

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LISA KRAGNES, et al.</p> <p>Plaintiffs,</p> <p>vs.</p> <p>CITY OF DES MOINES, IOWA,</p> <p>Defendant.</p>	<p>Case No. CE 49273</p> <p>PLAINTIFF'S RESISTANCE TO DEFENDANT'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT MOTION FOR SUMMARY JUDGMENT PURSUANT TO IOWA CODE SECTIONS 670.4(2) AND 670.4(3)</p>
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COMES NOW the Plaintiff, Lisa Kragnes, on behalf of herself and all others similarly situated, and respectfully submits this statement of additional facts in support of Plaintiffs' Resistance to Defendant's Motion for Summary Judgment Pursuant to Iowa Code Sections 670.4(2) and 670.4(3). The Plaintiffs' state the following:

1. The Defendant's statement of material facts not in dispute contains references to the *Kragnes v. City of Des Moines*, 714 N.W.2d 632 (Iowa 2006) through paragraphs 1-12, 14-16). To the extent that the Defendant's paraphrase the *Kragnes* holding and findings of fact the Plaintiff would direct the Court to the actual findings and holdings of the case.
2. Plaintiffs qualify paragraph 13. While the Plaintiffs' petition does refer to the natural gas and electricity franchise fees as illegal taxes collected in violation of state statute, the petition does not refer to any legal theory that sounds in tort. (Petition, DA pp. 13-18).
3. Plaintiffs admit paragraphs 17 and 18.

WHEREFORE the Plaintiff respectfully requests that the Court deny Defendant's Motion for Summary Judgment and assess costs against the Defendant, and for such other and further relief as the Court deems equitable in the premises.

Respectfully Submitted,

By:



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ORIGINAL FILED.

CERTIFICATE OF SERVICE:

Copies of the foregoing have been mailed
this 19th day of May, 2008, to the following:

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ATTORNEY FOR DEFENDANT

Judge Joel D. Novak
Polk County Courthouse
500 Mulberry Street
Des Moines, IA 50309



By _____