

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

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OCT 13 2005

BRICK, GENTRY, BOWERS, SWARTZ,
STOLTZE, SCHULING & LEVIS, P.C.

LISA KRAGNES,)
)
Plaintiff,)
)
vs.)
)
CITY OF DES MOINES, IOWA,)
)
Defendant.)

Equity No. 49273
STATEMENT OF MATEREAL
FACTS NOT IN DISPUTE
IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

FILED
POLK COUNTY IA
OCT 11 PM 2:30
CLERK DISTRICT COURT

COMES NOW the Defendant, the City of Des Moines, and for its Statement of Material Facts Not in Dispute in Support of its Motion for Summary Judgment states:

1. The City of Des Moines has imposed franchise fees upon utilities since at least 1960. (Deposition of Assistant City Manager Michael Matthes, P. 7, L.20 to P.10, L.4, Tab A, App. 2-3).
2. In September 2004 the City increased its electric and gas franchise fees from 1% to 3% (Deposition of Matthes, P. 11, L.24 to P.14, L.4, App. 3-4; Ordinances 14,341 and 14,342, Tabs B & C, App. 8, 15).
3. MidAmerican Energy accepted the imposition of the fees. (Deposition of Matthes, P. 14, L.15 to P.17, L.5, App. 4-5; Tabs D & E, App. 22, 23).
4. The Iowa Utilities Board approved the fees. (Deposition of Iowa Utilities Board Administrator John Harvey, P.1-12 and 21-32, Tab K, App. 64-69; Tab F and G, App. 24, 38).
5. The Plaintiff, a resident of Des Moines and a gas and electric customer of MidAmerican, claims the franchise fees are an illegal sales tax. (Petition, Tab H, App. 54).
6. Plaintiff has paid the applicable franchise fee on gas and/or electricity without protest, for approximately ten years before filing this suit. (Deposition of Lisa Kragnes, P. 4, L. 1

to P. 5, L. 18, Tab I, App. 60).

7. Plaintiff has not complained to the Iowa Utilities Board that the franchise fees are an illegal sales tax. (Kragnes Depo. P. 6, L. 17 to P. 7, L. 3, Tab H, App. 61).

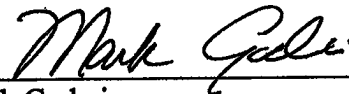
8. Plaintiff has never attempted to deduct the alleged "tax" on any income tax return. (Kragnes Depo, P. 8, L. 18 to P. 8, L. 23, Tab H, App. 61).

9. Des Moines does not charge a right-of-way user fee of MidAmerican Energy. (Matthes Depo., P. 70, L. 9 to P. 71, L. 15, Tab A, App. 6).

10. If Des Moines had not increased its franchise fees by way of the ordinances in question, there is a strong likelihood that property taxes would have been increased. (Matthes Depo., P. 19, L. 18 to P. 20, L. 25, Tab A, App. 5).

11. After the franchise fee was instituted, the City enacted one of the largest tax cuts in its history. (Matthes Affidavit, Tab J, App. 63).

12. At least 16 other cities have negotiated gas and/or electric franchise fees with MidAmerican Energy. (Matthes Affidavit, Tab J, App. 63).



Mark Godwin
Deputy City Attorney
City Hall
400 Robert D. Ray Drive
Des Moines, IA 50309-1891
Telephone: 283-4564
Fax: (515) 237-1748
ATTORNEY FOR DEFENDANT
CITY OF DES MOINES

Original Filed.

Copy to:

Honorable Michael D. Huppert
Judge, Fifth Judicial District

Mr. Brad Schroeder
Hartung & Schroeder LLP
Equitable Building, Suite 100
608 Locust Street
Des Moines, IA 50309
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 10-11-05

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

Signature Deane Roscoe