

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

LISA KRAGNES,

Plaintiff,

vs.

CITY OF DES MOINES, IOWA,

Defendant.

)
)
) Equity No. 49273

) ANSWER AND AFFIRMATIVE
) DEFENSES OF DEFENDANT
) CITY OF DES MOINES
)
)

FILED
POLK COUNTY, IA
FEB FEB - 2 P 3 51

COMES NOW the Defendant, the City of Des Moines, and for its answer to Plaintiff's Petition states:

1-5. The City admits paragraphs 1 through 5 of Plaintiff's Petition. In further answering paragraph 5 of the Petition, the City states that Ordinance No. 14,341 (the Electricity Franchise) and Ordinance No. 14,342 (the Gas Franchise) and MidAmerican Energy's acceptance of both, are attached and by this reference made a part hereof.

6. The City denies paragraph 6 of the Petition.

7. The City admits paragraph 7.

8-19. The City denies paragraphs 8 through 19 of the Plaintiff's Petition.

WHEREFORE, the City prays the Court dismiss Plaintiff's Petition and assess the cost of this action against the Plaintiff.

AFFIRMATIVE DEFENSES

COMES NOW the City, and for its affirmative defenses states:

1. This Court lacks jurisdiction to hear this case because the Iowa Utilities Board has exclusive jurisdiction over the matter.

2. This Court lacks jurisdiction of this case because the Plaintiff has failed to exhaust her adequate administrative remedies.

3. Plaintiff's Petition fails to state a claim for which relief can be granted because Plaintiff's Petition is a collateral attack upon final agency action.

4. Plaintiff lacks standing because the franchise fees are imposed upon MidAmerican Energy, not Plaintiff.

5. The Doctrine of Latches precludes Plaintiff's claim.

6. Plaintiff has failed to join indispensable parties to this case, namely MidAmerican Energy, which is a party to the Franchise Agreements at issue, and the Iowa Utilities Board, which has, by law, approval power over the franchise fees at issue.

WHEREFORE, the City prays the Court dismiss Plaintiff's Petition and assess the cost of this action against the Plaintiff.



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Original Filed.

Copy to:

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ATTORNEY FOR PLAINTIFF

PROOF OF SERVICE

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

disclosed on the pleadings on 2-2-05

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

Signature Duane Roscoe