Hand Delivered       Overnight Courier  
 Federal Express       Other:

Signature Diane Roscoe