

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 La Porte Ave., Suite 100 Fort Collins, CO 80521	DATE FILED: December 15, 2016 4:40 PM FILING ID: E9BD9C02EC609 CASE NUMBER: 2016CV144 COURT USE ONLY
Plaintiff: VIRGINIA FARVER, v. Defendants: CITY OF FORT COLLINS, FORT COLLINS ELECTRIC UTILITY; and DOES 1-100.	Case Number: 2016 CV 144 Courtroom: 5B
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	<p style="text-align: center;">AFFIDAVIT OF STEVE CATANACH</p>

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

1. My name is Steve Catanach. I am over the age of 18 and I have personal knowledge of the matters set forth in this Affidavit.
2. I was previously employed with the City of Fort Collins ["the City"] as the Light & Power Operations Manager from May 2008 through February 1, 2015. In that capacity, I was part of the executive team for the Advanced Meter Fort Collins Project ["the Project"] and worked closely with other management and administrative staff of Utility Services 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, Utility Services 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, and I regularly participated in those meetings.

10. As the Light & Power Operations Manager, I worked closely with and reported directly to the Director of Utility Services, who for most of that relevant timeframe was Brian Janonis. Mr. Janonis often participated in the regular Utility Services executive team meetings at which the details of implementation of the Project were discussed. He also participated in executive meetings with the City Manager and other City department heads at which he reported on the various aspects of the Project and brought back input and direction from the City Manager to our Utility Services executive team for purposes of developing and implementing the details of the Project.

11. As noted immediately above, one of the important components of the Project was educating the City's electric customers about the Project and the fact that the meter on their homes would be replaced. In this regard, it is important to note that, under Section 26 of the City Code, the utility meter on a customer's home is owned, operated and maintained by the City. Any person receiving utility service from the City is obligated under Section 26 of the City Code to comply with the rules, regulations, policies and procedures of the City as a condition of receiving such service, and must provide access to the property for the City to operate and maintain its utilities, including the metering system.

12. 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.

13. After extensive public outreach, Utility Services recognized that some customers had 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)

14. These options were presented to City Council at a work session on July 12, 2011, at which I and other members of the Utility Services executive team 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*.

15. Council gave specific direction on the Project to Utility Services management staff at that work session. As reflected in the memorandum dated July 14, 2011, that I prepared following that session [*See Exhibit O*], "Council supported offering the three options proposed and was very clear in their direction that associated operational costs should be fairly recovered from those customers selecting the modified offering of Option 2 and 3." Council also directed staff to "continue to explore opportunities related to the wide area communication network the project will be installing."

16. Based upon the specific 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, I personally provided information and an interview to *The Coloradoan* to run a detailed newspaper story about the Project on April 3, 2012. *See Exhibit P*. 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.

17. Utility Services also distributed to its customers written information describing the three options they would have for replacement of the existing meter on their home: As reflected in *Exhibit ___*, 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.”

18. The Electric Utility had begun installing the advanced metering technology in a small test area in March 2012. The meters installation was done by Corix, a contractor hired by the City under a services agreement to install the meters for the Project.

19. In Fall 2012, Utility Services began its wide-spread installation of the advanced meters throughout the community, using Corix to do the actual installation, with 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.

20. 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.

21. 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 Y*. Most customers who were sent a termination notice contacted Utility Services to resolve issues and facilitate the installation of one of the meters offered.

22. The Plaintiff and her husband, Craig Farver, were among the customers who refused to cooperate in the installation of a new meter. Utility Services had previously received letters from the Plaintiff in July 2011 and April 2013 objecting to the installation of one of the new smart meters on her home, and I had responded on both occasions trying to address her concerns. *See Exhibits AA*. However, notwithstanding the availability of the Option 3 meter, the Farvers still did not cooperate in the installation of a new meter on their home, even after receiving a termination notice.

23. Accordingly, the Utility Services again tried reaching out to the Farvers through a personal phone call made on November 18, 2013, by Dennis Sumner, the Implementation Project Manager for the Project and part of our executive team. I understand that Mr. Sumner made considerable efforts during that lengthy phone conversation to explain the various meter options available for installation in an effort to avoid terminating service at the Farver residence. I also understand that he 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. However, the Farvers still would not cooperate in the installation of one of the Option 3 meters.

24. By early 2014, there were only a small number of customers who had still refused to cooperate in the installation of a new meter, including the Farvers. Therefore, the executive team developed a plan, with input from the City Manager, to go 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. This type of installation occurred at the Farver residence, with a police stand-by, in March 2016.

