

IN THE IOWA DISTRICT COURT
FOR POLK COUNTY

RECEIVED
JUL 25 2008

STOLTZE & UPDEGRAFF, P.C.

LISA KRAGNES, et. al.,

Plaintiff,

vs.

CITY OF DES MOINES, IOWA,

Defendant.

)
) Law No. CE 49273
)
)
)
) DEFENDANT'S SECOND MOTION
) TO DECERTIFY CLASS AND
) VIEW FINANCIAL DATA
)

COMES NOW the Defendant, the City of Des Moines, and for its motions states:

1. Previously, the City made a motion to decertify the class and then a motion to view the financial data presented to the court by the Plaintiff that the City was not allowed to view

2. The Court denied the motion to decertify the class.

3. The Court has yet to rule on the Defendant's motion to view financial data.

4. Attached to these motions is an e-mail, marked as Exhibit A, from MidAmerican Energy.


5. As the e-mail clearly shows, the data on the number of customers given to the Plaintiff by MidAmerican Energy was off by somewhere between 40,000 and 70,000 customer addresses. MidAmerican originally told the City and the Plaintiff that it had approximately 56,000 customers. Now, it says it has 94,000 premises or perhaps 124,000 premises that will need to get class notice.

6. Thus, any cost estimates or assumptions made by the Plaintiff initially in presenting its financial data to the court are now irrelevant.

7. All costs and assumptions must go up as the number of premises to be noticed has increased from 56,000 to 94,000 or 124,000.

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CLERK DISTRICT COURT

WHEREFORE, the City prays the Court re-examine all financial data supplied by the Plaintiffs, question the Plaintiffs as to why they did not bring this significant discrepancy to the Court's attention, share the financial data with the City, and decertify the class if the Plaintiff's attorneys are unable to fund the lawsuit, and for such other relief as is appropriate.


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ATTORNEY FOR DEFENDANT
CITY OF DES MOINES

Original Filed.

Copies to:

Hon. Joel D. Novak, Judge, 5th Judicial District

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Bruce H. Stoltze
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Des Moines, IA 50393
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 7-24-08
By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Federal Express Other:
Signature Diane Roscoe

EXHIBIT A

Godwin, Mark .

From: Weiss, Steven R [SRWeiss@midamerican.com]
Sent: Friday, July 18, 2008 9:11 AM
To: Godwin, Mark .
Subject: FW: City of Des Moines vs. Kragnes

Below is information you requested regarding average bills. Please note the assumption used to derive those estimates.

Steven R. Weiss
Senior V.P. & General Counsel
MidAmerican Energy Company
sweiss@midamerican.com
(515) 281-2644 (phone)
(515) 242-4398 (fax)

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From: Knight, Gretta R
Sent: Friday, July 18, 2008 9:02 AM
To: Weiss, Steven R
Cc: Henkel, Randall E; Bryant, Stephen D; Ousley, Terry T
Subject: City of Des Moines vs. Kragnes

Steve,

In response to the request from the city attorney to determine the average amount a customer might receive should a refund be required, our IT department ran queries on all customers in the city's taxing jurisdiction. First of all, it's important to note that the initial number of customers quoted to both the city and plaintiff's attorneys was incorrect. The number provided was approximately 56,000. The number of premises (not customer) is 94,000. If you take into consideration that some customers moved and you could the number of bill accounts for the test year, the number increases to approximately 124,000. I know this seems complicated but it becomes difficult to count due to customers moving.

On July 10, 2008, our bill print department quoted \$14,964.02 to mail a regular sized postcard to 56,000 customers. The bill print supervisor is out of the office until Monday so I can't get a new estimate but this cost will increase, primarily due to postage. I roughly estimate that the cost will increase to \$24,745 if you send the postcard to the 94,000 premises, or \$32,420.00 for 124,000 customers who paid franchise fees in 2007 (2007 being the test year used to determine the average).

We used the following criteria to obtain an estimate for the average annual amount billed to a customer:

- Separated residential and non-residential
- Looked at franchise fees paid by city of Des Moines premises to determine what a customer who lived in a premise for a year would receive. For example, if an apartment had three tenants during the year, this would be counted as one

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premise. The franchise fee paid by all three tenants was used to determine what that premise paid in a year. This means that the average quoted is for a customer who paid the franchise fee for a full year.

- The year used to determine the amount paid was 2007.

Below is a table showing the number of premises, the total paid and the average, split by residential and non-residential. Keep in mind the non-residential will vary greatly depending on the size of the business.

Count of Premises	Revenue Class	Des Moines Franchise Fee	Average Annual Amount Billed for Des Moines Franchise Fee by Premise for 2007
83,955	Residential	\$6,475,660.19	\$77.13
10,153	Non Residential	\$6,212,031.85	\$611.84
94,108	Total	\$12,687,692.04	

Give me a call if you would like to discuss.

Gretta Knight
Manager, Customer Accounting
Phone: 563-333-8473
Fax: 563-336-3556
Mobile: 563-320-1947

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