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☐ Small Claims ☐ County Court ☒ District Court
☐ Probate Court ☐ Juvenile Court ☐ Water Court
Larimer County, Colorado
Larimer County Justice Center
201 La Porte Ave
Suite 100
Ft. Collins, CO 80521

Plaintiff: Virginia L.Farver
v
Defendant(s):
City of Fort Collins,
the Fort Collins Electric Utility; and
Does 1 - 100

▲ COURT USE ONLY ▲

Case Number: 2016 CV 144

Div.:5B Ctrm:

Attorney or Party Without Attorney: (Name & Address)
1214 Belleview Drive
Fort Collins, CO 80526

Phone Number: 970-689-3798
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Atty. Reg. #:

First Amended Complaint for damages, declaratory order and injunction

#1 Virginia L. Farver, hereinafter "Plaintiff", alleges as follows.

#2 Plaintiff brings this action to exercise her rights provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq* and to compel Defendants' performance under said Act.

#3 Introduction

Utility companies around the world are replacing electric, gas and water analog meters with pulsed radiation smart meter networks, which are costing us money, privacy, and our health and safety.

Smart Meters, (also called AMI, or AMR) eliminate meter reader jobs and are part of the "Smart Grid", which is an expensive wireless system installed on our homes, businesses, and in our environment that customers pay for. It's being installed without informed consent and without full disclosure of how they work, and what they can do with the personal data they collect. Customers and the media report serious complaints about Smart Meters for the following reasons: cybersecurity risk, privacy invasion, and health hazard.

Fort Collins residents are in the absurd position where the hazardous electric meters are free and the safe ones cost extra.

This case raises the question of whether the City Council and / or the Fort Collins Electric Utility (also known as "Fort Collins Utilities" or "Utility Services" or other names) ever properly adopted and approved any resolution, ordinance, or motion which would have authorized the Advanced Meter Fort Collins Project ("AMFC Project" or "Project") which entailed the removal of the analog electric meters from the homes and businesses of every resident and business in the City of Fort Collins and the installation of so called "smart electric meters" or "smart meters" in their place. The City of Fort Collins and Fort Collins Utilities spent approximately $31.4 million on the electric portion of the Advanced Meter Fort Collins project.

#4 Related to that, it raises the question of whether Fort Collins Utilities can legally charge Plaintiff a "manual meter reading charge" for the privilege of NOT having a smart meter on her home, producing and transmitting hazardous microwave radiation into the home and in every direction several thousands of times per day and causing a wide range of health impacts at low levels of chronic exposure according to hundreds of peer reviewed scientific papers and partial results of a large study published by the U.S. government National Toxicology Program on May 27, 2016.

http://ntp.niehs.nih.gov/results/areas/cellphones/index.html

The report, "Report of Partial Findings from the National Toxicology Program Carcinogenesis Studies of Cell Phone Radiofrequency Radiation in Hsd: Sprague Dawley SD Rats (Whole Body Exposure)," is available at

http://biorxiv.org/content/early/2016/06/23/055699

NTP is located at the National Institute of Environmental Health Sciences, part of the National Institutes of Health.

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#5 Jurisdiction

Jurisdiction is found in the Governmental Immunity Act, C.R.S. 24-10-109 (2015), which states:

> "(5) Any action brought pursuant to this article shall be commenced within the time period provided for that type of action in articles 80 and 81 of title 13, C.R.S., relating to limitation of actions, or it shall be forever barred; except that, if compliance with the provisions of subsection (6) of this section would otherwise result in the barring of an action, such time period shall be extended by the time period required for compliance with the provisions of subsection (6) of this section."

Section 13-80-102 provides a two year statute of limitations for:

> "(h) All actions against any public or governmental entity or any employee of a public or governmental entity, except as otherwise provided in this section or section 13-80-103;"

#6 Venue

Venue is proper in this court because defendants' place of business is located in and the events which are the subject of this complaint occurred in Larimer County, Colorado.

#7 Immunity

Immunity is waived according to the Governmental Immunity Act, C.R.S. 24-10-106 (1) (f), which states:

> "(1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:
>
> > (f) The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity;"

#8 Administrative remedies

Plaintiff has exhausted all administrative remedies by filing a notice and claim of injuries and damages related to the Advanced Metering Fort Collins project per the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.* A true and correct copy is attached hereto as Exhibit 1.

Plaintiff hand delivered and sent via U.S. Postal Service certified mail this notice and claim to the City Council, the City Attorney, and the Risk Management Division, on September 23, 2015 at the following address:

City of Fort Collins
Risk Management Division, the City Council, the City Attorney
P.O. Box 580
Fort Collins, Colorado 80522

The City denied Plaintiff's claim in a letter signed by Deputy City Attorney John R. Duval dated January 12, 2016. A true and correct copy of the UPS store receipt and certified mail post card, are attached hereto as Exhibits 2 and 3.

Mr. Duval wrote in his January 12 letter, "The City therefore denies the claims you have asserted in your Notice." The City thereby denied Plaintiff's claim and refused to pay Plaintiff as requested in the notice and claim.
A true and correct copy of that letter is attached hereto as Exhibit 4.

#9 Plaintiff cannot remember what exhibits she attached to the Notice and Claim but will be glad to provide copies to the Court and Defendants if and when she becomes sure.

#10 An employee of the City prepared a hand written receipt and gave it to Plaintiff on the day Plaintiff delivered the notice and claim. It appears that the employee's name is Jane Johnson but the handwriting is somewhat illegible.

A true and correct copy of said document is included in this Complaint as Exhibit 5.

#11 Legal basis and context

The Colorado Sunshine Act of 1972,

C.R.S. 24-6-101 *et seq*, ("the Act" or "Act") sets forth the requirements for meetings of governing bodies of public entities.

Declaration of policy

PART 4. OPEN MEETINGS LAW says, "It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." (24-6-401. Declaration of policy)

#12 Definitions

The Colorado Sunshine Act of 1972, C.R.S. 24-6-101 *et seq*, provides the following definitions in 24-6-402:

(1) For the purposes of this section:

(a) (I) "Local public body" means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.

(b) "Meeting" means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.

(c) "Political subdivision of the state" includes, but is not limited to, any county, city, city and county, town, home rule city, home rule county, home rule city and county, school district, special district, local improvement district, special improvement district, or service district.

#13 The City of Fort Collins ("City") is a "political subdivision of the state" as defined in the previous paragraph.

#14 According to the City of Fort Collins ("City"), the City Council delegated to the Fort Collins Electric Utility the authority to make decisions about the city's electric services including the choice of electric meters used. The City made this claim in a letter to Plaintiff that said in part, "Based on these provisions in the City Charter and Code, the choice and decision of what kind of electric meter is to be used by the Electric Utility has clearly been delegated to the City Manager and the Director of Utility Services subject, of course, to any needed appropriation of funds by the City Council." The City's letter was from John R. Duval, Deputy City Attorney, to Plaintiff and dated January 12, 2016.

(Duval letter at 2)

#15 The Fort Collins Electric Utility is a "local public body" as defined in 24-6-402 because it is an authority, policy-making, rule-making or formally constituted body of the City of Fort Collins to which the City of Fort Collins has, according to the Duval letter, delegated a governmental decision-making function; namely, "the choice and decision of what kind of electric meter is to be used by the Electric Utility".

#16 The Colorado Sunshine Act of 1972, C.R.S. 24-6-101 *et seq*, applies to the Fort Collins Electric Utility because according the plain language of the Duval letter Fort Collins Utilities meets the definition of a "local public body".

#17 Requirements for meetings

The Colorado Sunshine Act of 1972, C.R.S. 24-6-101 *et seq*, Part 4, the Open Meetings Law, states requirements for meetings, including in relevant part the following:

"(2) (a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

(d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV)."

#18 Individual cause of action and enforcement

C.R.S. 24-6-402 further provides for an individual cause of action and enforcement of Part 4, the Open Meetings Law:

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(9) (a) Any person denied or threatened with denial of any of the rights that are conferred on the public by this part 4 has suffered an injury in fact and, therefore, has standing to challenge the violation of this part 4.

(b) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees. In the event the court does not find a violation of this section, it shall award costs and reasonable attorney fees to the prevailing party if the court finds that the action was frivolous, vexatious, or groundless.

#19 Charter of the City of Fort Collins

The Charter of the City of Fort Collins, Colorado sets forth requirements for the making of public policy.

Article II, Section 6, for Ordinances, Resolutions and Motions:

Section 6. Ordinances, resolutions, motions.
The Council shall act by ordinance, resolution, or motion.

The ayes and nays shall be recorded on the passage of all ordinances, resolutions, and motions. Every Councilmember present shall vote; if a member fails to vote when present, he or she shall be recorded as voting in the affirmative. All legislative enactments and every act creating, altering, or abolishing any agency or office, fixing compensation, making an appropriation, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance, which shall not be so altered or amended on the final passage as to change the original purpose.

All ordinances, except the annual appropriation ordinance and any ordinance making a general codification of ordinances, shall be confined to one (1) subject which shall be clearly expressed in the title. All ordinances shall be formally introduced at a regular or special Council meeting in written or printed form by any member of the Council and considered on first reading and action taken thereon. No ordinance, except an emergency ordinance, shall be finally passed on the first reading or at the meeting at which it is first introduced. An emergency ordinance may be formally introduced at a special Council meeting and action taken thereon, including final passage at such special meeting.

Reading of an ordinance shall consist only of reading the title thereof, provided that copies of the full ordinance proposed shall have been available in the office of the City Clerk at least fortyeight (48) hours prior to the time such ordinance is introduced for each member of the City Council, and for inspection and copying by the general public, and provided further that any member of the City Council may request that an ordinance be read in full at any reading of the same, in which case such ordinance shall be read in full at such reading. Final passage of all ordinances except emergency ordinances shall be at a regular Council meeting. Emergency ordinances shall require for passage the affirmative vote of at least five (5) members of the Council and shall contain a specific statement of the nature of the emergency. No ordinance granting any franchise or special privilege which involves a benefit to any private person or entity shall ever be passed as an emergency ordinance.

The enacting clause of all ordinances passed by the Council shall be as follows: "Be it ordained by the Council of the City of Fort Collins."

#20 Notwithstanding the interpretation of the City Charter and Code in the Duval letter, Article II, Section 6 of the City Charter applies to the Project and to Fort Collins Utilities (insofar as that body actually made the decision that the City would do or implement the Project) because it was an "act" "establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property".

#21 Article II, Section 7

of the Charter of the City of Fort Collins says:

Section 7. Ordinances, publication and effective date.
Every proposed ordinance, except an emergency ordinance, shall be published in full at least seven (7) days before its final passage on the city's official internet web site. In addition, each such ordinance shall be published in a newspaper of general circulation in the city by number and title only, together with a statement that the full text is available for public inspection and acquisition in the office of the City Clerk and on the city's internet web site. Both publications shall contain a notice of the date when said proposed ordinance will be presented for final passage. The City Clerk shall, within seven (7) days after final passage of any such ordinance, publish such ordinance in the same method as is required for the first publication. All ordinances, except emergency ordinances, shall take effect on the tenth day following their passage. An emergency ordinance shall take effect upon passage and shall be published as provided above within seven (7) days thereof.

#22 Analog electric meters and smart meters

Analog meter appearance

An analog electric meter is the kind of meter that every electric utility worldwide used for every customer from the beginning of the electric grid until about 7 years ago. Although there are different designs analog meters usually look similar. An analog meter typically has on its face five circles or dials in a horizontal row about 5/8 of an inch in diameter each enclosed in a glass case about 6" in diameter that protrudes from the home or business about 4". Inside each circle is a needle that points to one of the numbers 0 through 9 similar to the hour hand on a clock. Each circle represents a different digit such as ones, tens, hundreds, and thousands. The units may be kilowatt hours or a comparable unit of electricity usage.

A photograph of an analog meter is attached hereto as Exhibit 6.

#23 How an analog meter works

As the customer uses electricity, the needles advance to show the cumulative electricity usage. There is also a horizontally mounted disc about 5" in diameter which spins at a rate commensurate with the rate of electricity usage at any moment.

#24 Typically each electric utility sends out a person to each house once per quarter to read the meter. Based on this reading the utility knows how much electricity the customer has used and can calculate how much to charge the customer based on the applicable rate schedule or rate sheet. The utility estimates the customer's electricity use the other two months in the quarter. For decades this meter reading was considered one of the utility's costs and it was not billed.

#25 Analog electric meters may be the most tested machine in the world because of the number of them in use, the number of years they have been used and the fact that they run 24 hours a day, 7 days a week.

#26 Proliferation of smart meters despite no federal mandate

Spurred by the federal Energy Policy Act of 2005, which did not mandate the removal of any customer's analog meter or the installation on any customer's home or business of a different kind of meter, and despite the plain language of the Act, which specifically required each state regulatory authority and each nonregulated utility, in section 1252, to consider and make a Determination on the "Time-Based Metering and Communication Standard", which Standard authorized the utility to offer a time-based meter (smart meter) to "each customer requesting a time-based rate" (section 111(d)(14)(C) of the Public Utilities Regulatory Policies Act ("PURPA"), as amended by the Energy Policy Act of 2005), thereby assuring that each individual customer would have the choice of whether to keep her analog meter or receive a smart meter from the utility, many utilities began removing analog meters and installing "smart electric meters" or simply "smart meters" in about 2009.

#27 Smart meter appearance

A smart meter is a digital electronic gadget, basically a computer with 2 antennae. There is no glass case, no 5/8" diameter circles or dials, and no horizontally mounted rotating disc. There is only a digital display which shows an FCC ID number (for Federal Communications Commission) which often flashes different readings.

A photograph of a smart meter is attached hereto as Exhibit 7.

#28 How a smart meter works

The computer inside a smart meter is capable of storing data on many customers' electricity usage at any interval, whether by the month, week, day, hour or minute. The antennae transmit this data wirelessly back to the utility similar to how a cell phone works and receive data from other smart meters. The smart meter typically transmits in two frequencies: 900 MHz (megahertz) and 2.4 GHz (gigahertz).

Both the number of transmissions of customer data via microwave radiation and the peak power of those transmissions are typically remotely adjustable by the utility. The customer has no ability to adjust these parameters to protect herself or her family from harmful radiation. Many smart electric meters transmit microwave radiation in excess of 10,000 (ten thousand) times per day on average. Some transmit up to 240,000 times per day. Although each transmission only lasts for a fraction of a second, each one is an electrical jolt to the human body and, like a boxer's punch or a bullet from a criminal's gun, it does not take long for an impact to cause physical damage especially when there is chronic, long term exposure to such radiation.

Smart electric meters have a range of up to 1.8 miles based on information available to the Plaintiff at this time (on information and belief). They are typically adjusted or set to maximum range; that is, to reach another meter up to 1.8 miles away.
Although the meters are typically adjustable the utilities do not take the time to measure the distance to the nearest home and set the meters accordingly for each person, home or business.

The radiation is not continuous. Rather, it is characterized by thousands of very short term, powerful bursts or spikes in the voltage. As such this radiation is more harmful than radiation that is continuous and consistent.

#29 AMI network does not require 100% participation

Therefore the AMI (Advanced Metering Infrastructure) network can work without anywhere near 100% participation (without 100% of the utility's customers having a smart meter on their home or business.) Fort Collins Utilities can have a working smart meter grid or smart grid with 80, 70 or 60% participation or less (that percent of its customers having a smart meter on their home or business.) Actually because of the huge range of smart meters and because of the way

the utility typically sets or adjusts them, the City could have a working smart meter network as long as there was no more than 1.8 miles distance from any meter to the nearest meter. In other words it would only take a small percentage of Fort Collins restaurants to have a working smart meter network.

#30 The meter on a given person's home or business does not have to reach all the way back to Fort Collins Utilities or its corporate partners. It only has to reach as far as the nearest smart meter - which is typically the nearest home - or to the nearest collector meter, which is a special kind of smart meter. In commercial areas the nearest smart meter or collector meter is often disguised in antennae at a local intersection or disguised as palm trees or other seemingly innocuous places. The typical spacing and arrangement of smart meters in Defendants' Project can be determined through discovery.

#31 Health impacts of wireless radiation

Non-ionizing radiation found to be harmful

Both microwave and RF radiation, and indeed all forms of electromagnetic radiation, have been found to be harmful to humans. Previously it was believed that only ionizing radiation, such as gamma rays and x-rays, which are capable of splitting an atom, was harmful. The National Toxicology Program study described in paragraph 4 is only the tip of the iceberg of scientific research on wireless radiation. Hundreds of scientists from all over the world have been studying wireless radiation for years as it has proliferated around the world.

#32 The International EMF Scientist Appeal

On May 11, 2015 190 scientists from 39 nations signed "The International EMF Scientist Appeal". All of these scientists have published peer-reviewed papers on the biological or health effects of non-ionizing radiation, part of the EMF spectrum that includes Extremely Low Frequency fields (ELF) used for electricity, or Radio Frequency radiation (RFR) used for wireless communications. The Appeal, addressed to

To: His Excellency Ban Ki-moon, Secretary-General of the United Nations;
Honorable Dr. Margaret Chan, Director-General of the World Health Organization;
Honorable Achim Steiner, Executive Director of the U.N. Environmental Programme;
U.N. Member Nations

said in part:

> We are scientists engaged in the study of biological and health effects of non-ionizing electromagnetic fields (EMF). Based upon peer-reviewed, published research, we have serious concerns regarding the ubiquitous and increasing exposure to EMF generated by electric and wireless devices. These include–but are not limited to–radiofrequency radiation (RFR) emitting devices, such as cellular and cordless phones and their base

stations, Wi-Fi, broadcast antennas, smart meters, and baby monitors as well as electric devices and infra-structures used in the delivery of electricity that generate extremely-low frequency electromagnetic field (ELF EMF).

Scientific basis for our common concerns

Numerous recent scientific publications have shown that EMF affects living organisms at levels well below most international and national guidelines. Effects include increased cancer risk, cellular stress, increase in harmful free radicals, genetic damages, structural and functional changes of the reproductive system, learning and memory deficits, neurological disorders, and negative impacts on general well-being in humans. Damage goes well beyond the human race, as there is growing evidence of harmful effects to both plant and animal life.

These findings justify our appeal to the United Nations (UN) and, all member States in the world, to encourage the World Health Organization (WHO) to exert strong leadership in fostering the development of more protective EMF guidelines, encouraging precautionary measures, and educating the public about health risks, particularly risk to children and fetal development. By not taking action, the WHO is failing to fulfill its role as the preeminent international public health agency.

Inadequate non-ionizing EMF international guidelines

The various agencies setting safety standards have failed to impose sufficient guidelines to protect the general public, particularly children who are more vulnerable to the effects of EMF.

The Appeal recommended:

Since there is controversy about a rationale for setting standards to avoid adverse health effects, we recommend that the United Nations Environmental Programme (UNEP) convene and fund an independent multidisciplinary committee to explore the pros and cons of alternatives to current practices that could substantially lower human exposures to RF and ELF fields.

and further:

Collectively we also request that:

1.children and pregnant women be protected;
2.guidelines and regulatory standards be strengthened;
3.manufacturers be encouraged to develop safer technology;
4.utilities responsible for the generation, transmission, distribution, and monitoring of electricity maintain adequate power quality and ensure proper electrical wiring to minimize harmful ground current;

5.the public be fully informed about the potential health risks from electromagnetic energy and taught harm reduction strategies;
6.medical professionals be educated about the biological effects of electromagnetic energy and be provided training on treatment of patients with electromagnetic sensitivity;
7.governments fund training and research on electromagnetic fields and health that is independent of industry and mandate industry cooperation with researchers;
8.media disclose experts' financial relationships with industry when citing their opinions regarding health and safety aspects of EMF-emitting technologies; and
9.white-zones (radiation-free areas) be established.

https://emfscientist.org/index.php/emf-scientist-appeal

As of July 25, 2016, the Appeal has 221 signatures from 41 nations. A copy of the Appeal is attached hereto as Exhibit 8.
The Appeal is one of several appeals by the scientific community to policy makers calling for urgent measures to protect humans from the harmful impacts of wireless radiation.

#33 Deleted

#34 Parties

Plaintiff Virginia L. Farver lives at 1214 Belleview Drive, Fort Collins, CO 80526 and lived at this at all times relevant to this action.

#35 Defendant City of Fort Collins is a home rule city with a Council/Manager form of government.

#36 Fort Collins was founded as a military fort in 1864 and referred to as "Camp Collins." The post was given the name in honor of Lt. Col. William 0. Collins, the popular commander of Ohio Cavalry troops whose headquarters were at Fort Laramie. Fort Collins was incorporated as a town in 1873.

#37 The Fort Collins City Council and Mayor govern the City of Fort Collins according to the Fort Collins Charter, which is available on line at:

https://www.municode.com/library/co/fort_collins/codes/municipal_code?nodeId=FOCOCH

#38 A complete and current copy of the City Charter and Code through April 19, 2016 can be found on the City's website at http://www.fcgov.com/cityclerk/codes.php

#39 Defendant the Fort Collins Electric Utility, also known as the City's "Electric Utility", "Utilities Light and Power", "Fort Collins Light and Power", "Fort Collins Utilities" or "Light

and Power", is an electric utility owned by the City of Fort Collins. It provides service to over 70,500 homes and businesses, over 55+ square miles.

http://www.fcgov.com/utilities/what-we-do/light-power

#40 This Defendant has its principal place of operations at 700 Wood Street in Fort Collins, Colorado. Its billing office is located at:

117 N. Mason St. (north of Mountain on Mason), Fort Collins, CO 80524

Its mailing address is:

P.O. Box 580, Fort Collins, CO 80522-1580

#41 Deleted

#42 Defendants Does 1 – 100 are individuals, each of whose true name is unknown, who caused or contributed to Plaintiff's injuries.

#43 Colorado law C.R.S. 24-10-109 (2)(b) requires "A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of;".

Factual basis for this Complaint

Plaintiff is *in pro per* and not familiar with the amount of detail required or allowed by the above section of the Colorado Revised Statutes. Plaintiff provided great detail as to the factual basis of the claim including all the named required elements in her notice and claim and incorporates those details and that notice and claim by reference.

Concise statement:

Whether or not the City could and did delegate to the Fort Collins Electric Utility the power to make policy for the City, neither the City Council nor the Utility followed the requirements of the City Charter and the Colorado Sunshine Act of 1972 in deciding that the Project would be the policy of the City. The decision was made behind closed doors, informally, and out of public view. Thus the Project was never properly approved. Although the Council did approve a monthly meter reading charge for those customers who wanted to "opt out", the Project itself was never properly approved. As a result the monthly meter reading charge was improper and an injury to Plaintiff. Plaintiff seeks the return of those charges, a declaratory order regarding the Project and an injunction against further monthly meter reading charges.

#45 Failure to comply with requirements

of the Colorado Sunshine Act of 1972 and the City Charter

More briefly, the basic argument is that Defendants implemented the Project without first going through the public policy making process as described in the Colorado Sunshine Act of 1972 and the City Charter, in particular Article II, Sections 6 and 7. Neither the City Council nor the Fort Collins Electric Utility complied with the requirements of that Act and the Charter. The City's belief that provisions in the Charter and City Code (or Municipal Code) "delegated" responsibility for making policy regarding electric services, including the type and choice of electric meter, from the City Council to the Fort Collins Electric Utility does not relieve the City or the Fort Collins Electric Utility from its obligations to comply with the Act and City Charter.

#46 Specific requirements for public policy making

If such responsibility or policy making power or authority were truly and legally delegated by the City Council to the Fort Collins Electric Utility then the latter had the obligation to follow all the procedures of public policy making that the City Council would otherwise have to follow according to the Act, including but not limited to: holding open meetings with the requisite public notice, making the agenda and supporting documents available to the public a certain number of days prior to the meeting, soliciting public comment, and having an agendized vote on the authorization of the Project following a motion and second by members of the Council. In deciding that the Project would be the policy of the City of Fort Collins the Fort Collins Electric Utility did not follow these steps.

#47 Violation of Plaintiff's rights

This short circuit of the legally mandated public policy making process deprived Plaintiff of her right to have her government, in this case her city government, function according to law and openly and her right to participate in that decision making process. It caused the Fort Collins Electric Utility to deprive Plaintiff of her property (in this case money) without due process, in violation of the Colorado Constitution, Section 25. Due process of law, which says, "No person shall be deprived of life, liberty or property, without due process of law."

It similarly deprived other residents of Fort Collins of their rights, but Plaintiff represents only herself in this action.

#48 Secret policy making process

Rather than being open to the public and transparent, the policy making process that took place inside the Fort Collins Electric Utility (according to Defendants' Answer, see the John Duval letter dated January 12, 2016) was secret, in direct violation of the Act. 24-6-401. (Part 4 Open Meetings Law, Declaration of policy)

#49 Plaintiff's objections to a smart meter and the Project

The direct result of this secret and illegal decision making process was the approval of the Project by the Fort Collins Electric Utility (but not by the City Council). The Project entailed the removal of the analog electric meters from the homes and businesses of every customer of Fort Collins Utilities, including that meter on Plaintiff's house, and the installation in its place of a smart meter. Plaintiff repeatedly told the Fort Collins Electric Utility, in writing and verbally, that she did not want a smart meter on her house and she wanted to keep her analog meter. Her reasons included, but were not limited to, the hundreds of peer reviewed scientific studies from the United States and all over the world showing that wireless radiation of the type produced and transmitted thousands of times per day by smart electric meters is not safe and in fact is hazardous to human health, causing a wide range of short and long term adverse health impacts. This radiation causes these impacts, according to the published research, at very low levels of chronic radiation compared to the radiation transmitted by a smart meter.

#50 Utilities leadership will be key witnesses

Plaintiff believes and alleges that Darin Atteberry, Dennis Sumner, Steve Catanach, Kraig Bader and possibly one or more of the Doe defendants will testify under oath as to the meetings, discussions, and deliberations that took place within the Fort Collins Electric Utility about the Project and / or about "the choice and decision of what kind of electric meter is to be used by the Electric Utility", documents and presentations on that subject, the interim and final decisions to take action on that Project and make it the policy of the City of Fort Collins. They will each testify as to their knowledge of the various requirements for public meetings and public policy making contained in the Colorado Sunshine Act of 1972 and Article II, Section 6 of the Charter of the City of Fort Collins and what, if anything, was done to comply in such meetings, discussions and deliberations with that Act. Their testimony will reveal, Plaintiff believes, that the requirements in the Act and in the Charter were not met or that most of them were not met.

#51 Conference call with and letter from the City

regarding Plaintiff's records request

Plaintiff made great efforts in early 2015, as described in detail in her notice and claim, to find and get a copy of the resolution(s) adopted and approved by the City Council which authorized the Project. The result of those efforts was a conference call on April 13, 2015 with several representatives of the City in which Plaintiff and the City representatives discussed her records request (a Colorado Open Records Act request) and the City's response to that request including what documents were available. Following that conference call Plaintiff asked the City to send her a letter based on the phone call and the City's statements during that phone call, which letter the City did send on April 21, 2015.

A true and correct copy of said that letter is attached hereto as Exhibit 9.

#52 City Staff did not even mention

the Fort Collins Electric Utility's decision making power

At no time during the phone call did the City mention that the power to make decisions regarding electric services in the City of Fort Collins had been delegated to the Fort Collins Electric Utility. Similarly the City did not mention that alleged delegation of power in its letter to Plaintiff on April 21, 2015. If there really had been such a delegation the City should have mentioned it both in the phone call and the letter because it would explain why there was no record of the City Council ever approving the Project. In other words if the Fort Collins Electric Utility had really authorized the Project the City would have said so, would have mentioned that fact, during the phone call and in its follow up letter to Plaintiff.

#53 Uncertainty regarding the nature of the Utility's

policy making process

Although Plaintiff has followed the development of the Project relatively closely at City Council meetings, Plaintiff was not aware until January 2016 that the City had allegedly delegated the decision making authority described above to the Fort Collins Electric Utility. Plaintiff is not aware that the Fort Collins Electric Utility holds meetings open to the public at which policy decisions are discussed and voted on and does not believe that the Utility does so. In any case Plaintiff has not attended any such meetings. Plaintiff has always believed that such decisions are discussed and voted on at City Council meetings.

The result of this disconnect or uncertainty is that Plaintiff is not aware of the actual date(s) and time(s) of the meetings at the Fort Collins Electric Utility at which the Project was discussed and voted on. Thus Plaintiff cannot provide those details here. However they may come out in discovery / disclosure. Plaintiff assumes that those meetings inside the Fort Collins Electric Utility took place between the date when the City first contemplated installing smart meters (a date unknown to Plaintiff) and the date when the City authorized the spending of money on smart meters, a date contained on a resolution the City provided to Plaintiff through her Open Records Act request.

#54 As described in the notice and claim dated September 23, 2015 the following events gave rise to Plaintiff's claim. Note that Plaintiff was at the time the Claimant and referred to herself as such in the notice and claim.

#55 Origin and history of the Project

The following six paragraphs are directly quoted (with paragraph numbers added) from a letter from Mr. Jeff Mihelich, Deputy City Manager, dated April 21, 2015 and addressed to Plaintiff.

#56 The pursuit of the AMFC project began in 2008, and was referenced in the 2008 Fort Collins Climate Action Plan as "SmartGrid, Advanced Metering Infrastructure, Pricing, Conservation" as one of the menu of project options to support Climate Action Plan goals.

#57 In 2009, the viability of an Advanced Metering Infrastructure (AMI) project was explored by Utilities staff and, as a result, a Light and Power budget offer was developed for City Council consideration as part of the 2010 - 20ll Budgeting for Outcomes (BFO) process.

#58 Concurrent with the BFO consideration process, the City submitted an application to the Department of Energy (DOE) as part of the American Recovery and Reinvestment Act for the Smart Grid Investment Grant (SGIG).

#59 The City of Fort Collins was notified by DOE that the Fort Collins SGIG proposal was selected for SGIG award negotiations on October 21 ,2009, just prior to the completion of the BFO process.

#60 Based on the notification from DOE, the AMFC budget offer was withdrawn to modify the budget request.

#61 Therefore, at the May 18, 2010 meeting of the Fort Collins City Council, Council approved Resolution 2010-030 authorizing the City Manager to enter into agreements for the SGIG award and Ordinance No. 43,2010 and Ordinance No. 001 authorizing the following; 1) $18,101,264 for SGIG funding support, 2) $16,000,000 Issuance and Sale of Tax Exempt Revenue Bonds, and 3) $258,499 for bond issuance costs.

#62 Plaintiff's correspondence with the Utility

about smart electric meters

Plaintiff wrote to the City and / or the Fort Collins Electric Utility one or more times in 2011, 2012, and 2013, often via certified mail through the U.S. Postal Service, informing the City and the Fort Collins Electric Utility of:

a) Plaintiff's objection to the installation of a smart electric meter or a digital analog meter on her home and

b) Plaintiff's wish to keep the analog meter that was on the home and had been on the home since the home was built.

#63 Phone call to Plaintiff's husband

Plaintiff's husband Craig Farver got a call from Dennis Sumner (FTC Utility Head) in late November of 2013. This is when the City was sending letters to utility customers about shutting off customers' electrical service if claimant and other residents who objected to a smart meter did not comply. Dennis Sumner kept Plaintiff's husband on the phone for over 20 minutes. Dennis Sumner had just called Plaintiff at home before calling Plaintiff's husband.

Plaintiff had told Dennis, "NO smart meter, and this would be the end of communication." Then Dennis Sumner called Plaintiff's husband Craig. They City taped these conversations of course! Plaintiff's husband explained what happened to Rich and he just wanted to protect Plaintiff. As the City is aware and was aware at the time, Plaintiff's son Rich Farver had been a student at San Diego State University and spent a lot of time in Nasatir Hall on

campus. Very close to Nasatir Hall on a hill is an enormous tower that carries multiple wireless communications for multiple universities and is a central station for San Diego Gas and Electric. SDSU students, faculty and staff were never warned about the hazards of the wireless radiation that this tower produced. Plaintiff's son Rich, a student at SDSU, developed brain cancer and died from it on October 11, 2008. Plaintiff believes that the wireless radiation from that tower directly caused Rich Farver's brain cancer. Several other SDSU faculty, students and staff who worked in Nasatir Hall also died from cancer around that time, supporting the idea that the tower was causing the cancer. The University has never investigated the cause of these cancers or the health impacts of the radiation from that tower.

#64 Attorney letter to City re smart meters

In the fall of 2013 Plaintiff's friend Mrs. Ruth Ann Shay of Fort Collins hired an attorney, Thomas V. Hoeflinger of the law firm Jorgensen Brownell & Pepin PC, who wrote a letter to Mr. Steve Catanach at the City dated November 27, 2013 objecting to the removal of the analog electric meter and the installation of a smart electric meter on claimant's home. Plaintiff and Mrs. Shay were similarly situated and felt that the letter expressed both of their interests as well as the interests of other Fort Collins residents similarly situated. The attorney charged $1,500 of which Mrs. Shay paid $1,000 and Plaintiff paid $500.00 for writing that letter and his earlier related work.

True and correct copies of said letter and check are attached hereto as Exhibits 10 and 11.

#65 Early morning meter removal and replacement

The City and / or the Fort Collins Electric Utility removed the original electric meter from Plaintiff's home and installed in its place a digital analog electric meter on March 6, 2014 at 8:30 in the morning. Dennis Sumner, the head of the Fort Collins Electric Utility was present. Another woman and Plaintiff saw 1 police officer present and the other police officer was on the side of the garage with the installers. They went immediately to Ruth Shay's house across town. Mrs. Shay got the business cards from the officers. When Mr. Sumner and the police officers showed up at Plaintiff's door Plaintiff looked at the woman police officer and said, "You, being on my property without a warrant is unlawful." Plaintiff knows that Mr. Sumner and the police officers stood in the streets of the other homes where the Utility was installing smart meters after that.

#66 On November 18, 2013 the Fort Collins Electric Utility head Dennis Sumner called Plaintiff's husband at work regarding terminating the electric service at Plaintiff's home. This was moments after Sumner had called Plaintiff at home and Plaintiff had told Sumner that she did not want any more communication with him about the smart meter.

#67 The City begins charging Plaintiff a manual meter reading charge

In April, 2014 the City and / or the Fort Collins Electric Utility began to charge Plaintiff a manual meter reading charge on the monthly electric bill in the amount of $11.00 (eleven

dollars). They have continued to charge this charge each month since then. Because the City and / or the Fort Collins Electric Utility could turn off the electricity to Plaintiff's home for failure to pay this charge Plaintiff has paid it each month although Plaintiff has never agreed with it.

#68 Plaintiff's Colorado Open Records Act request

Plaintiff wrote to the City with an Open Records Act request on February 10, 2015 which said in relevant part:

> "I request the following records as provided by Colorado Revised Statutes 24-72-200 through 206.
>
> "Any and all Resolutions, ordinances or other formal records of decision approved or adopted by the City Council:
>
> > that authorize the removal of analog electric meters from customers' homes and businesses and the replacement of those meters with smart meters.
> >
> > that authorize the charging of fees for those customers who request an analog electric meter, or in other words who choose to "opt out" of the smart meter project."

#69 The City Clerk, Wanda Nelson, responded on that same day and wrote, "We have received your record request and will begin processing it right away. My colleague Christine Macrina will facilitate this request."

#70 Plaintiff, Ms. Nelson and Ms. Christine Macrina, the colleague of Ms. Nelson, engaged in lengthy correspondence between February 24 and April 3, 2015. This correspondence was necessary because the City had failed to provide to Plaintiff responsive records which Plaintiff strongly believed must exist. Plaintiff wrote to the City more than once that the records the City had provided were not responsive to, or were not ALL the records responsive to, her request.

#71 On March 18, 2015 Ms. Nelson wrote to Plaintiff via email. That message said:

> "We have clearly missed the ball in terms of responding to your request to your satisfaction. I have spoken with Utilities Executive Director Kevin Gertig and we will be getting together as soon as possible to determine what additional records, if any, respond to your request. If you are aware of any specific documents you are seeking, please send me a list.
>
> "Thank you once again for your patience. Please do not hesitate to call if you would like to discuss this further."

#72 On March 27, 2015 Ms. Macrina wrote to Plaintiff via email. That message said in part:

> "It is not clear from your requests what record(s) you are seeking, or whether the record(s) you describe are under the control of this office."

#73 The phone conference call

Due to the apparent confusion by the City and the City's inability to provide certain resolutions, etc. that Plaintiff believed had to exist, Plaintiff asked to have a phone conference with representatives of the City. The purpose of that phone conference was to discuss Plaintiff's record request, the City's response so far, the records provided so far, any other responsive records that might exist, and the City's deliberative and policy making process that led to the approval of the Advanced Meter Fort Collins project. Plaintiff requested that a representative of the city with decision making authority as to providing certain records in response to a records request would be on that phone conference.

#74 On April 3, 2015 Ms. Nelson wrote to Plaintiff stating that Mr. Jeff Mihelich's (Deputy City Manager) was willing to participate in a phone conference and stating three dates and times when he would be available.

#75 Plaintiff responded that day requesting April 13 for the phone conference. Ms. Nelson wrote to Plaintiff that day saying in part, "Thanks for your quick reply! We will schedule the phone conference for Monday, April 13th at 2:00 p.m."

#76 On Monday, April 13, 2015 Plaintiff, Plaintiff's friend Mark Graham of California, Mr. Mihelich and 5 other City employees participated in that phone conference. It was a very thorough conversation in which Plaintiff and Mr. Graham explored with Mr. Mihelich and City staff the question of the authorization of the AMFC project or lack thereof and the policy making process that the City had actually used. No stone was left unturned.

#77 A separate document describing statements made by representatives of the City during this phone conference is attached hereto as Exhibit 12. Plaintiff's correspondence with the City regarding her Open Records Act request is attached hereto as Exhibit 13.

#78 During the phone conference Plaintiff learned that according to the Deputy City Manager Jeff Mihelich, whose statement was not contradicted by any of the five other employees of the City who were present on the phone conference, the City Council never approved a resolution authorizing the removal of the original meters and / or the installation of smart electric meters. Mr. Mihelich and his staff made it absolutely clear that no such resolution or ordinance exists, stating so repeatedly in different words. (Notice and claim at 13)

#79 Plaintiff and Mr. Graham asked many questions intended to flush this information out. They asked questions from many different angles. They asked about the deliberative process by which the City made the decision. The separate document describing statements made by representatives of the City during this phone conference will contain greater detail but for the concise statement of the factual basis of the claim, suffice it to say that that deliberative process did not include a motion, resolution or ordinance approved by the City Council to approve the Project. There were ordinances authorizing the appropriation for the Project.

#80 Statements made during the phone conference call

During the phone conference call the City made the following statements:

> "During the work sessions we received enough direction from the City Council to move forward." Plaintiff does not remember who said this but if it was Mr. Mihelich, who did most of the talking on behalf of the City, remember that he also said during the call that he was not involved in City government back in 2010.
>
> Mr. Mihelich said, "Item 1 does not exist; therefore we have satisfied the request." Mr. Mihelich was referring to item 1 from Plaintiff's Open Records Act request.
>
> Mr. Mihelich said, "A lot of decisions are made at the administrative level, so Council doesn't need to approve the AMI program." "They are not required by law to approve the program." By "they" he was referring to the Fort Collins City Council. By "the program" he was referring to the AMI program. (AMI stands for Advanced Metering Infrastructure. The AMFC project is an AMI project.)
>
> Somebody from the City, either Mr. Sumner or Mr. Mihelich, said, "The document you are asking for does not exist."

#81 Mr. Mihelich and other representatives of the City made other statements during the phone conference to that effect.

#82 Soon afterward Plaintiff wrote to the City asking the City to write a letter to Plaintiff with some, but not all, of the details which the City had presented during the phone conference, such as the absence of any resolution etc. approving the Advanced Meter Fort Collins project and the deliberative process by which the city decided to do that project or in other words the deliberative process the City had taken in approving the Project.

#83 The City's letter about the conference call

The City provided such a letter to Plaintiff on the city's letterhead dated April 21, 2015. The letter was signed by Deputy City Manager Jeff Mihelich. The bottom line is that, according to Mr. Mihelich and all of the other City representatives on that conference call, the City Council, as stated above, never acted by ordinance, resolution or motion to approve the Project or the removal and replacement of Plaintiff's and other residents' and businesses' electric meters.

A copy of that April 21, 2015 letter is attached hereto as Exhibit 9.

#84 Mr. Mihelich's letter quoted the first part of Plaintiff's open records act request, which asked for the resolutions, ordinances or other records of decision authorizing the removal and replacement of the electric meters. Mr. Mihelich then wrote:

> "In the end, we both understood that the City of Fort Collins does not have the document you described in your request, and as discussed in our conference call."

(Mihelich letter at 1)

#85 Mr. Mihelich's letter then said,

"Nevertheless, the City has endeavored to provide you a description of the events below that should help to describe the approval process for the AMFC project."

(Ibid)

#86 Mr. Mihelich's letter then described the steps in the approval process for the AMFC project. These were quoted in paragraphs 1 through 6 on page 14-15 of Plaintiff's notice and claim. They are also quoted in paragraphs 56 through 61 of this Complaint.

#87 Nowhere in Mr. Mihelich's description of that approval process for the AMFC project is any mention of a resolution, ordinance or motion approved by the Fort Collins City Council or the Fort Collins Electric Utility authorizing the Project or the removal or replacement of the electric meters. Any such resolution, ordinance or motion is conspicuously absent from Mr. Mihelich's letter. That is proof from the Deputy City Manager.

#88 It was on the day of the phone conference, April 13, 2015, when Plaintiff learned these facts about the project, that Plaintiff realized she had been injured by the City. The nature and extent of the injury is described in this notice and claim. For now suffice it to say that the injury was financial in nature. April 13, 2015 was the date of Plaintiff's discovery of her injury and damages. It was the date on which Plaintiff discovered her injury and damages.

#89 For the above stated reasons Plaintiff respectfully asked the City of Fort Collins, in her notice and claim dated September 23, 2015, to grant and accept her claim and pay her compensation for injuries and damages as described therein.

Legal arguments about the Project

#90 Legal basis for the Project according

to John R. Duval, Deputy City Attorney

On January 12, 2016 John R. Duval, Deputy City Attorney, wrote a letter to Plaintiff responding to Plaintiff's notice and claim. ("Duval letter"). This was previously identified as Exhibit 4.

#91 Mr. Duval's letter acknowledged Plaintiff's notice and claim.

#92 Mr. Duval's letter summarized, in his words, the contents of Plaintiff's notice and claim.

#93 Mr. Duval's letter did not deny either the factual allegations or the legal basis in Plaintiff's notice and claim.

#94 Mr. Duval's letter presented the City's interpretation and understanding of "how all of the Electric Utility's operations, including the AMFC Project, are authorized in the City's Charter and Code."

#95 Mr. Duval's letter quoted brief excerpts from Section 5(b)(4) of Charter Article II and Article VI Section 26-396 and argued that, "Based on these provisions in the City Charter and

Code, the choice and decision of what kind of electric meter is to be used by the Electric Utility has clearly been delegated to the City Manager and the Director of Utility Services . . . ."

(Duval letter at 2)

#96 In fact neither Section 5(b)(4) of Charter Article II nor Article VI Section 26-396 uses the word "delegate" or "delegated" or any synonym for those words.

#97 If the City had wanted to delegate the authority to make major decisions (such as spending $31.4 million on a city-wide project that entailed removing the analog electric meter from every customer's home and business and installing in its place a digital "smart" electric meter) the City would have written the City Charter to say so. The City would have used the word "delegate" or "delegated" or synonyms for those words in the Charter.

#98 Legal requirements for the Project according to Plaintiff

Plaintiff had cited in her notice and claim Article II, Sections 6 and 7 of the Charter of the City of Fort Collins and Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*, including the OPEN MEETINGS LAW, C.R.S. 24-6-401 (2015) sections 2(b), 2(c) 2(d) and 8, which set forth the obligations of public entities such as the City of Fort Collins in making policy decisions in such a manner as to give the public the opportunity to be aware of public policy decisions before and as they are being made and to participate in the making of those decisions.

(Notice and claim at 10)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#99 Plaintiff had cited the OPEN MEETINGS LAW, C.R.S. 24-6-401 (2015)
24-6-401. Declaration of policy

> "It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret."

The intent of the Open Meetings Law is to afford public access to a broad range of meetings at which public business is considered. *Benson v. McCormick*, 195 Colo. 381, 578 P.2d 651 (1978); *Van Alstyne v. Hous. Auth. of City of Pueblo*, 985 P.2d 97 (Colo. App. 1999); *Bd. of County Comm'rs v. Costilla County Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004).

(Notice and claim at 10)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#100 Plaintiff had also cited case law to support her legal argument that the City Council was and had been obligated to make the public policy decisions on AMFC in such a manner that would enable public participation:

> The public meetings laws are interpreted broadly to further the legislative intent that citizens be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved. Cole v. State, 673 P.2d 345 (Colo. 1983).

(Notice and claim at 10)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#101 Plaintiff had cited C.R.S. 24-6-402 (2015)

24-6-402. Meetings - open to public – definitions

Subsection 2(b) states:

> (b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(Notice and claim at 10)

#102 Plaintiff had cited Subsection 2(c) which states:

> (c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

(Notice and claim at 10-11)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#103 Plaintiff had cited Section 2(d) which states:

> (d) (I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.
>
> (II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall

be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV).

(Notice and claim at 11)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#104 Plaintiff had cited Section 8, which states unambiguously:

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(Notice and claim at 11)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#105 Plaintiff had alleged that, "The City never approved a resolution, rule, regulation, ordinance or formal action that met the requirements of subsection (2) of this section. The plain language of this statute is very clear. Absent such a resolution, rule, regulation, ordinance or formal action of the City of Fort Collins City Council the Project and the actions undertaken as part of the project were and are unauthorized and illegal. These actions include the charging of the manual meter reading charge to claimant and other residents and businesses."

(Notice and claim at 11)

#106 Allegations not made by Mr. Duval

Mr. Duval's letter did not deny that the City's decision to implement the AMFC project had been made in secret. In fact Mr. Duval did not identify any resolution, ordinance or motion or record of a formal decision by the Fort Collins Electric Utility or the Director of Utility Services to adopt and approve the Project per his interpretation of how the City makes electric service policy (paragraph 95).

#107 Mr. Duval's letter did not allege that the City's had afforded public access to the meetings at which the decision to implement the AMFC project and what that project should consist of had been made.

#108 Mr. Duval's letter did not allege that the meetings at which the decision to implement the AMFC project and what that project should consist of had been public meetings open to the public at all times.

#109 Mr. Duval's letter did not allege that there had been full and timely notice to the public of the meetings at which the decision to implement the AMFC project would be made and what that project should consist of.

#110 Mr. Duval's letter did not allege that any minutes had been taken and promptly recorded at the meetings at which the decision to implement the AMFC project was made and what that project would consist of.

#111 Mr. Duval's letter did not deny that the decision to implement the AMFC project and the decisions on what that project would consist of were subject to the Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*,Section 8, which states unambiguously:

> (8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

#112 Mr. Duval's letter did not provide or attempt to provide any legal basis for the City of Fort Collins, Fort Collins Utilities, or the other Defendants to NOT comply with the requirements of Colorado Sunshine Act of 1972, as amended, C.R.S. 24-6-101 *et seq*, including but not limited to the OPEN MEETINGS LAW, C.R.S. 24-6-401 (2015) Sections 2(b), 2(c) 2(d) and 8, and in particular Section 2(d)(IV), which states:

> "(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV)."

#113 In her notice and claim, Plaintiff had cited the Charter of the City of Fort Collins. This complaint quoted Article II, Section 6 of the Charter in paragraph 19, page 6.

(Notice and claim at 12)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#114 In her notice and claim Plaintiff had alleged that Section 6 of the City Charter was and is applicable to the AMFC project.

> "The AMFC Project established a rule or regulation that each resident had to have the original analog meter removed from the resident's home and that the City or FCU would install a smart electric meter or, in some cases, a digital analog meter, whether the resident liked it or objected to it. There was a penalty. If claimant or other residents had

attempted to block or physically delay the removal and replacement of the electric meter the Police Department could have and would have arrested the resident. In fact the City and / or FCU cut off a lock that claimant had installed to protect her original analog electric meter and prevent its removal and replacement. This was done at 8:30 in the morning and without claimant's consent or knowledge as to the day and time. Another possibility was that, if claimant had removed the digital analog meter that the City and / or FCU placed on claimant's home on March 6, 2014 the City and / or FCU would have cut off claimant's electricity. That is clearly a rule or regulation for the violation of which a penalty is imposed. Shutting of electricity to a home is a penalty."

(Notice and claim at 8)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#115 As Plaintiff alleged in her notice and claim, the City and Fort Collins Utilities had failed to comply with Section 6 of the City Charter. "As stated above the City Council never acted by ordinance, resolution or motion to approve and authorize the Project."

(Notice and claim at 8)

Mr. Duval did not deny this statement.

#116 Why the Project had to be "by ordinance"

This and the next two paragraphs describe and analyze how and why the Project had to be "by ordinance".

On November 19, 2013 the City of Fort Collins sent a letter bearing neither a name nor a signature of any City official to Plaintiff and to other customers of the Fort Collins Electric Utility who had objected to the removal of the analog electric meter from and the installation of a smart electric meter on their homes. The subject of that letter was "Subject: Notice of Termination of Utilities Service".

A true and correct copy of said letter is attached hereto as Exhibit 15.

#117 The entire body of that letter was:

"November 19, 2013

Subject: Notice of Termination of Utilities Service

Dear Utilities Customer,

Fort Collins Utilities has provided multiple communications regarding the need to upgrade its electric and/or water metering equipment at your property, including notification that continued refusal to allow meter upgrades will result in service termination.

> **You must contact Utilities now at 970.221.6718 to schedule an appointment for immediate installation of upgraded meter equipment to avoid termination of service.** If we have not installed upgraded meter equipment by December 2, 2013, electric and/or water utility service will be terminated to your premise.
>
> Utilities will reconnect service at your premises ***only during normal business hours*** (Monday-Friday 8:00am to 5:00pm) once you have allowed access for the purpose of installing upgraded metering equipment. If service is disconnected, call 970.221.6718 to arrange for reconnection. Service restoration may take 24 hours or longer.
>
> The customer is responsible for preparing the property for restoration of electric and/or water service. The City of Fort Collins is not responsible for damage that may result from failure to prepare for restoration of service.
>
> If you choose not to contact Utilities to arrange for installation of upgraded metering equipment, electric and/or water service will be terminated at your premise after December 2, 2013."

(Emphasis and italics in original)

#118 This November 19, 2013 letter is related to Article II, Section 6 of the Charter of the City of Fort Collins, in particular the provision that,

> "All legislative enactments and every act . . . establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance, which shall not be so altered or amended on the final passage as to change the original purpose."

The decision to move ahead with the Project was such an act. The rule is that, "**You must contact Utilities now at 970.221.6718 to schedule an appointment for immediate installation of upgraded meter equipment to avoid termination of service.**"

The violation referred to was, "choos[ing] not to contact Utilities to arrange for installation of upgraded metering equipment".

The penalty was, "If we have not installed upgraded meter equipment by December 2, 2013, electric and/or water utility service will be terminated to your premise."

By this letter Fort Collins Utilities made a significant threat to Plaintiff and the other recipients. As Plaintiff stated in her notice and claim, "Fort Collins is a VERY cold city in early December. Termination of electric service would have left Mrs. Shay, claimant, and other recipients of this threat very cold since a furnace, heat pump, or any other common residential heating system requires electricity."

(Notice and claim at 9)

The City enforced "any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property" not just in late November to

early December, 2013 but generally with respect to smart meters. The fact that the City brought a police officer along when it removed the analog meter from and installed the smart meter on Plaintiff's house shows that this was the City's position in general regarding smart meters. A resident could either cooperate or suffer the consequences, including not only the termination of electric service but (from the presence of a police officer) also arrest and jail time.

#119 Without (in the absence of) the AMFC project, Fort Collins Utilities would never have sent the November 19, 2013 letter to Plaintiff and other customers who rejected the smart meter threatening to shut off their electricity if they did not allow the removal of their analog meter and the installation of a smart electric meter, which was a penalty.

#120 The Project caused Plaintiff's injuries

Without (in the absence of) the AMFC project, Fort Collins Utilities would never have charged Plaintiff the $11.00 manual meter reading charge each month since April, 2014, which charges constitute Plaintiff's injury.

#121 Mr. Duval's letter did not deny that Section 6 of the City Charter was and is applicable to the AMFC project and the related manual meter reading charge.

#122 Undisputed statements in Plaintiff's notice and claim

In her notice and claim Plaintiff had cited Article II, Section 7 of the Charter of the City of Fort Collins, cited earlier in paragraph 21, page 7 – 8.

(Notice and claim at 12-13)

Mr. Duval did not deny that these legal authorities apply to the City, to the Fort Collins Electric Utility, and to the Project.

#123 In her notice and claim Plaintiff had alleged that, "The City never complied with the requirements of section 6 and 7 of the City Charter, either by acting by ordinance, resolution or motion, acting by ordinance in this case, introducing and considering the ordinance, passing the ordinance at a subsequent meeting, and making copies of the full ordinance proposed available to the general public at least forty eight (48) hours prior to the time at which the ordinance is introduced (all required by section 6) or publication of the ordinance (required by section 7)."

(Notice and claim at 13)

#124 In her notice and claim Plaintiff had alleged that, "Proof of the claim made in the preceding paragraph and proof that the City Council never acted by ordinance, resolution or motion to approve the Project or the removal and replacement of the electric meters is found in the City's letter dated April 21, 2015 signed by Jeff Mihelich, Deputy City Manager and addressed to claimant, in the attachment to this notice and claim titled 'Phone conference with City of FC April 13 2015.docx', in the section of this document titled '<u>These are the key events that led to this notice and claim</u>' in paragraphs 1 through 6 on page 14-15 and paragraphs 13 through 23 on pages 17-19, and immediately following this sentence."

(Notice and claim at 13)

#125 Mr. Duval's letter failed to explain how or why there could be a statutory conflict situation where a section of the City Charter and a section of the City Code could contradict the plain language of Sections 6 and 7 of the City Charter and the Colorado Sunshine Act of 1972, as amended.

#126 The City's process frustrates public participation

The City's interpretation and understanding of the process of public meetings open to the public and the public policy decisions made at such meetings does not further the interests of public access and participation. In fact, it frustrates those interests. When the City Manager and the Director of Utility Services have the power, as the City claims, to make decisions such as spending $31 million on a project such as AMFC, which entails arguably placing a product onto the wall of each resident's home and business that is known to transmit microwave radiation in all directions, including into that home and business, thereby potentially causing physical bodily injury to the occupants, with no public notice, no public meeting, no agenda, and no public knowledge or participation, clearly this is not an open government. This is called a back room deal. There is no accountability in such a system. Nor is there any transparency.

#127 Mr. Duval's letter failed to provide any explanation for why the public should be excluded from the decisions on what the AMFC project would consist of and whether the City would adopt and approve the Project.

#128 The only part of the entire public policy making process that the City, as expressed by Mr. Duval, admits has to be conducted in public is the financing. Mr. Duval's letter said, "Based on these provisions in the City Charter and Code, the choice and decision of what kind of electric meter is to be used by the Electric Utility has clearly been delegated to the City Manager and the Director of Utility Services subject, of course, to any needed appropriation of funds by the City Council. As you concede in your Notice, the Council adopted ordinances to appropriate the funds needed to implement and complete the AMFC Project."

(Exhibit 14, City of Fort Collins letter by John R. Duval, Deputy City Attorney, to Plaintiff dated January 12, 2016 at 2)

#129 The question of financing begs the question of whether the Project, any project, should be done by the City at all and what that project should consist of. Absent a decision to do a certain project according to certain specifications there would be no need for a decision on how to finance the project.

#130 Mr. Duval's interpretation and understanding of the law, that City Manager and the Director of Utility Services have the power, as the City claims, to make decisions such as spending $31 million on a project such as AMFC conflicts with the plain language and meaning of Section 6 of the City Charter, that the City Council is required to "act by ordinance, resolution, or motion".

#131 Mr. Duval's letter concluded by saying, "The City therefore denies the claims you have asserted in your Notice."

#132 Mr. Duval's letter did not attempt to reconcile the legal basis that Plaintiff had presented in her claim for her argument (consisting of sections of the City Charter and the Colorado Sunshine Act of 1972) that the "manual meter reading charge" was unlawful with the City's interpretation and understanding of the above; in other words with the City's opinion that the charge was lawful.

#133 Mr. Duval's letter did not mention or notify Plaintiff of her right through the Governmental Immunity Act to take this matter to court or the applicable deadline or statute of limitations.

#134 Did the City really delegate power to the Utility?

The alleged delegation by the City to the Utility of policy making power

Mr. Duval's letter said on page 2:

> In Section 5(b)(4) of Charter Article II, the City Council is authorized to establish a City administrative office to provide "electric utility services." The Council did this by the adoption of Code Section 2-504 through which it created the City's "Utility Services" and authorized the appointment of a "Director...directly responsible to the City Manager...for the functions and duties of Utility Services . . . to provide for the design, construction, reconstruction, addition, repair, replacement, operation and maintenance of the City's electric . . . services . . . ."

#135 Article II, Section 5, Powers

Article II, Section 5 (a) and (b) actually state:

Section 5. - Powers.
All powers of the city and the determination of all matters of policy shall be vested in the Council except as otherwise provided by this Charter. Without limitation of the foregoing, the Council shall have power to:

(a) appoint and remove the City Manager;

(b) establish, change, consolidate or abolish administrative offices, service areas or agencies by ordinance, upon report and recommendation of the City Manager, so long as the administrative functions and public services established by this Charter are not abolished in any such reorganization. The city shall provide for all essential administrative functions and public services, including, but not limited to the following:

   (1) fire suppression and prevention;

   (2) police services;

   (3) finance and recordkeeping;

(4) electric utility services;

(5) water supply and wastewater services;

(6) street maintenance;

(7) storm drainage;

(8) planning and zoning.

#136 The first sentence of Section 5 is very clear that the Council, not any other City office such as an administrative office, has the power to make policy such as the AMFC Project.

> "All powers of the city and the determination of all matters of policy shall be vested in the Council except as otherwise provided by this Charter."

#137 Section 2-504 of the Municipal Code

Section 2-504 of the Municipal Code actually says:

> Sec. 2-504. - Utility Services; duties of Director.
>
> Utility Services shall be and is hereby created. Utility Services shall be in the charge of a Director who shall be directly responsible to the City Manager for the functions and duties of Utility Services, including, without a limitation, the functions and duties necessary to provide for the design, construction, reconstruction, addition, repair, replacement, operation and maintenance of the City's electric, water, wastewater and stormwater utility services, and who shall have control and supervision over such agencies, service units, departments, divisions, offices or persons assigned by the City Manager.

https://www.municode.com/library/co/fort_collins/codes/municipal_code?nodeId=CH2AD_ARTVADOR_DIV3SEAR_S2-504UTSEDUDI

#138 Section 2-504 says that the Director "shall be directly responsible to the City Manager for the functions and duties of Utility Services". It then describes the tasks that the Director can do. What this means is that the City Council makes a policy decision, the City Manager conveys that policy decision to the Fort Collins Electric Utility, and the Utility implements and carries out that policy decision. The City Council actually makes the policy decision ". . . for the design, construction, reconstruction, addition, . . . replacement, . . . of the City's electric, . . . utility services." The Director of Utility Services "shall have control and supervision over such agencies, service units, departments, divisions, offices or persons assigned by the City Manager."

All the Fort Collins Electric Utility does is make it happen; it makes whatever policy decision the Council adopted and approved happen. The City decides what will happen and what will be done and Utility Services implements or carries out the City's decisions.

#139 No use of the word "delegate"

As referred to in paragraph 68, the word "delegate" or any synonym for "delegate", any word meaning that the City Council had relinquished or turned over or assigned its authority or power to make policy decisions regarding the electric utility, do not appear in the Municipal Code Section 2-504 or in the City Charter Article II, Section 5 (a) and (b) either as applied to the City Manager or the Director of Utility Services. In other words neither the Charter nor the Code actually delegate such authority or power to the City Manager or the Director of Utility Services.

#140 In a letter to Plaintiff dated April 23, 2013 the City stated, speaking of the AMFC Project, "This program and project is subject to the authority and jurisdiction of the Fort Collins City Council."

A true and correct copy of said document is attached hereto as Exhibit 16.

The point of that statement is that it is the City Council, not the Fort Collins Electric Utility or its Director, that has the authority to make decisions about "this program", which is the Project, the smart meter project.

#141 The AMFC Project was not and is not a maintenance issue. Maintenance means making changes or repairs where needed. Maintenance is a much smaller scale than the AMFC Project, which entailed removing and replacing every customer's electric meter in the City.

#142 The Council has adopted major projects

Plaintiff believes, and will be able to prove this through discovery, that when the City has decided on multi-million dollar projects in the past for the Fort Collins Electric Utility the City Council has adopted and approved such projects. The City has not delegated the power to adopt and approve such projects to the Fort Collins Electric Utility nor has the Fort Collins Electric Utility actually adopted and approved such projects. Rather, the City Council has done so.

This practice has been consistent with the Open Meetings Law and Sections 6 and 7 of the City Charter cited earlier.

#143 Absent an ordinance, resolution or motion from the City Council authorizing the AMFC Project, Plaintiff infers that the decision to move forward with the Project was made by the Fort Collins Electric Utility by and through one or more of Darin Atteberry, Dennis Sumner, and Steve Catanach and / or one or more of the Doe defendants.

#144 The Director of Utility Services is responsible to the City Manager for certain limited responsibilities as provided in the City Code as explained earlier.

#145 through #147 Deleted

#148 Causes of Action

#149 First cause of action,

against the City of Fort Collins and the Fort Collins Electric Utility, for violating the Colorado Sunshine Act of 1972, C.R.S. 24-6-101 *et seq*, in implementing the AMFC Project.

#150 The previous paragraphs are reiterated as if fully set forth here.

#151 The Act applies to both defendants because the Project is a massive, $31 million project that affected the electric meter of every electric utility customer in the City. The Project was clearly a significant public policy and adopting and approving this policy was a significant public policy decision.

#152 The City Council did not adopt and approve the Project. We have seen this in paragraphs 51 through 61 and 68 through 87, the discussion of Plaintiff's Open Records Act request and the City's response to it.

#153 The Fort Collins Electric Utility did not adopt and approve the Project. We have seen this in paragraphs 51 through 53 and 73 through 87.

#154 Mr. Duval's interpretation of the City Charter and Code in his January 12, 2016 letter to Plaintiff is incorrect. We have seen this in paragraphs 95-98 and 134-141. Furthermore Mr. Duval's interpretation conflicts with the statement by City staff during the conference call that "During the work sessions we received enough direction from the City Council to move forward." (Quoted in paragraph 80 of this complaint)

#155 Assuming without admitting that Mr. Duval's interpretation of the City Charter and Code in his January 12, 2016 letter to Plaintiff is correct, the Fort Collins Electric Utility was the decision making body. As such the Fort Collins Electric Utility was required to follow the Colorado Sunshine Act of 1972 and meet all the requirements thereof. We have seen this in paragraphs 12 – 16.

#156 On information and belief the Fort Collins Electric Utility did not follow the Colorado Sunshine Act of 1972 and meet all the requirements thereof. Paragraph 17 quoted the Act on some of those requirements. There was clearly never a resolution, ordinance or motion from the City Council that adopted and approved the Project.

As mentioned earlier there was probably never any such resolution, ordinance or motion from or by the Fort Collins Electric Utility either. City staff including Jeff Mihelich would have mentioned it in the written responses to Plaintiff's Open Records Act request in 2015, the phone conference about that request and responsive documents, and the City's (Mr. Mihelich's) follow up letter to Plaintiff about the phone conference. But they did not. Nobody from the City mentioned any such resolution, ordinance or motion.
Furthermore Mr. Duval would have mentioned such resolution, ordinance or motion in his letter to Plaintiff dated January 12, 2016 if it existed but he did not mention it.

#157 It appears that the decision to move ahead with the Project was made informally and in secret, which is a violation of the Act.

#158 If the power to adopt and approve the Project had really been legally delegated to the Fort Collins Electric Utility and if the Fort Collins Electric Utility had really adopted and approved the Project, that would have been a relevant and appropriate answer not only to Plaintiff's Open Records Act request but also to her request for a description of the policy making process by which the City decided to do the Project. (Paragraph 82 of this Complaint)

For example Mr. Mihelich would have written a sentence in his letter similar to, "The Fort Collins Electric Utility has the power over 'the choice and decision of what kind of electric meter is to be used by the Electric Utility'" (per Mr. Duval's January 12, 2016 letter to Plaintiff, cited earlier).

#159 Were it not for the Project the Fort Collins Electric Utility would never have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's home. Nor would the Fort Collins Electric Utility have charged Plaintiff the manual meter reading charge. The Project directly caused the removal and replacement of Plaintiff's electric meter and the charges. The charges are Plaintiff's injuries.

#160 C.R.S. 24-6-402 further provides for an individual cause of action of Part 4, the Open Meetings Law:

> (9) (a) Any person denied or threatened with denial of any of the rights that are conferred on the public by this part 4 has suffered an injury in fact and, therefore, has standing to challenge the violation of this part 4.

(Paragraph 18 of this Complaint)

#161 C.R.S. 24-6-402 further provides for enforcement of Part 4, the Open Meetings Law:

> (8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(Ibid)

#162 Second cause of action,

against the City of Fort Collins, for failing to exercise appropriate oversight over the Fort Collins Electric Utility by allowing the latter to implement the Project even though neither the City Council nor the Fort Collins Electric Utility had ever adopted and approved or authorized the Project.

#163 The previous paragraphs are reiterated as if fully set forth here.

#164 The City has and had a duty to exercise appropriate oversight over the Fort Collins Electric Utility and its Director, who "shall be directly responsible to the City Manager for the functions and duties of Utility Services" and to prevent the Fort Collins Electric Utility and its Director from taking action not authorized by the City Council. (Municipal Code section 2-504)

#165 Although this is a duty describing the City's actions vis a vis the Fort Collins Electric Utility, by acting and following through on this duty the City protects the interests of Plaintiff and other utility customers such as their interest in not being charged improper charges on their electric bill.

#166 The City knew or should have known that neither the City Council nor the Fort Collins Electric Utility had ever properly adopted and approved the Project as required by the Colorado Sunshine Act of 1972 and the City Charter. We have seen this in paragraphs 51 through 61 and 68 through 87.

#167 The City had full knowledge of the status of the Project and knew that the Fort Collins Electric Utility and its Director were implementing the Project. Despite this the City allowed the Fort Collins Electric Utility to implement the Project.

#168 The City of Fort Collins failed to exercise oversight over Darin Atteberry, Dennis Sumner, Steve Catanach and the Fort Collins Electric Utility. Proper oversight would have entailed prohibiting each of them from implementing the AMFC Project without approval and authorization from the City Council or the Fort Collins Electric Utility. Proper oversight would have meant telling each of them essentially that, "You will implement projects that have been properly adopted and approved; and you will not implement any other projects" and seeing to it that each of them followed those instructions.

#169 If the City of Fort Collins had exercised oversight over Darin Atteberry, Dennis Sumner, Steve Catanach and the Fort Collins Electric Utility, the Utility would not have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's home. Similarly, the Utility would not have charged Plaintiff the manual meter reading charge which was also known to the City and the Fort Collins Electric Utility as an "opt out" charge.

#170 The City of Fort Collins is responsible for the injuries to Plaintiff caused by Darin Atteberry, Dennis Sumner, and Steve Catanach and the Fort Collins Electric Utility. This is because these individuals are or were City employees, Fort Collins Electric Utility is a branch of city government and because immunity is waived according to the Governmental Immunity Act, C.R.S. 24-10-106 (1) (f).
(Paragraph 7 of this complaint)

#171 Were it not for the Project, the Fort Collins Electric Utility would never have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's

home. Nor would the Fort Collins Electric Utility have charged Plaintiff the manual meter reading charge. The Project directly caused the removal and replacement of Plaintiff's electric meter and the charges, which are Plaintiff's injury.

#172 Third cause of action,

against both defendants, for violating Plaintiff's right of due process in Article II, section 25, of the Colorado Constitution.

#173 The previous paragraphs are reiterated as if fully set forth here.

#174 Article II, Section 25 says, "Section 25. Due process of law. No person shall be deprived of life, liberty or property, without due process of law."

#175 Due process, in this case, means for the City Council and the Fort Collins Electric Utility to fully comply with and follow all the requirements for meetings and policy making in the City Charter, the Colorado Sunshine Act of 1972, and other laws which apply to the Project and the process by which the decision to do the Project was made.
In particular the provisions identified in paragraphs 17 and 19 of this Complaint.

#176 If the power over "the choice and decision of what kind of electric meter is to be used by the Electric Utility" has really been delegated by the City to the Fort Collins Electric Utility then that entity must comply with the policy making requirements identified in the previous paragraph. The City cannot evade its responsibility to use due process by delegating power.

#177 On information and belief, Plaintiff believes and alleges that the Fort Collins Electric Utility did not comply with the policy making requirements identified two paragraphs earlier. During the entire lengthy correspondence between Plaintiff and the City about Plaintiff's Open Records Act request, and in the conference call in April 2015, and in Mr. Mihelich's follow up letter to Plaintiff about that conference call, not once did Mr. Mihelich or any representative of the City state that the Fort Collins Electric Utility has the power to adopt and approve the Project and / or that the Fort Collins Electric Utility actually did so.

#178 Following these requirements would have enabled Plaintiff to be aware of and participate in the policy making process at multiple steps along the way. She had a right to be aware of the proposed Project and to so participate by, for example, studying the proposed Project, offering her written and verbal comments and recommendations to the City Council and the Fort Collins Electric Utility and making recommendations for alternative policies to the same bodies. Failure to follow due process deprived Plaintiff of her rights to do this. When Plaintiff had to choose between being exposed to and suffering from wireless radiation from the smart meter placed on her house, on the one hand, and paying a monthly meter reading charge for this program that was never properly approved, the Defendants were depriving her of property (money) without due process of law.

#179 The City has admitted in its response to Plaintiff's Open Records Act request and in Mr. Duval's January 12, 2016 letter to Plaintiff that the City Council never adopted and approved the Project.

#180 On information and belief it appears to Plaintiff that the decision to move forward with the Project, if it really was made at and by the Fort Collins Electric Utility and its upper management, likely Dennis Sumner and / or Steve Catanach, was made informally, behind closed doors, hidden from the public, and essentially in secret. It is impossible to tell who really made this decision but such information will come out in discovery or disclosure. We do know that the decision was made and we know that it was not made by resolution, ordinance or motion. Logically then it must have been made informally, etc.

#181 Were it not for the Project the Fort Collins Electric Utility would never have removed the analog electric meter from Plaintiff's home and installed a smart electric meter on Plaintiff's home. Nor would Fort Collins Utilities have charged Plaintiff the manual meter reading charge. The Project directly caused the removal and replacement of Plaintiff's electric meter and the charges. The charges are Plaintiff's injuries.

#182 Fourth cause of action,

against both Defendants, for violating Article II, Sections 6 and 7 of the Charter of the City of Fort Collins.

#183 The previous paragraphs are reiterated as if fully set forth here.

#184 Article II explicitly applies to the City of Fort Collins because Article II is titled, "ARTICLE II. CITY COUNCIL" and the City Council is the governing body of the City of Fort Collins.

#185 Article II does not explicitly say that it applies to the Fort Collins Electric Utility; however, according to the City "the choice and decision of what kind of electric meter is to be used by the Electric Utility has clearly been delegated to the City Manager and the Director of Utility Services", in other words the leader of the Fort Collins Electric Utility. As such the Fort Collins Electric Utility is an agency or branch of the City of Fort Collins. Plaintiff believes and alleges that a policy making agency or branch of the City of Fort Collins is subject to Article II.

#186 Plaintiff is not aware of any parallel or comparable set of procedures to Article II, Sections 6 and 7, (applicable to the City of Fort Collins) that apply to and govern the policy making process of the Fort Collins Electric Utility (assuming the latter has the power to make policy). Surely there must be some policy making procedures applicable to the Fort Collins Electric Utility.

However we do know from the Colorado Sunshine Act of 1972 that public policy cannot be made in secret.

As quoted in paragraph 11, PART 4. OPEN MEETINGS LAW says, "It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret." (24-6-401. Declaration of policy)

#187 Plaintiff is not aware of any section of the City Charter or the City Code that says that Article II of the City Charter do NOT apply to the Fort Collins Electric Utility. Plaintiff believes and alleges that Article II does apply.

#188 It would not make sense for the City, whose City Council has to follow Article II's requirements, to be able to delegate the power to make major, expensive, wide reaching public policy to an agency or branch of city government that is not subject to strict requirements for its decision making. Such an arrangement would enable the City to avoid transparency and accountability in the making of public policy and effectively circumvent Article II and would facilitate the formulation of public policy in secret.

#189 In deciding to move forward with the Project the City did not comply with this requirement of Section 6 , "The Council shall act by ordinance, resolution, or motion." We have seen this in paragraphs 51 through 61 and 68 through 87. There was no ordinance, resolution or motion on the adoption and approval of the Project at or by the City Council.

#190 In deciding to move forward with the Project the City did not comply with this requirement of Section 6, "All legislative enactments and every act creating, . . . establishing any rule or regulation for the violation of which a penalty is imposed, . . . shall be by ordinance, which shall not be so altered or amended on the final passage as to change the original purpose." We have seen that this requirement applies in paragraphs 114 and 116 - 118 and that there was no such ordinance in paragraphs 51 through 61 and 68 through 87.

#191 Assuming that the Fort Collins Electric Utility made the policy decision to do the Project Plaintiff is not aware of any resolution, ordinance or motion adopted and approved (or otherwise passed, broadly speaking) by the Utility expressing a final policy decision to move ahead with the project. Therefore the Fort Collins Electric Utility did not comply with the two requirements of Section 6 quoted in the preceding two paragraphs.

We have seen that the direct result of the Project was the removal of the analog meter from Plaintiff's house, the installation of a smart meter on the house, and Plaintiff having to choose between being irradiated in her home 24 hours a day OR paying the manual meter reading charge, of which she chose the latter, which charges are her injuries.

#192 Fifth cause of action,

against the City, for violating the Colorado Sunshine Act of 1972 and Section 25 of the Colorado Constitution by delegating the power to make policy decisions on electricity to the Fort Collins Electric Utility.

#193 The previous paragraphs are reiterated as if fully set forth here.

#194 On information and belief, Plaintiff alleges that the Fort Collins Electric Utility does not follow requirements of Article II of the City Charter, the Act, and procedures designed to ensure due process. Through Plaintiff's entire inquiry into the Project and her Open Records Act request for the resolution(s) that authorized the Project Plaintiff has not seen one piece of evidence of an open, transparent public policy making process at the Utility. Perhaps it really is there but Plaintiff has seen neither hair nor hide of it.

Plaintiff is open to being proven wrong on this by substantial evidence.

#195 Insofar as and to the extent that the Fort Collins Electric Utility does NOT follow the requirements of Article II of the City Charter, the Act, and procedures designed to ensure due process the City has effectively avoided all accountability and transparency by "delegating" (in the City's words) such power to the Utility. The same decision that would have to be made in compliance with the Act, Article II and due process requirements if made by the City Council can be made without complying with any of them if made by the Fort Collins Electric Utility. This cannot be legal. It's not legal because it enables the Utility to deprive Plaintiff and other customers of their property (in the form of manual meter reading charges, as described earlier) without due process and it effectively circumvents the Act.

#196 As far as Plaintiff knows there is no provision in the Act or another Colorado law that allows a city to delegate to a branch or agency of the City government the power to make significant, expensive public policy decisions with little or no public notice or opportunity for input.

#197 Given the assumption in paragraph 194, this unlawful delegation of power has deprived Plaintiff of her right of due process and her right to be aware of and participate in the making of electric meter policy. It has also enabled the Utility to implement the Project which directly caused Plaintiff to have to pay a monthly meter reading charge (or choose to be irradiated 24 hours a day in her home).

#198 Prayer for relief

Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants as follows:

#1) An order directing the City of Fort Collins to grant and approve Plaintiff's notice and claim

dated September 23, 2015 and to pay to Plaintiff the amount demanded therein plus Plaintiff's costs in bringing this action.

#2) A declaratory order to the effect that:

a) The written adoption and approval of the AMFC Project, which would have authorized the Project, was required by and from the Fort Collins City Council and / or the Fort Collins Electric Utility; and
b) Neither the Fort Collins City Council nor the Fort Collins Electric Utility ever provided such written adoption and approval; and
c) The AMFC Project was unlawful; and
d) The removal by Fort Collins Utilities of the analog electric meter from Plaintiff's home and the installation of a smart electric meter on Plaintiff's home, actions which the Fort Collins Electric Utility purportedly took pursuant to the AMFC Project, was unlawful; and
e) The manual meter reading charge that the Fort Collins Electric Utility has been charging Plaintiff, despite being purportedly authorized by Resolution of the City Council, was directly related to and caused by the AMFC Project, which was not authorized as stated above, and was therefore unlawful.

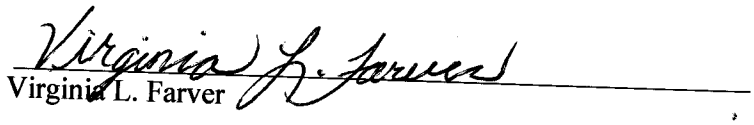
#3) An order to permanently enjoin Defendants and each of them from charging Plaintiff a manual meter reading charge;

#4) An order pursuant to C.R.S. 24-6-402 that the decision to move ahead with the Project, which was a "formal action of a state or local public body", is not valid; and

#5) Such other relief as the Court deems fair and appropriate.

Dated August 29, 2016

Respectfully,



Virginia L. Farver

#199 List of exhibits

Exhibit 1	Notice and claim
Exhibit 2	UPS store receipt for certified mail
Exhibit 3	Certified mail post card
Exhibit 4	John Duval letter of January 12, 2016
Exhibit 5	Hand written receipt for notice and claim
Exhibit 6	Analog meter photo
Exhibit 7	Smart meter photo
Exhibit 8	EMF Scientist International Appeal
Exhibit 9	April 21, 2015 letter from City to Plaintiff after conference call
Exhibit 10	Attorney Thomas Hoeflinger letter
Exhibit 11	Check to attorney Thomas Hoeflinger
Exhibit 12	April 13, 2015 phone conference with City of Fort Collins
Exhibit 13	Plaintiff correspondence with City on her CORA request
Exhibit 14	November 19, 2013 letter from City on Notice of Termination
Exhibit 15	April 23, 2013 letter from City to Plaintiff on AMFC