

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

<p>LISA KRAGNES, et al</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>CITY OF DES MOINES, IOWA,</p> <p style="text-align: center;">Defendant.</p>	<p>Equity No. 49273</p> <p style="text-align: center;"><b>PLAINTIFF'S SUPPLEMENTAL APPENDIX IN SUPPORT OF PLAINTIFF'S RESISTANCE TO DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON REFUND ISSUE</b></p>
--	---

**TABLE OF CONTENTS**

**PAGE**

Deposition of Wesley Bridgeman . . . . . 1

Respectfully Submitted,



By:

\_\_\_\_\_  
Brad Schroeder  
Hartung & Schroeder LLP  
Equitable Building, Suite 100  
608 Locust Street  
Des Moines, Iowa 50309  
Telephone: (515) 282-7800  
Facsimile: (515) 282-8700  
ATTORNEY FOR PLAINTIFF

IOWA DISTRICT COURT

07 AUG 11 PM 4:27

FILED

**ORIGINAL FILED.**

**CERTIFICATE OF SERVICE:**

A COPY of the foregoing has been mailed  
this 11<sup>th</sup> day of April, 2007, to the following:

Mark Godwin  
Deputy City Attorney  
City Hall  
400 Robert D. Ray Drive  
Des Moines, Iowa 50309-1891  
ATTORNEY FOR DEFENDANT

A COPY of the foregoing has been hand-delivered  
this 11<sup>th</sup> day of April, 2007, to the following:

Judge Don C. Nickerson  
Polk County Courthouse  
5<sup>th</sup> and Mulberry  
Des Moines, Iowa 50309



By: \_\_\_\_\_

1 IN THE IOWA DISTRICT COURT FOR POLK COUNTY  
2 LISA KRAGNES, and all )  
3 Others Similarly )  
4 Situated, )  
5 Plaintiffs, ) Equity No. 49273  
6 vs. )  
7 CITY OF DES MOINES, IOWA, ) DEPOSITION OF  
8 Defendant. ) WESLEY BRIDGEMAN

---

9 THE DEPOSITION OF WESLEY BRIDGEMAN,  
10 taken before Jodi Lewis, Certified Shorthand  
11 Reporter and Notary Public of the State of  
12 Iowa, commencing at 10:45 a.m., Tuesday,  
13 April 12, 2005, at 608 Locust Street, Des Moines,  
14 Iowa.

A P P E A R A N C E S

15 Plaintiffs by: BRAD SCHROEDER  
16 Attorney at Law  
17 608 Locust Street  
18 Des Moines, Iowa 50309  
19 Defendant by: MARK GODWIN  
20 Deputy City Attorney  
21 400 East First Street  
22 Des Moines, Iowa 50309  
23 Also present: David Lynch, Esq.

24  
25 Reported by: Jodi Lewis, C.S.R.

Sweeney Court Reporting  
320 Insurance Exchange Bldg., Des Moines, Iowa 515-244-6373

9 were actually imposed some time ago, raised last  
10 fall, correct, raised from 1 percent to 3  
11 percent?

12 A. I believe that was on the electric one they  
13 were raised from 1 to 3 effective September 1,  
14 2004.

15 Q. Is it not your understanding that it was  
16 raised on gas as well?

17 A. It was passed on both of them at the same  
18 time.

19 Q. Now, you deal primarily with electric  
20 tariffs and not gas; is that right?

21 A. Basically I work with electric tariffs, but  
22 I do get involved in some gas tariffs, especially  
23 ones like this where there's a dual process.

24 Q. When there's a companion tariff, you'll take  
25 both of them?

Sweeney Court Reporting  
320 Insurance Exchange Bldg., Des Moines, Iowa 515-244-6373

6

1 A. Yeah.

2 Q. Okay. What are your responsibilities when  
3 you get something like this put in front of you?  
4 What's your job?

5 A. My job is to look at the tariff and  
6 determine -- it usually has a date stamp on it --  
7 when it was filed. I have 21 days to process it,  
8 and I look at the tariff to make sure it is -- it  
9 conforms with the rules and regulations for  
10 filing tariffs, and then I look to see what would  
11 support that tariff.

Page 5

12 Q. What do you mean by that?

13 A. Well, in the particular tariffs we're  
14 looking at now, there was an ordinance for gas  
15 and an ordinance for electricity filed with the  
16 tariff showing that the franchise fee was going  
17 to be 3 percent effective September 1, 2004.

18 Q. So once you see that there's an ordinance  
19 passed by the City that's underlining this tariff  
20 in front of you, is that basically the end of the  
21 inquiry?

22 A. That would be basically the end of my  
23 inquiry.

24 Q. What do you mean by that?

25 A. I have no reason to dispute the City

Sweeney Court Reporting  
320 Insurance Exchange Bldg., Des Moines, Iowa 515-244-6373

7

1 ordinance and the tariff that was filed.

2 Q. Have you ever looked at an underlying City  
3 ordinance supporting one of these and said that  
4 it was invalid?

5 A. No.

6 Q. Do you know if that's within your authority  
7 to do so?

8 A. No.

9 Q. Why do you think that's the case?

10 A. I just believe that is the case, that the  
11 City has the right to impose 3 percent on the  
12 people who reside in Des Moines, and they gave  
13 them that authority when they elected them.

14 Q. In your mind, Wes, is this similar to a  
15 state sales tax that might be imposed?

16 A. They certainly look alike, but I don't know  
17 if they are or not.

18 Q. In terms of the processes that you would  
19 employ with the utilities board, they're the  
20 same; correct?

21 A. They're similar.

22 Q. You check to see whether there's a valid  
23 underlying ordinance on the one hand or whether  
24 there's a validly-passed state sales tax on the  
25 other. Is that fair to say?

Sweeney Court Reporting  
320 Insurance Exchange Bldg., Des Moines, Iowa 515-244-6373

8

1 A. I don't want to get into state sales tax  
2 because that's -- that's usually -- that would be  
3 a little different than this, I believe. This is  
4 strictly the City of Des Moines.

5 Q. But it would be the same, would it not, Wes,  
6 in that the utilities board -- in your role with  
7 the utilities board, you're not going to tell,  
8 just as you wouldn't tell the State, hey, you  
9 can't pass this sales tax, we don't think that's  
10 right, you wouldn't tell the City of Des Moines,  
11 hey, you can't pass this franchise fee because we  
12 don't think there's a good reason for it?

13 A. That's correct.

14 Q. Now, you know that the City's been talking  
15 about raising the franchise fee again; correct?

16 A. Yes. It's in the ordinance.

Page 7

17 Q. And do you know what they're raising it to?

18 A. I don't have privy as to what they're going  
19 to raise it to, but in the ordinance it could be  
20 raised to 6 percent.

21 Q. Is it your expectation that -- That has not  
22 been put in front of the utilities board at this  
23 point, has it?

24 A. No.

25 Q. Is it your expectation, Wes, that if it

Sweeney Court Reporting  
320 Insurance Exchange Bldg., Des Moines, Iowa 515-244-6373

1 were, it would be the same sort of situation as  
2 last fall where it's really just a matter of  
3 signing off on it on the part of the utilities  
4 board?

5 A. Yes.

6 Q. And when I say by the utilities board, I  
7 understand in talking with John that, in fact,  
8 what happened in this situation last fall was  
9 that you did what's called a gray memo?

10 A. That's correct.

11 Q. Is that a term that's familiar to you?

12 A. Gray memo. And when we send it up, it was  
13 subject to complaint and investigation and, you  
14 know, they're always subject to complaint and  
15 investigation.

16 Q. And to make sure I've got the procedure  
17 right, when we're talking about a gray memo,  
18 we're talking about a memo that basically is sent

19 to the board members just sort of outlining  
20 what's in front of the board, and if you don't  
21 hear from them within let's say a minimum of two  
22 days' time --

23 A. I don't know if there's any minimum days of  
24 time or anything like that, but we usually get a  
25 response by letter that the tariff has been

Sweeney Court Reporting  
320 Insurance Exchange Bldg., Des Moines, Iowa 515-244-6373

10

1 allowed to go into effect from whoever signs off  
2 on the board probably. It's not from the board  
3 directly, necessarily. But there's a letter that  
4 goes out saying that it has been approved by the  
5 board.

6 Q. Even though the board doesn't directly act?

7 A. The board doesn't directly assign the  
8 letter.

9 Q. So basically their inaction may result in  
10 someone at your level sending out the order; is  
11 that correct?

12 A. No. I think they see it. They see it.

13 Q. Okay.

14 A. It's up to them to say yes or no.

15 Q. Do you know whether they actually review  
16 these things? I mean, do you know for a fact  
17 that when something like this is sent to the  
18 board, that all the board members review it and  
19 consciously determine yea or nay?

20 A. That would be a reach for me because I'm not  
21 usually in the office with the board members to