

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LISA KRAGNES, et al

Plaintiff,

vs.

CITY OF DES MOINES, IOWA,

Defendant.

Equity No. 49273

**PLAINTIFFS' FIRST MOTION FOR
PARTIAL SUMMARY JUDGMENT**

(Oral Argument Requested)

COMES NOW the Plaintiff, Lisa Kragnes, and pursuant to Rule 1.981 of the Iowa Rules of Civil Procedure and for her First Motion for Partial Summary Judgment, states to the Court as follows:

1. The present action is an action for declaratory judgment brought by Lisa Kragnes, on behalf of herself and all others similarly situated, residents of the City of Des Moines, against the City of Des Moines, a municipality located in Polk County, Iowa. The action was filed on July 27, 2004.

2. This action centers upon the City of Des Moines' ordinances that have been passed enacting franchises for MidAmerican Energy Company for the supplying of utilities and gas and electric to the residents of the City of Des Moines.

3. The Defendant City of Des Moines has enacted ordinances relating to MidAmerican Energy Company franchises for the supplying of utilities of gas and electric. This is pursuant to its powers under Iowa Code §364.2(4).

4. In connection with the franchises, the Defendant City of Des Moines has determined that MidAmerican Energy Company is required to charge to its customers, the

residents of the City of Des Moines, a “franchise fee” which is calculated as a percentage of the amount of billings each of such customer’s use of the gas and electric utility.

5. MidAmerican Energy acts merely as a “conduit” or “collector” for the collection of these funds and submission of these monies to the City of Des Moines. MidAmerican is not allowed to retain any of the monies relating to any of this collection activity.

6. The Plaintiffs assert that this is an illegal tax exacted by the City of Des Moines outside the scope of its legal authority to tax. The City of Des Moines denies that it is a tax and asserts that it is a properly assessed franchise fee under the statutes.

7. In further denial, the City of Des Moines has asserted various affirmative defenses.

8. Under Iowa Rule of Civil Procedure Rule 1.981, summary judgment may be entered against a party if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to summary judgment as a matter of law.

9. There is no genuine issue as to any material fact as to and the Plaintiffs are entitled to Partial Summary Judgment, as a matter of law, on the following:

- a. Defendant’s first affirmative defense asserting that: this Court lacks jurisdiction to hear this case because the Iowa Utilities Board has exclusive jurisdiction over the matter.
- b. Defendant’s second affirmative defense asserting that: This Court lacks jurisdiction of this case because the Plaintiff has failed to exhaust her adequate administrative remedies.

c. Defendant's third affirmative defense asserting that: 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.

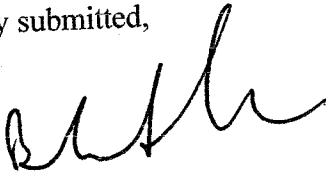
10. Accompanying and supporting this First Motion for Partial Summary Judgment is a Brief in Support of the First Motion for Partial Summary Judgment, Plaintiffs' Statement of Undisputed Facts in Support of Plaintiffs' First and Second Motion for Partial Summary Judgment and Plaintiffs' Appendix Submitted in Support of Plaintiffs' First and Second Motion for Partial Summary Judgment.

11. Plaintiffs respectfully request oral argument on this First Motion for Partial Summary Judgment.

WHEREFORE the Plaintiff, Lisa Kragnes, on behalf of herself and all others similarly situated, prays that this Court grant Partial Summary Judgment to the Plaintiffs as specified above.

Respectfully submitted,

By:


Brad Schroeder PK#000015582
Hartung & Schroeder LLP
Equitable Building, Suite 100
608 Locust Street
Des Moines, Iowa 50309
Telephone: (515) 282-7800
Facsimile: (515) 282-8700
E-mail: Schroeder@handslawfirm.com

ATTORNEY FOR PLAINTIFFS

ORIGINAL FILED.

Copies of the foregoing have been hand-delivered this 11th day of October, 2005, to the following:

Mark Godwin
Deputy City Attorney
City Hall
400 East First Street
Des Moines, Iowa 50309-1891
ATTORNEY FOR DEFENDANT

Judge Michael D. Huppert
Polk County Courthouse
500 Mulberry
Des Moines, Iowa 50309

By: 