

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

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POLK COUNTY IOWA
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CLERK DISTRICT COURT

LISA KRAGNES and all others)	
Similarly situated,)	
)	
Plaintiff,)	Law No. CE 49273
)	
vs.)	MOTION TO ENLARGE AND
)	AMEND FINDINGS AND
CITY OF DES MOINES, IOWA,)	CONCLUSIONS AND TO
)	MODIFY RULING ON
)	SUMMARY JUDGMENT BY
Defendant.)	DEFENDANT CITY OF DES MOINES

COMES NOW the Defendant, the City of Des Moines, pursuant to Iowa Rule of Civil Procedure 1.904(2), and for its motion states:

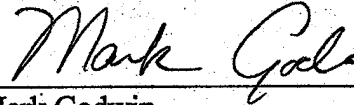
1. On or about October 6, 2006, the City of Des Moines made a Motion for Partial Summary Judgment on the issue of the refund claimed by the Plaintiff. (See Motion, Exhibit A attached.)
2. As part of its motion, the City assumed, for purposes of the motion only, that it would collect more in franchise fees than it was entitled to collect. (See Motion, paragraph 2, Exhibit A attached.)
3. The purpose of the motion, therefore, was to determine the legal availability of a refund **EVEN IF** the City was not entitled to collect all of the franchise fees that it has collected.
4. However, the Court apparently misapprehended the purposes of the motion. Instead, the Court concluded genuine issue of material fact "continues to exist as to whether all or part of the franchise fee charged by the City in gas and electric services are reasonably related to the City's administrative expenses in exercising its police power." (See Court file, Ruling on Motion for Partial Summary Judgment, page 6.)

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5. Thus, the Court completely misapprehended the Defendant's motion. The City admitted, for purposes of the motion, that the fees it was collecting were not reasonably related to the City's administrative expenses.

6. As such, the District Court has failed to resolve issues raised by the motion, which was properly submitted for adjudication.

WHEREFORE, the City prays the Court examine the motion, realize that the City has admitted a fact that the Court now claims is a factual dispute, enlarge and amend the Court's findings, and modify the Court's ruling and grant the City's Motion for Summary Judgment.



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Original Filed.
Copies to:

Honorable Don C. Nickerson
Judge, 5th Judicial District

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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 8-6-07

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

Signature Diane Roscoe