

IN THE IOWA DISTRICT COURT  
FOR POLK COUNTY

LISA KRAGNES and all others  
similarly situated,

Plaintiff,

vs.

CITY OF DES MOINES, IOWA,

Defendant.

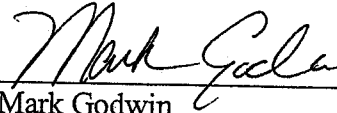
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)  
) Law No. CE 49273  
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)  
)

) DEFENDANT'S RESPONSE  
) TO PLAINTIFF'S STATEMENT  
) OF ADDITIONAL FACTS  
) PURPORTEDLY PRECLUDING  
) SUMMARY JUDGMENT  
)

COMES NOW the Defendant, the City of Des Moines, and for its response to Plaintiff's statement of additional facts purportedly precluding summary judgment states:

1. All of the facts set forth by the Plaintiff that she says precludes summary judgment are of one kind. They relate to the fact that it is MidAmerican Energy, and MidAmerican Energy only, that collects the franchise fee. And, it is MidAmerican Energy, and MidAmerican Energy only, that would (if it ever did so at all) disconnect a customer for failure to pay the franchise fee. The City is not involved in the collection process or the disconnection process at all. It is strictly at the discretion of MidAmerican Energy.
2. The City agrees with the correctness of each of the facts stated by the Plaintiff. Because MidAmerican is the collecting and disconnecting entity, the City believes that the facts have no legal significance. As pointed out in the City's Reply Brief, Plaintiff's defense of duress only applies if it is the public body doing the disconnecting. In this instance a private utility is doing the disconnecting.
3. Additionally, to the extent that Plaintiff's facts rely on Affidavits from the Plaintiff regarding the effect of utility cut-off for failure to pay a franchise fee, the same is immaterial.

Plaintiff has had her franchise fees suspended by injunction. Therefore, she will never be cut off for failure to pay them and her Affidavit is immaterial and pure speculation.



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.

Copies to:

Honorable Don C. Nickerson  
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 2-16-07

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

Signature Diane Roscoe