

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LISA KRAGNES, et al. Plaintiff, vs. CITY OF DES MOINES, IOWA, Defendant.	Equity No. 49273 PLAINTIFF'S SECOND SUPPLEMENTAL APPENDIX IN SUPPORT OF PLAINTIFFS' RESISTANCE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.
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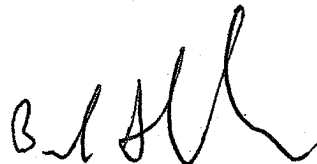
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Respectfully Submitted,

By:



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ATTORNEY FOR PLAINTIFF

ORIGINAL FILED.
CERTIFICATE OF SERVICE:

A COPY of the foregoing has
been mailed this 5th day

RECEIVED

DEC 6 2005

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

FILED
POLK COUNTY IA
05 DEC -5 AM 9:56
CLERK DISTRICT COURT

of December, 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: *Kathy Parsons*

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

LISA KRAGNES,)
)
Plaintiff,) Equity No. 49273
)
vs.) DEFENDANT'S RESPONSE
) TO PLAINTIFF'S REQUEST
CITY OF DES MOINES, IOWA,) FOR ADMISSIONS
)
Defendant.)

COMES NOW the Defendant, and for its response to Plaintiff's Request for Admissions states:

REQUEST FOR ADMISSIONS NO. 1: More than 25 persons, firms, corporations or entities have paid a franchise fee to MidAmerican Energy Company for receiving electric and gas utilities pursuant to the City of Des Moines Ordinance No. 6281 and 6280 since July 1, 1999.

RESPONSE: Admit.

REQUEST FOR ADMISSIONS NO. 2: The franchise fees for receiving electric and gas utilities collected by MidAmerican Energy Company from residents of Des Moines since July 1, 1999 have been paid directly to the City of Des Moines.

RESPONSE: Admit.

REQUEST FOR ADMISSIONS NO. 3: More than 25 persons, firms, corporations or entities have paid an increase of the franchise fee to MidAmerican Energy Company for receiving electric and gas utilities pursuant to the City of Des Moines Ordinance Nos. 14, 342 and 14,341 since September 1, 2004.

RESPONSE: Admit.

REQUEST FOR ADMISSIONS NO. 4: The franchise fees collected by MidAmerican Energy Company for receiving electric and gas utilities collected by MidAmerican Energy Company from residents of Des Moines will be paid directly to the City of Des Moines on a quarterly basis.

RESPONSE: Admit.

REQUEST FOR ADMISSIONS NO. 5: In order to have its franchises extended for the provision of gas and electric to the citizens of the City of Des Moines, MidAmerican Energy Company was required by the City of Des Moines to accept Ordinance Nos. 14,342 and 14,341.

RESPONSE: To the extent that this request implies that the franchise agreement was some sort of *fait accompli* which was forced upon a powerless MidAmerican Energy, it is DENIED because MidAmerican was free to negotiate terms and conditions of the franchise agreement with the City and did in fact do so. To the extent that this request states terms of the Franchise Agreement, it is ADMITTED.

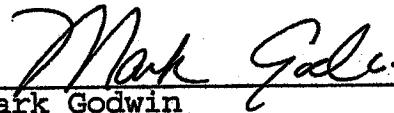
REQUEST FOR ADMISSIONS NO. 6: A part of Ordinance Nos. 14,342 and 14,341 included an increase in the franchise fees charged by MidAmerican Energy Company and then paid to the City of Des Moines.

RESPONSE: Admit.

REQUEST FOR ADMISSIONS NO. 7: The franchise fees collected by MidAmerican Energy Company and paid to the City of Des Moines

are considered revenue by and for the City of Des Moines.

RESPONSE: To the extent that revenue is a broad and general term which includes all public money which the City collects and receives, from whatever source and in whatever manner, as defined in Black's Law Dictionary, 5th Edition, the request is admitted. The City further states that some utility franchise fee money is deposited into an account specifically established to offset the cost of maintaining the City's right-of-way.



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Original 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 Feb. 1, 2005

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

Signature



IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

LISA KRAGNES,)
)
 Plaintiff,) Equity No. 49273
)
 vs.) DEFENDANT'S ANSWERS
) TO PLAINTIFF'S
 CITY OF DES MOINES, IOWA,) INTERROGATORIES
)
 Defendant.)

COMES NOW the Defendant, and submits the following answers to interrogatories propounded by Plaintiff.

Mark Godwin

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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 3-9-05

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

Signature *Diane Roscoe*

INTERROGATORY NO. 1: State the full name, address, and title of the person answering these interrogatories on behalf of the defendant and whether or not he/she has authority to make such answers.

ANSWER:

Finance Director Merrill Stanley, City Clerk Diane Rauh, Information Technology Director Michael Armstrong, and Assistant to the City Manager, Mike Mathes, along with counsel, assisted in answering these interrogatories on behalf of the Defendant, and all have authority to do so.

INTERROGATORY NO. 2: State whether or not the person answering these interrogatories has made or caused to be made a sufficient investigation or inquiry from the employees, agents, and/or representatives of the Defendant so as to fully and accurately answer the interrogatories herein.

ANSWER:

Yes.

INTERROGATORY NO. 3: With reference to the franchise fees that are the subject matter of this action, please state the following:

- (a) the date of the adoption of any ordinance(s) by the City of Des Moines approving all such franchise fees;
- (b) the date of approval(s) by MidAmerican Energy Company or its predecessors;
- (c) the date of approval(s) by the Iowa Utilities Board;
- (d) the date of any amendments of the ordinance(s) or any ordinance(s) in any way related to the franchise fees;
- (e) the date of repeal of any ordinance(s);
- (f) the number of the ordinance(s).

ANSWER:

See documents attached.

INTERROGATORY NO. 4: State the total amount of fees collected by the City of Des Moines for the franchise fees charged by and through MidAmerican Energy Company during the time frame covered by this case.

ANSWER:

\$21,241,462.61

INTERROGATORY NO. 5: If the Defendant claims that the collection of these fees was authorized by the Iowa Utilities Board, please specifically state the decision(s) number(s) of the Iowa Utilities Board that authorized the Defendant to collect the franchise fees in exchange for the provision of gas and electric utilities.

ANSWER:

See documents attached for 2004 franchise fees.

Per discussions with counsel at the Iowa Utilities Board, the approvals for the 1987 franchise fees may not be in existence anymore. If they can't find it, the City will get an affidavit saying that the approval cannot be located but that the franchise fee couldn't be collected without that approval.

INTERROGATORY NO. 6: Please identify each and every expenditure made from franchise fees collected by the City of Des Moines from MidAmerican Energy Company since the passage of the Ordinance and covered by the time frame of this case. In answering this Interrogatory provide the date of each expenditure, the purpose of the expenditure, and the amount of said expenditure.

ANSWER:

Franchise fee receipts are deposited in the city's General Fund along with receipts from various other sources, including property taxes, hotel/motel taxes, investment income, etc. Of the \$2,414,538.02 utility franchise fee revenue received in the fiscal year ending June 30, 2004, \$126,168.50 was placed in a General Fund revenue account and identified as a source to help defray costs of \$389,192.64 incurred in maintaining the city's street right of way. This only occurred in FY 2004. Other than that, the expenditure of utility franchise fees is not identified by revenue source.

INTERROGATORY NO. 7: Identify the fund and the name of the depository with which funds collected for the franchise fees involved in this case have been and are deposited. In answering this interrogatory provide the name, address, and telephone number where said funds are deposited.

ANSWER:

City of Des Moines - General Operating Account
Bankers Trust Company
665 Locust
Des Moines, Iowa 50309
Contact name: Pat Rourke
Phone: 515-245-5284

INTERROGATORY NO. 8: Pursuant to Rule 1.508 of the Iowa Rules of Civil Procedure, provide in detail the identity of each person you expect to call as an expert witness at the time of trial and with respect to each such person, state the following:

- a. The name, address and telephone number of such person(s);
- b. Describe the specialization and field in which it is claimed such witness will qualify as an expert;
- c. Specify the qualifications of each such witness;
- d. State the subject matter or area in which such person is expected to testify;
- e. State the substance of the facts and opinions on which such person will testify; and
- f. Give a summary of the grounds for each such opinion.

ANSWER:

None at this time.

INTERROGATORY NO. 9: Please identify the name of each employee of the Defendant who has specific knowledge regarding the collection of the franchise fees pursuant to the Ordinances, the depositing of said fees, and the accounting/bookkeeping procedures which have been used in the management of said franchise fees, once collected from MidAmerican Energy Company.

ANSWER:

Collection and deposit: Tim McCarthy, Deputy Controller

Accounting and Bookkeeping: Allen McKinley, Research and Budget Director

INTERROGATORY NO. 10: Identify the purpose and/or intended use of the franchise fee funds collected by the City of Des Moines and which are the subject of this litigation. In answering this interrogatory attach any and all memorandum, policies, resolutions, or ordinances evidencing the purpose and intended use of said funds.

ANSWER: Per City of Des Moines Municipal Code, Chapter 102, Article IX, a portion of utility franchise fee revenue received will be placed in a General Fund revenue account and identified as a source to help defray costs of maintaining the city's street right of way.

In addition, future franchise fee revenues have been earmarked for:

- 24 new firefighters;
- 12 new police officers;
- approximately \$210,000 to low income energy bill assistance
- approximately \$400,000 to restored library hours;
- relates to manufacturers and the school district

INTERROGATORY NO. 11: Identify the following persons:

- a. The person(s) who is(are) currently employed with the Defendant who is in charge of the contacts (via phone, letter, personal or email) with MidAmerican Energy Company for the verification of names, addresses, amounts of monies and/or receipts of the monies collected by MidAmerican Energy Company and delivered to the Defendant pursuant to the Ordinances(s) involved in this case;
- b. The person(s) who is (are) currently employed with the Defendant who is (are) most familiar with the computer hardware and software by which any electronic communications are or have been made by the Defendant with MidAmerican Energy Company as to the franchise fees involved in this case, including the transmission of such funds to the Defendant.
- c. The person(s) who is (are) currently employed with the Defendant who is (are) most familiar with the accounting(s) for the funds received from MidAmerican Energy for the franchise fees involved in this case.

ANSWER:

- a. No one person in the City is in charge of contacts to MidAmerican Energy. No person at the City verifies names, addresses, amounts of monies and/or receipts of money collected by MidAmerican and delivered to the City. MidAmerican is audited on a regular basis and the City receives a copy of the audit.
- b. Funds are paid by MidAmerican Energy Company to the City by check, not by electronic transmission. I.T. Manager Al Ihde is responsible for computer hardware and software at a managerial level.
- c. Allen McKinley, Research and Budget Director.

VERIFICATION

I certify under penalty of perjury, and pursuant to the laws of the State of Iowa, that the preceding Answers to Interrogatories are true and correct to the best of my knowledge.

Dated this 3/9/05 day of _____, 2005.


Signature

Mike Mathes
Printed Name