DISTRICT COURT, LARIMER COUNTY, COLORADO 201 La Porte Ave., Suite 100 Fort Collins, CO 80521 **Plaintiff: VIRGINIA FARVER,** **v.** **Defendants: CITY OF FORT COLLINS, FORT COLLINS ELECTRIC UTILITY; and DOES 1-100.**	DATE FILED: December 15, 2016 4:40 PM FILING ID: E9BD9C02EC609 CASE NUMBER: 2016CV144 COURT USE ONLY
Kimberly B. Schutt, #25947 WICK & TRAUTWEIN, LLC 323 South College Avenue, Suite 3 P.O. Box 2166, Fort Collins, CO 80522 Phone Number: (970) 482-4011 E-mail: kschutt@wicklaw.com FAX Number: (970) 482-8929 John R. Duval, #10185 FORT COLLINS CITY ATTORNEY'S OFFICE P.O. Box 580 Fort Collins, CO 80522 Phone: (970) 221-6520 Email: jduval@fcgov.com	Case Number: 2016 CV 144 Courtroom: 5B

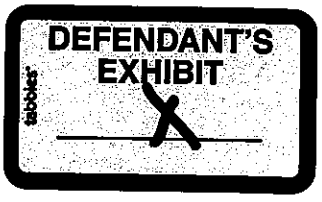
AFFIDAVIT OF DENNIS SUMNER

AFFIANT, being duly sworn upon oath, states as follows:

1. My name is Dennis Sumner. I am over the age of 18 and I have personal knowledge of the matters set forth in this Affidavit.

2. I have been employed with the City of Fort Collins ["the City"] for 41 years, and served as Implementation Project Manager for the Advanced Meter Fort Collins Project ["the Project"]. In this capacity, I was part of the executive team for the Project and worked closely with Steve Catanach, the Light & Power Operations Manager for the City, in the development and implementation of the Project within the City of Fort Collins' Electric Utility. I also participated in City Council work sessions and meetings related to the Project.

3. I am aware of the above-captioned action filed against the City by Plaintiff Virginia Farver, as I was originally named as an individual defendant in the suit (I have since been dismissed). I understand that the action brings several claims to challenge the validity of the Advanced Meter Fort Collins Project ["the Project"].



4. The Project involved the City's replacement of older, analog electro-mechanical meters which had to be read manually at their location, with a digital "smart meter" that allows for remote meter reading through wireless communications ("Smart Meter"). The meters were replaced on homes and businesses throughout the City, with extensive notice to customers as discussed further below. The Project also involved adoption of Smart Grid technology for modernization of the City's electric grid.

5. The advanced metering and smart grid technology involved in the Project were some of the specific energy-related strategies for reducing greenhouse gas emissions contained within the City's Climate Action Plan adopted by City Council in 2008, and in the Fort Collins Utilities Energy Policy 2009 adopted by Council in 2009.

6. Pursuant to the policy directives contained within the Climate Action Plan and the Fort Collins Utilities Energy Policy of 2009, the Electric Utility staff started developing a budget proposal for the Project to be presented to Council for its consideration in the City's 2010 budget.

7. However, in 2009, Utility Services staff also learned of the availability of grant funding under the federal government's recently adopted American Recovery and Reinvestment Act. This grant funding was available from the United States Department of Energy ("DOE") under its Smart Grid Investment Grant program ("Smart Grid Grant Program") for electric grid modernization projects. The Electric Utility submitted a grant application to the DOE requesting funding under the Smart Grid Grant Program for the Electric Utility's advanced metering infrastructure improvements proposed for the Project as contemplated under the Climate Action Plan and the 2009 Energy Plan.. The total proposed funding for the Project was approximately $32 million.

8. In October 2009, the Electric Utility was notified that the DOE had awarded it a grant of $15.7 million under the Smart Grid Grant Program ("DOE Smart Grid Grant") that was conditioned on the City providing matching funds for the Project. The City Council provided for those matching funds through a series of ordinances and resolutions in April and May 2010, authorizing the sale of revenue bonds and appropriating the other funds needed to complete the Project.

9. With this funding, the Electric Utility was able to move forward with the Project in furtherance of the policy goals expressed in the Climate Action Plan and the Energy Policy of 2009. The Electric Utility assembled an executive team, comprised of management and administrative staff, to oversee the day-to-day details for development and implementation of the Project. These details included, by way of example, research and selection of the particular metering system and components to be used, bidding and selection of a contractor to install the meters, development of a timeline for installation of the new meters, the process for providing notification to customers, etc. Development of those details to implement the Project involved regular meetings of the management staff of the Electric Utility, including Light & Power Operations Manager Steve Catanach.

10. As noted immediately above, one of the important components of the Project was educating the City's electric customers about the Project. In 2010, Fort Collins Utilities began extensive public outreach to provide information and education on smart grid technologies as well as their impacts on customers and on the City's electrical distribution system. The public outreach emphasized the importance of the technology support services and the customer's role in demand side management, load control and energy conservation through the tag line of "Monitor My Use." Customer communications were coordinated through a variety of tools, including:

- Utility bill inserts;
- Utility Services and City web sites;
- Electronic newsletters and City newsletters;
- News releases to local print media;
- Coordinated residential, commercial and key accounts support, including newsletters;
- Targeted communications for specific areas of program implementation such as meter installation, deployment of in-home displays , efficiency and renewable energy; and
- Well-established education programs (Q&A sessions/seminars), including. fact sheets distributed at City facilities.

11. After public outreach and other industry research, Utility Services recognized that some customers may have concerns with the technology associated with Smart Meters. To address these concerns, Utility Services developed three options for different meters to offer customers:

Option 1: Standard mode with full functionality and ability to take advantage of the new technology
Option 2: Limited mode collects data only once a day
Option 3: Manual mode: meter read manually once per month (added monthly cost)

12. These options were presented to City Council at a work session on July 12, 2011, at which executive members of Utility Services presented a comprehensive report on the Project and sought direction from City Council on certain issues. One of the specific questions discussed with Council at that work session was whether Council was comfortable with the three options to be offered to customers, and the fact that option 3 would require imposition of an additional fee for manual meter reading. *See Exhibit* N.

13. Based upon the direction provided by Council, Utility Services moved forward with the Project and the plan to offer those three options to customers. Utility Services also continued its efforts to educate the public about the Project. Among other things, Steve Catanach provided information to *The Coloradoan* to run a detailed newspaper story about the Project on April 3, 2012. *See Exhibit* O. The story covered several aspects of the Project, including its purpose, how the new smart meters would work, safety issues, and the fact that customers who opted out of having a smart meter would have to pay an additional $11 monthly meter reading charge.

14. Utility Services also made available to customers written information describing the three options they would have for replacement of the existing meter on their home: As reflected in *Exhibit* Q, the written information explained the three options in very simple terms:

> "**Option 1.** You don't need to do anything. A new digital electronic meter and water meter device will be installed, at no cost to you. Electric usage data will be recorded every 15 minutes and water consumption data will be recorded every hour.
>
> **Option 2.** A new digital electric meter and water meter device will be installed at no cost to you. Water usage data will be recorded every 12 hours and electric usage data will be recorded every 24 hours. No meter reading fee applies.
>
> **Option 3.** The meter will be upgraded to a more accurate digital device but data will not be transmitted electronically. The meter will be manually read on a monthly basis. Contact Utilities to select this option. An $11 monthly charge to cover the cost of manual meter reading will be added to your monthly utility bill."

15. The Electric Utility had begun installing the advanced metering technology in a small test area in March 2012.

16. In Fall 2012, Utility Services began its wide-spread installation of the advanced meters throughout the community using Corix, a contractor hired by the City under a services agreement to install the meters for the Project. The Project had an anticipated completion sometime in 2014. As part of that process, Utility Services notified customers by postcard approximately 6 weeks before the time that meters would be installed in their particular neighborhood, and then a second time approximately two weeks out from the anticipated installation date for their property. *See Exhibit* S. Corix would also leave a packet at each residence when a new meter was installed, informing the customer that the replacement had been made. *See Exhibit* S. If Corix employees ran into a concern or problem in the process of replacing a meter, Corix was instructed by Utility Services to simply pass over that particular residence until the issue could be resolved by Utility Services representatives. Those issues may have involved anything from customer concerns about potential damage to rose bushes or other plantings around the electric meter, to logistical problems in the contractor gaining access a meter (some of which were located inside a residence), to customer questions or concerns about the new meter. Utility Services sent a letter to customers at those residences asking them to contact Utility Services to discuss the particular problem or concern in order for the installation process to proceed. If a customer did not contact Utility Services after a certain period of time, a Utility Services employee would follow up by telephone with that customer to answer questions and/or address the logistical issues for gaining access to the meter.

17. There were approximately 500 residences passed over in the initial installation to resolve issues according to the process described above, and then approximately 50 residences for which these issues were not resolved through telephone calls. Most of those 50 residences involved situations where the customers failed to respond to repeated efforts by Utility Services to contact them to resolve these issues, and a smaller number involved customers who simply refused to cooperate in the installation of the new meter.

18. At that point, the Utility then sent termination notices to these remaining customers via certified mail to inform them that their electric service would be discontinued due to their failure to contact Utility Services or to otherwise cooperate in the installation of a new meter under one of the three options offered by Utility Services. *See Exhibit* ___. Most customers who were sent a termination notice contacted Utility Services to resolve issues and facilitate the installation of one of the meters offered.

19. The Plaintiff and her husband, Craig Farver, were among the customers who refused to cooperate in the installation of a new meter after receiving a termination notice.

20. On November 18, 2013, I personally made a courtesy phone call to Craig Farver to discuss the electric service termination notice sent to the Farver residence. During that phone call, which lasted over 20 minutes, I explained to Mr. Farver the various meter options available for installation in an effort to avoid terminating service at the Farver residence. I also made every effort to emphasize that the alternative meter option did not contain the "smart" wireless technology about which Plaintiff was concerned, and offered several times to allow the Plaintiff and her husband to inspect the different meters, and to provide whatever information they needed to understand how the Option 3 non-communicating digital meter worked.

21. By March 2014, Utility Services had only 5 customers who refused to cooperate in the installation of a new meter, including the Farvers. Therefore, with direction from the City Manager, the executive team developed a plan for going out to each of those residences with a police stand-by in order to facilitate installation of a new meter under one of those three options.

22. Pursuant to this plan, I and other Utility Services representatives visited the Plaintiff's home in March 2014 with a police-standby to install the Option 3 non-communicating digital meter on the home. During the stand-by, I personally talked with Mrs. Farver to explain to her that, due to the Farvers' failure to cooperate in the installation of a new meter, Utility Services representatives had removed the older style analogue electric meter that was no longer being used and that we could restore her electric service with one of the three available metering options if that is what she wanted. As a result of that conversation, Mrs. Farver advised us to restore electric service to the Farver's home- with the Option 3 non-communicating digital meter.

23. In April 2014, Utility Services began charging the $11 per month meter reading charge to its customers for whom an Option 3 meter was installed, including the Plaintiff and her husband.

24. In May 2014, customers began having access to review their metering data online and receive information about their consumption through an online web portal. The access was available on mobile devices beginning in December 2014.

25. As of June 2016, Utility Services had approximately 59,700 electric accounts using an Option 1 meter, 122 electric accounts using an Option 2 meter, and 221 electric accounts using an Option 3 meter.

FURTHER, Affiant sayeth naught.

Dennis L. Sumner
Dennis Sumner

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

Subscribed and sworn to before me this 5th day of December, 2016 by the said Dennis Sumner

Heather E. Hagen
Notary Public

4/27/17

HEATHER E. HAGEN NOTARY PUBLIC STATE OF COLORADO