



admits this in Paragraph 16. The City agrees with the remainder of Paragraph 10.

11. The City agrees.

12. The City disagrees because the statement in paragraph 12 directly conflicts with Plaintiff's statement in paragraph 16. See answer to Paragraph 10. The City does not understand why the Plaintiff insists upon this obvious misstatement. See Paragraph 16.

13. The City agrees.

14. The City agrees.

15. The City agrees.

16. The City disagrees that the City "imposed" the ordinance upon MidAmerican Energy. The City does not understand why the Plaintiff would state such a thing when in Paragraph 9 the Plaintiff says that MidAmerican accepted the franchise agreement amendments. The City agrees with the remainder of the paragraph.

17. The City disagrees that the franchise agreements impose the franchise fees upon City residents. Just like in Paragraph 10, Plaintiff makes the statement despite making the opposite factual assertion in Paragraph 16. The City agrees with the remainder of the paragraph.

18. The City agrees.

19. The City disagrees that MidAmerican's pass-through of the franchise fees is "pursuant to the dictates of the City ordinances." The ordinances speak for themselves and nowhere do they require the company to pass the fees on to its customers. The Plaintiff knows this because she says so in Paragraph 16. The City agrees with the remainder of the paragraph.

20. The City agrees and points out this paragraph is redundant to Paragraphs 13 and 36.

21. The City agrees and points out this paragraph is redundant to Paragraphs 15, 13, 20

and 36.

22. Not material. The City has not resisted Plaintiff's first motion for summary judgment.

23. Not material. See answer to Paragraph 22.

24. Not material. See answer to Paragraph 22.

25. Not material. See answer to Paragraph 22.

26. Not material. See answer to Paragraph 22.

27. The City disagrees with this paragraph because it is nonsensical.

28. Immaterial. See answer to Paragraph 22.

29. Immaterial. See answer to Paragraph 22.

30. Immaterial. See answer to Paragraph 22.

31. This jurisdictional allegation is not a statement of fact. Instead, it is a legal conclusion.

32. Immaterial. See answer to Paragraph 22.

33. Immaterial. See answer to Paragraph 22.

34. The City disagrees. See Tabs F and G in City's Appendix where Iowa Utilities Board formally, in writing, approved both fees.

35. The City agrees and points out this paragraph is redundant to Paragraph 14.

36. The City agrees and points out this paragraph is redundant to Paragraphs 13 and 20.

37. The City disagrees. The appendix page cited by Plaintiff in support of this fact is the deposition of Assistant City Manager Mike Matthes who says there are costs associated with the provision of gas and electricity. Indeed, one of the questions asked by Plaintiff of Mr. Matthes was:

Q. "Are there ANY OTHER COSTS in your opinion that are incurred by the city in providing gas and electric services to the citizens of Des Moines?

(Plaintiff's Appendix, P.95, Deposition of Matthes, P.17, L.17 to 20).

38. The City disagrees. Mr. Matthes did not speculate that there were costs associated with the franchise activity. See answer to Paragraph 37. Also, the statement is immaterial.

39. The City agrees that the statement is accurate. It is also immaterial.

40. The City agrees.

*Mark Godwin*

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, 5th 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 11-4-05

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

Signature Diane Roscoe