

Mark Godwin

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ATTORNEY FOR DEFENDANT
CITY OF DES MOINES

Original Filed.

Copy to:

Honorable Don C. Nickerson
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 2-16-07

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

Signature Diane Roscoe

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.

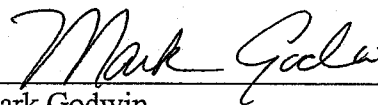
6. Plaintiff has failed to join indispensable parties to this case, namely MidAmerican Energy, which is a party to the Franchise Agreements at issue, and the Iowa Utilities Board, which has, by law, approval power over the franchise fees at issue.

7. The City is immune from Plaintiff's refund claims pursuant to Iowa Code § 670.4(2).

8. The City is immune from Plaintiff's refund claims pursuant to Iowa Code § 670.4(3).

9. All or part of Plaintiff's refund claims are barred by applicable statute of limitations.

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



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