

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**LISA KRAGNES,****Plaintiff,**

vs.

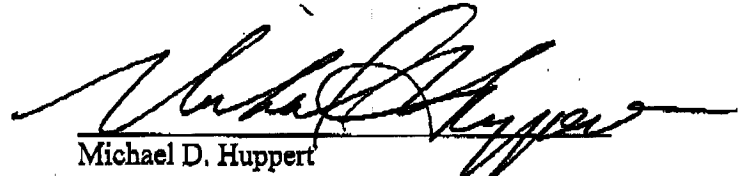
CITY OF DES MOINES,**Defendant.****CASE NO. CE 49273****RULING ON MOTION TO
RECONSIDER RULING ON
MOTION TO DISMISS**

The court has been provided with the defendant's motion to reconsider its previous ruling denying the motion to dismiss filed by the defendant, as well as a supporting brief. Upon consideration of the arguments contained therein, and having reviewed its previous ruling, the court is still of the opinion that the motion to dismiss should not be granted at this time. In the absence of a more complete record, the court is not inclined to merely accept as gospel the assertions of counsel as to what did or did not occur before the Iowa Utilities Board regarding the franchise fee in question. In so doing, the court is exercising the type of restraint recommended by the Iowa Supreme Court in considering pre-answer motions to dismiss. See Robinson v. State, 687 N.W.2d 591, 592-93 (Iowa 2004) (quoting Cutler v. Klass, Whicher & Mishne, 473 N.W.2d 178, 181 (Iowa 1991)).

IT IS THEREFORE ORDERED that the motion to reconsider ruling on motion to dismiss filed by the defendant is denied. The defendant shall have fourteen (14) days from the date of this ruling in which to file and serve its answer to plaintiff's petition.

FILED
POLK COUNTY, IA.
2005 JAN 27 PM 3:12
CLERK DISTRICT COURT

Dated this 27th day of January, 2005.



Michael D. Huppert
Judge, Fifth Judicial District of Iowa

Copies to:

✓ Brad Schroeder
✓ Mark Godwin