

EXHIBIT A

JURISDICTION AND VENUE

4. This action raises federal questions under the Fourth and Fourteenth Amendments to the United States Constitution and under federal statute, as well as issues under the Illinois Constitution of 1970.

5. This Court has subject matter jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over Plaintiff's state claims under 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over all of the parties hereto because they are all residents of Illinois and conduct their activities in Illinois.

7. Venue is proper under 28 U.S.C. § 1391 in the Northern District of Illinois because a substantial part of the events or omissions giving rise to the subject claims arose in this district.

PARTIES

8. Plaintiff, Naperville Smart Meter Awareness ("NSMA"), an Illinois not-for-profit corporation organized under Section 501(c)(4) of the Internal Revenue Code, was formed to educate, engage and empower families, friends and neighbors to advocate for a fiscally responsible and safe utility meter solution in Naperville, Illinois.

9. NSMA has standing to vindicate the interests of its members whose rights, status or other legal relations are affected by the Defendant's actions.

10. NSMA is an organization composed of more than 1,800 members who would have standing to sue in their own individual right for the allegations set forth in this Complaint ("NSMA members").

11. The interests that NSMA seeks to protect in this action are germane to the organization's purposes.

12. Neither the claims asserted nor the relief requested by NSMA in this action requires the participation by individual members of NSMA.

13. Defendant, City of Naperville (the "City"), operates under the council-manager form of government consisting of the Mayor and eight Councilpersons elected as provided by State law. The Naperville City Council ("City Council") is the governing body of the City and has the powers and duties prescribed by statute and by ordinance of the City of Naperville.

FACTS COMMON TO ALL CLAIMS

City's Electric Utility and Regulatory Oversight

14. The City, located in the counties of DuPage and Will in the State of Illinois, is home to approximately 145,000 residents.

15. The City is a "home rule" unit of local government pursuant to Article VII of the Illinois Constitution of 1970.

16. Electricity for all residential and commercial consumers within the incorporated city limits of Naperville, Illinois is supplied by the City's Department of Public Utilities-Electric ("DPU-E"), a utility entirely owned and operated by the City. The City does not permit the municipality's residents to utilize an alternative supplier of electricity.

17. All analog electric meters and so-called "smart" meters are owned by the City and are part of the DPU-E's electrical distribution system; however, the meter base (or socket) that each meter fits into is owned by the customer.

18. DPU-E is a municipal, citizen-owned utility, and is not investor owned.

19. Section 17-100 of the Illinois Public Utilities Act, states in pertinent part:

“Electric cooperatives, as defined in Section 3.4 of the Electric Supplier Act, and public utilities that are owned and operated by any political subdivision, or municipal corporation of this State, or owned by such an entity and operated by any lessee or any operating agent thereof, hereinafter referred to as municipal systems, shall not be subject to the provisions of this amendatory Act of 1997, except as hereinafter provided in this Article XVII.” (220 ILCS 5/17-100)(Emphasis added).

20. Section 17-500 of the Public Utilities Act, states in pertinent part:

“. . . all control regarding an electric cooperative or municipal system shall be vested in the electric cooperative's board of directors or trustees or the applicable governing body of the municipal system.” (220 ILCS 5/17-500).

21. The City is completely outside of the jurisdiction and regulatory oversight of the Illinois Commerce Commission.

22. The City is defined as a “municipal system” and not an “alternative retail electric supplier,” by the Illinois Electric Service Customer Choice and Rate Relief Law of 1997 (220 ILCS 5/16-102)(the “Electric Service Customer Act”).

23. Section 16-102 of the Electric Service Customer Act, as amended, provides that an alternative retail electric supplier “shall not include” a municipal system and therefore, the City is exempt from the provisions of the Electric Service Customer Act. (220 ILCS 5/16-102).

24. The City is exempt from the provisions contained in sections 16-108.6(d) and 16-122(b)(c), of the Electric Service Customer Act which put in place precautions to prevent the unwarranted disclosure of NSMA members’ measurements of electricity usage without their consent. (220 ILCS 5/16-122(b)(c); 220 ILCS 5/16-108.6(d)).

Naperville Smart Grid Initiative

25. The American Recovery and Reinvestment Act of 2009, signed into law by President Barack Obama in February 2009, provided the U.S. Department of Energy (the “DOE”) with approximately \$4.5 billion of federal tax dollars to modernize the electric power grid. Of this funding, \$3.4 billion went into the Smart Grid Investment Grant Program (“SGIG”) for the purpose of funding competitively selected projects across the country. One of the projects selected by the DOE for its SGIG is the City’s Naperville Smart Grid Initiative (“NSGI”).

26. On April 20, 2010, the City Council passed Resolution No. 10-021 authorizing the execution of a grant agreement with the DOE.

27. On April 21, 2011, the City executed the grant agreement with the DOE whereby the City and the DOE each provide \$10,994,110 towards the contract specified \$22 million investment in NSGI (the “DOE Agreement”). (Exhibit A).

Analog Meters vs. Smart Meters

Analog Meters

28. Analog meters operate on the principle of an induction motor. When the residence exhibits a nonzero load, voltage appears across a voltage winding of the meter, which is connected in parallel to the terminals of the meter. Series coils of the meter are connected in series with the energized conductor feeding the home, and therefore all current passing into the residence goes through the series coils. An aluminum disk is allowed to freely rotate between the voltage winding and the series coils. In the analog meters replaced by the City, the rotation of this disk can be seen through glass from outside of the meter.

29. The electromagnetic field (EMF) alternately provided by the voltage and series coils applies a torque to the aluminum disk, and this torque, as suitably calibrated and as braked by a permanent-magnet field, will approximate a linear function of the load imposed by the home. As the speed of disk rotation is a linear function of power, angular displacement of the aluminum disk over time can be used as a measurement of consumed energy.

30. Complete rotations of the aluminum disk are mechanically accumulated by gearing similar to a mechanical car odometer, and the energy consumed by the home and revealed by the meter is a scalar product of the number of rotations of the aluminum disk. The meter registration will be correct at any power factor of the load. Meter registration varies somewhat (+/- 0.5%) depending upon the value of the percentage of rated line voltage. The City's own analysis confirms the 99.5% accuracy of its analog meters.

31. The conventional analog watt-hour meter, of the kind replaced by the City, is only capable of displaying and reporting accumulated consumption of energy, and nothing else.

Smart Meters

32. Smart meters represent a new technology which is not in the general public use.

33. Smart meters allow for real-time, two-way communications between the City and its electric customers.

34. Smart meters record energy in kilowatt hours; voltage, in volts; power, in watts; and reactive power in kVAR. Voltage is sensed through resistive dividers, and current is sensed through a current transformer.

35. A smart meter collects data consisting of granular, fine-grained, high-frequency type of energy usage measurements (“Interval Data”).

36. The analog meters previously installed by the City were not capable of collecting Interval Data.

37. According to the City, “[t]he Smart Grid includes tools and technologies that leverage digital meter data for greater efficiencies that are not possible with analog meters.”

38. The smart meter model currently installed by the City is capable of collecting Interval Data in 5, 15, 30, or 60-minute intervals. The City has chosen the 15-minute interval at present, but the City has the capability of increasing the frequency of collection of Interval Data to 5-minute intervals via the current wireless network deployed by the City.

39. The choice of interval collection frequency is entirely within the City’s discretion and can be changed at will by the City without customer notice or consent, and further, any such change can be performed remotely by the City.

40. Interval Data collected in 15-minute intervals by the City’s smart meters includes real power in kWh and reactive power in kVARh, and is unlike analog meter readings which reflect only aggregated energy data (total kilowatt hours used over an entire month).

41. Each wireless (or radio frequency mesh-enabled) smart meter is equipped with a network radio, which when employed, transmits the Interval Data collected via the smart meter to an electric network access point. The system uses radio frequency (“RF”) mesh technology, which allows meters and other sensing devices to route data via nearby smart meters and other relay devices.

42. Each RF mesh-enabled device (e.g., smart meters, relays) is connected to several other mesh-enabled devices which function as signal repeaters, relaying the data to an access point.

43. Because a smart meter accumulates a history of energy, power, and reactive power over thousands of intervals per month (each of which can be as small as 5 minutes), there is far more information here than an analog meter is capable of providing via its single monthly reading of energy.

44. Unlike analog meters, smart meters allow the City to collect much more than just aggregate data.

The City's Collection, Use, Reuse, and Retention of Interval Data Far Exceeds What is Necessary for Delivery of Electric Service and Customer Billing

45. The frequency, format, content, retention, use, reuse and retrieval of electricity consumption data have been changed considerably by the City via smart metering as compared with the frequency, format, content, storage, and retrieval of electricity consumption data under the City's analog metering system.

46. Prior to the installation of smart meters by the City, the energy consumption data collected by the City from analog meters (which only recorded the total energy usage), was solely for billing purposes.

47. The City now collects and retains more than aggregate electricity usage, and such data shows far more than total electric usage by its customers.

48. The City's collection and retention of Interval Data far exceeds what is necessary for delivery of electric service to its electric customers.

49. The City's collection of Interval Data far exceeds what is necessary for customer billing purposes and account management.

50. To satisfy the City's duty of calculating and collecting a monthly bill, the necessary electric energy-related data collection requirement is only one data point measured per month of energy usage in kWh (delivered) for its electric customers participating in the default/traditional fixed-rate pricing plan.

51. The City collects and retains for each of its electric customers, a full customer name, address, phone number, email address, Interval Data of energy consumption, account balance, payment history, preference for paper bill or electronic bill, and details regarding enrollment in optional energy efficiency and rate programs (collectively, the "Customer Information").

52. The City's retention of its electric customers' detailed Interval Data is not necessary for the purpose of billing those electric customers participating in the default/traditional fixed-rate pricing plan for their energy consumption.

53. The City retains all Customer Information (which includes electric customers' highly detailed Interval Data) for a period up to ten years. According to the City, after ten years the Customer Information is archived indefinitely.

54. According to the City, collection and retention of its electric customers' Interval Data is only necessary in order to gather information appropriate for the City's Demand Response Program, and is a feature not previously possible with the use of analog meters.

55. The City's Demand Response Program requires power consumption data at a level of granularity far finer than that required for billing purposes.¹

56. The City's Demand Response Program is a voluntary program of the City in which its electric customers may choose to participate.

57. The City currently collects and retains Interval Data on all of its electric customers regardless of whether or not the customer is voluntarily participating in the Demand Response Program.

58. As described by the City, its Demand Response Program will "allow the utility to control [a customer's] thermostat (adjust 2-5 degrees) for short periods of time (15-20 minutes per hour) to reduce air conditioning load or have select appliances (such as hot tubs or pool pumps) automatically cycled off during periods of high-energy demand and usage (like hot summer afternoons)."

59. The City's retention of its electric customers' detailed Interval Data is done for the purpose of the City's Demand Response Program, as well as to accommodate ePortal features of its NSGI which allows electric customers to access their electric utility account information and real-time personal energy use information online.

60. While the City's retention of its electric customers' detailed Interval Data is necessary for the City's Demand Response Program, such retention is not required or necessary for the purpose of billing its customers who only participate in the default/traditional fixed-rate pricing plan.

¹ Stephen Wicker and Robert Thomas, *A Privacy-Aware Architecture for Demand Response Systems*, undated, available at: http://wisl.ece.cornell.edu/wicker/SWicker_RThomas_HICSS.pdf.

61. The City's retention of its electric customers' detailed Interval Data is unnecessary for its electric customers who chose not to enroll in the City's Demand Response Program.

62. Only those electric customers who choose to enroll in the City's Demand Response Program have consented to the City's collection and retention of their Interval Data.

63. The City's retention of its electric customers' detailed Interval Data is also for the purpose of assisting the City's law enforcement personnel in criminal and regulatory investigations.

64. Interval Data harvested by the City via smart meters allows the City's police force to unreasonably search and access private information regarding the intimate activities of electric customers inside their homes and without a warrant.

65. Interval Data harvested and retained by the City via smart meters allows the City to observe human behavior within a home that is not knowingly exposed to the public, and that would ordinarily require an invasive physical presence.

66. City police detective Shaun Ferguson spoke at a public forum on February 13, 2012, on the topic of "The Rising Tide of Heroin" and addressed the City's use of Interval Data and how it would assist law enforcement personnel. Detective Ferguson told the crowd: "[p]lants, because plants are hard to grow. And people that smoke weed are lazy. You're gonna have a lot of people doing a lot of grows. One, it's tough to do in urban areas because

[inaudible] people ratting you out, seeing what’s going on, using up a ton of energy. Smart grid is going to fix all that for us.”² (Emphasis added.)

The City’s Policy Decisions Regarding Its Collection and Retention of Interval Data Were Arbitrary, Irrational and Inappropriate

67. According to the Energy Independence and Security Act of 2007 (“EISA”), Section 1301: “It is the policy of the United States to support the modernization of the Nation’s electricity transmission and distribution system” which includes the “deployment of ‘smart’ technologies” and for such purposes as “metering.”

68. While the City’s decision to implement its NSGI program for the stated purpose of increasing energy efficiency, reducing emissions, and lowering electricity consumption costs may be rational, the City’s conduct with regard to its Interval Data collection and retention of Interval Data is arbitrary, irrational and inappropriate.

69. The basic framework for what energy-related data should reasonably and appropriately be collected by the City via a smart meter is outlined by the National Institute of Standards and Technology (“NIST”) as follows:

“In the current operation of the electric utilities, data taken from traditional meters consists of basic data usage readings required to create bills. Under the Smart Grid implementation, smart meters will be able to collect other types of data. Home power generation services will also likely increase the amount of information created and shared. Some of this additional data may constitute personal information or may be used to determine personal activities. Because of the associated privacy risks, only the minimum amount of data necessary for services, provisioning, and billing should be collected.”³ (Emphasis added.)

² Shaun Ferguson, “The Rising Tide of Heroin,” <http://www.youtube.com/watch?v=JnCsaDuszns>, at 5:25 minute mark.

³ National Institute of Standards and Technology, *Guideline for Smart Grid Cyber Security: Vol. 2, Privacy and the Smart Grid*, August 2010, http://csrc.nist.gov/publications/nistir/ir7628/nistir-7628_vol2.pdf at page 20.

70. The City's decision to collect and retain the Interval Data of its electric customers which exceeds the "minimal amount of data necessary" for delivery of electric services and billing purposes is arbitrary.

71. The City arbitrarily decided to collect and retain Interval Data via smart metering which far exceeds data previously collected and retained by the City, and NSMA members have never given their lawful consent for such collection and retention.

The City's Constant Surveillance of Electric Customers Reveals Intimate Personal Details and Constitutes an Unreasonable Search and Seizure

72. The City's smart grid creates a constant conversation between the City and the City's electric customers revealing intimate personal details of the City's electric customers such as when people are home and when the home is vacant, sleeping routines, eating routines, specific appliance types in the home and when used, and charging data for plug-in vehicles that can be used to identify travel routines and history.

73. The amalgamation of Interval Data collected by a smart meter via two-way communication with the City, together with the electric customer's personal information already in the City's possession (e.g., homeowner or resident's first, middle, and/or last name; address; phone number, email address, payment history, social security number and driver's license number), provides the City with a treasure trove of detailed personal information of NSMA members which was not possible when an analog meter was utilized.

74. The City's collection and retention of Interval Data via the constant surveillance and search of NSMA members' homes unreasonably reveals intimate details of the personal lives of NSMA members.

75. New “energy disaggregation” software technology allows for the breakdown of Interval Data collected via a smart meter into appliance-level itemized consumption.

76. Disaggregation companies are now emerging which offer such “energy disaggregation” services to utility companies like the City’s DPU-E.

77. One such disaggregation company, Bidgely, Inc., provides such “energy disaggregation” free-of-charge to utility companies like the City’s DPU-E.⁴

78. No restriction exists to prevent the City from utilizing a disaggregation service provider’s “energy disaggregation” technology to disaggregate Interval Data collected and retained by the City which would allow an even more intrusive search of the intimate details of NSMA members’ in-home activities.

79. No restriction exists to prevent the City from employing disaggregation algorithms to disaggregate electrical energy measurements utilizing the retained Interval Data.

80. Sophisticated algorithms now exist which identify how much electricity even small appliances are using, and which require only Interval Data collected and retained via a smart meter without the need for any additional hardware.⁵

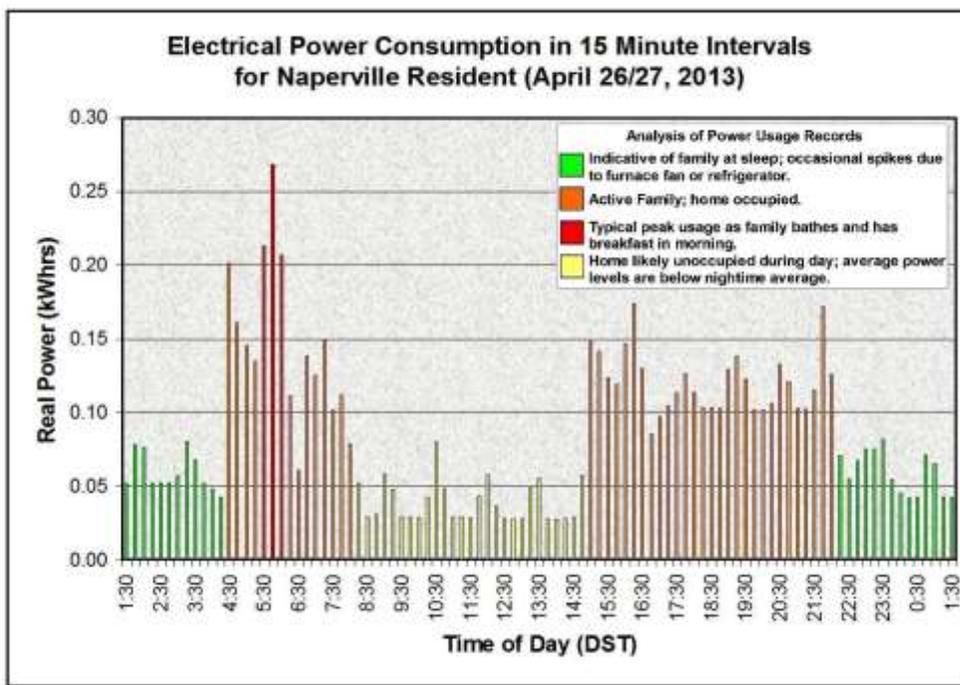
81. Detailed analysis of Interval Data collected and retained via smart meters by the City over time can reveal significant personal details about the lives of electric customers via two principal mechanisms, specifically: intuitive observation and disaggregation algorithms.

⁴ Smart Grid Today, *Bidgely CEO explains disaggregation, free trial for utilities*, May 14, 2014, available at: <http://www.smartgridtoday.com/public/Bidgely-CEO-explains-disaggregation-free-trial-for-utilities.cfm>.

⁵ Ecotagious, Inc., *Hydro Companies In Ontario Find A New Way To Use Smart Meters To Drive Conservation*, available at: <http://www.ecotagious.com/#!/smart-meters-driving-conservation/c12cc>.

82. Intuitive observation is not speculation; rather, it represents reasonable inference based upon a review of load profile information where patterns are identified related to the level of power consumption, its intermittency, and its duration.

83. As an example of load profile information, the 15-minute interval usage numbers for April 26, 2013, utilizing Interval Data collected and retained by the City for a representative electric customer of the City, were graphed as shown in the figure below.⁶



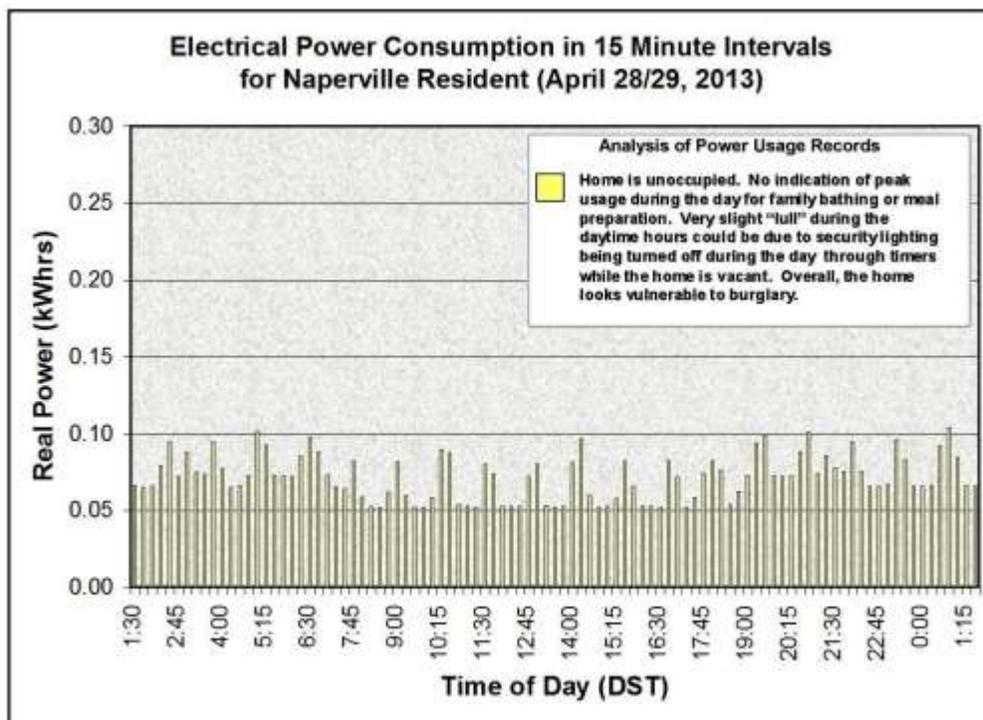
(Graphic credit: K.T. Weaver, B.S., Engineering Physics and M.S., Nuclear Engineering, University of Illinois)

84. Even without special software or other analytical tool, it is easy to infer human behavior from the graph above. It is clear that persons within the home arose at 4:30 a.m., started their day with the typical activities of bathing and meal preparation. It is also clear that there is no human activity between 8:30 a.m. and 3:00 p.m., and further that the

⁶ The Interval Data incorporated in and represented by the subject graph was obtained under the Illinois Freedom of Information Act in response to an electric customer’s request to the City for the Interval Data collected and retained by the City for her specific electric account.

usage reading abruptly drop off at 10:15 p.m. indicating that the family is retiring for the evening. And while the above graph cannot determine exactly what appliances are being used, the graph clearly reveals discrete human behavior within the home, information which would be unobtainable by someone merely observing from the street.

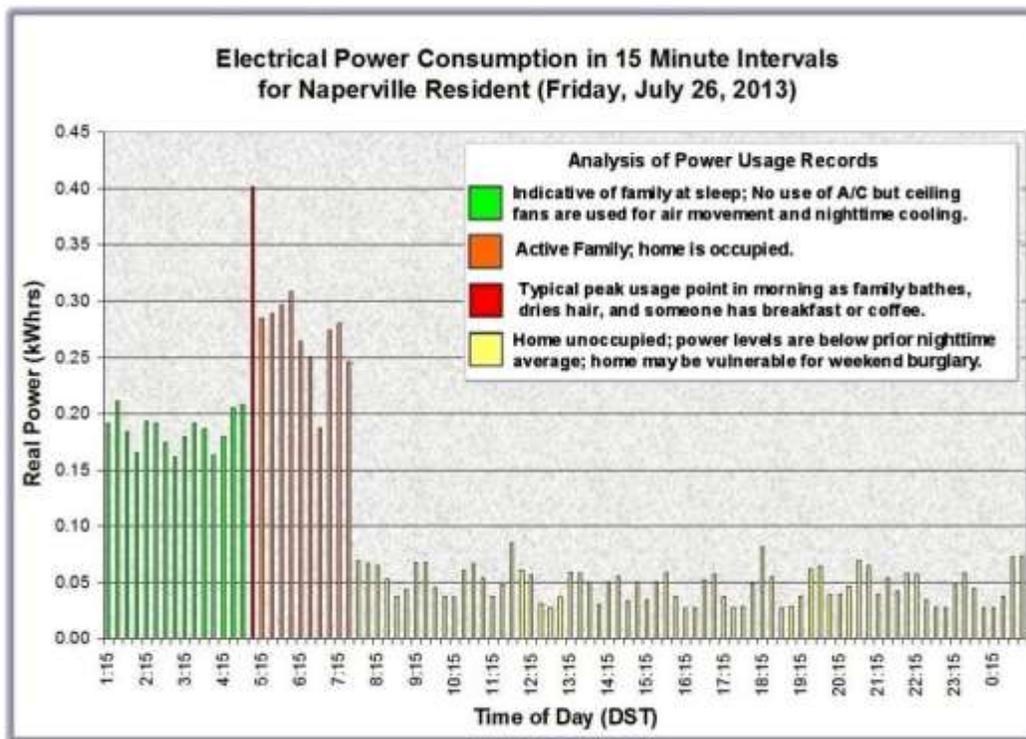
85. By contrast, utilizing Interval Data collected and retained by the City for the same electric customer on April 28, 2013, there is no characteristic peak energy usage readings. What the graph indicates is a levelized load with intermitted small peaks associated with a refrigerator and/or other automated appliance. It is clear there is no physical human activity within the home indicating the home is unoccupied on this date.



(Graphic credit: K.T. Weaver, B.S., Engineering Physics and M.S., Nuclear Engineering, University of Illinois)

86. This “real life” graphic example of an electrical usage profile allows anyone to surmise the human activity and occupancy status for the home. The graph below shows

that the persons within the home were asleep during the early morning hours of July 26, 2013, until about 4:45 a.m. when there is then a spike in energy usage. The persons within the home were not using air conditioning due to the reasonably cool summer weather experienced during the subject time period. Ceiling fans were instead used for night-time air movement and cooling. The persons within the home arose to go through a morning routine of bathing and getting dressed, etc., and were out of the house by 7:30 a.m., and did not return home for the remainder of the day or evening.



(Graphic credit: K.T. Weaver, B.S., Engineering Physics and M.S., Nuclear Engineering, University of Illinois)

87. The human behavioral inferences and home occupancy for this particular City electric customer were determined with no special software algorithms or consideration of the “reactive power” energy-related parameter as measured by the City’s smart meters in 15-

minute intervals. With back-end computer analysis and with the review of data covering a longer time period, additional behavioral determinations could be made.

88. Increased granularity of Interval Data provides more than ample detail for determining home occupancy, personal behaviors, and appliance usage with different levels of confidence. Hourly data can be used to determine occupancy and major appliance categories. Minute-by-minute data can be used to determine up to 10 different appliance loads such as refrigerator, air conditioning, heater, pool pump, dishwasher, clothes washer, microwave, dryer, etc.

89. Reactive power, which is measured by the City's smart meters, in addition to real power, is useful in disaggregation as it helps differentiate loads sampled at lower frequencies.

90. The DOE states that “[a]dvances in Smart Grid technology could significantly increase the amount of potentially available information about personal energy consumption. Such information could reveal personal details about the lives of consumers, such as their daily schedules (including times when they are at or away from home or asleep), whether their homes are equipped with alarm systems, whether they own expensive electronic equipment such as plasma TVs, and whether they use certain types of medical equipment.”⁷

⁷ DOE, *Data Access and Privacy Issues Related to Smart Grid Technologies*, October 5, 2010, http://energy.gov/sites/prod/files/gcprod/documents/Broadband_Report_Data_Privacy_10_5.pdf, at page 2.

The City at No Time Sought or Received Consent to Collect, Use, Reuse, and Retain Interval Data from NSMA Members

91. NSMA members have not consented to the transmission of RF created radiation into their homes to collect Interval Data, or to the use of their homes for the collection and transmission of Interval Data from other City electric customers.

92. NSMA members have not consented to the two-way, real-time communication between NSMA members and the City through use of a smart meter. Such two-way, real-time communication between NSMA members and the City did not exist prior to the installation of a smart meter.

93. At no time have NSMA members voluntarily provided their Interval Data to the City. The City instead has used its monopoly utility status in the City of Naperville to force the collection Interval Data, leaving NSMA members with only the unrealistic alternative of foregoing all electricity service at their homes.

94. The City's "Residential Application for Electric and/or Water/Wastewater Service" provides in part that electric customers "agree to all ordinances made by said City for the purpose of regulating and furnishings of electricity..." (Exhibit B).

95. Section 8-1-C3:8.1 of the City of Naperville Municipal Code, states in pertinent part:

"...the Department will furnish and maintain as a standard metering installation, meters adequate to measure at a single point of delivery the demand and energy consumption of the entire premises for a single nonresidential customer, and a meter adequate to measure energy consumption at a single point of delivery for residential customers."

96. The City of Naperville Municipal Code is void of information as to the frequency, format, content, storage, and retrieval of electricity consumption data.

97. The City at no time sought or received the consent of NSMA members with respect to the City's collection, use, reuse, and retention of Interval Data via smart metering which far exceeds data previously collected and retained by the City, and as defined in its Municipal Code.

98. Prior to commencing collection and retention of Interval Data, the City did not provide NSMA members with information addressing the health, safety, security, search, and privacy risks associated with smart metering.

99. Prior to commencing collection and retention of Interval Data, the City failed to notify NSMA members and other similarly situated electric customers, as to the type and scope of the Interval Data being collected and retained, or why it is necessary to collect and retain such Interval Data. Similarly, the City failed to advise customers regarding the intended use, reuse and sharing of Interval Data.

100. Prior to commencing collection and retention of Interval Data, the City failed to notify customers of any established policies and procedures regarding when and how Internal Data will be shared with law enforcement officials, including the City's own police force.

101. Prior to commencing collection of Interval Data, the City failed to notify customers regarding retention plans for such Interval Data.

102. The City's electric customers have never been informed of their consent options regarding the collection and use of Interval Data which is in violation of section 8-1B-2.3 of the City of Naperville Municipal Code, "Naperville Smart Grid Customer Bill of Rights," which states, in pertinent part:

“Customers will be informed of the available choices and consent options regarding the collection, use, and disclosure of energy consumption data.” (Emphasis added).

103. The City has violated, and remains in ongoing violation of section 8-1B-2:3 of the City of Naperville Municipal Code.

104. NSMA members have not consented to trespass and search occurring via the electronic entry of the home to an extent which exceeds the terms and conditions of the authorized service as consented to by NSMA members.

105. The City is exempt from the Electric Service Customer Act (220 ILCS 5/16-101 *et seq.*), and therefore that law affords NSMA members no protection from unwarranted or unauthorized disclosure of customer electrical usage without consent.

Privacy and Security Concerns Surrounding Smart Meters

106. NSMA members have not volunteered to assume the safety, privacy, search and security risks resulting from the City’s installation of a smart meter on their residences.

107. The City has admitted it never guaranteed, and can never guarantee, smart meters present no risk of harm to NSMA members’ privacy and security.

108. NSMA has frequently advised the City of the privacy and security concerns surrounding smart meters which include heightened risk of identity theft, monitoring of personal behavioral patterns and appliance use, real-time surveillance, and targeted home invasions.

109. Unlike an analog meter which provides no historical data about energy usage and requires proximity to access, smart meters contain a historical record about occupant(s)’ intimate behavior and can be broken into remotely.

110. According to the City, “similar to phone companies that record the time and duration of customers’ phone calls for billing purposes” smart metering provides the City with “information of interval usage of power.”⁸

111. Section 2-10-4 of the City of Naperville Municipal Code, states, in pertinent part:

“A violation of privacy shall be deemed not to have occurred in the event that:

[. . .]

c. The City permits access to private customer information to City employees or to individuals or entities under contract with the City solely for the purpose of performance of City operations.”
(Emphasis added.)

112. The term “performance of City operations” is undefined by the City.

113. The City lacks the ability to control the privacy policies and procedures of the “individuals or entities under contract with the City” that are permitted access to private customer information.

114. The City has its own police force and its law enforcement personnel have unfettered access to utility records and highly detailed Interval Data without a warrant.

115. The Congressional Research Service (“CRS”) states, “characteristics of smart meter data present privacy and security concerns that are likely to become more prevalent as government-backed initiatives expand deployment of the meters to millions of homes across the country.”⁹

⁸ City of Naperville, Naperville Smart Grid Initiative, Questions/Response Inventory (updated March 25, 2013), http://www.naperville.il.us/emplibary/Smart_Grid/NSGIQuestionResponseInventory.pdf, at page 27.

⁹ CRS, *Smart Meter Data: Privacy and Cybersecurity*, February 3, 2012, available at: <http://www.fas.org/sgp/crs/misc/R42338.pdf>.

116. The U.S. Government Accountability Office (“GAO”) states, “smart meters have not been designed with a strong security architecture and lack important security features. Without securely designed systems, utilities would be at risk of attacks occurring undetected.”¹⁰

117. The Federal Bureau of Investigation warns that “insiders and individuals with only a moderate level of computer knowledge are likely able to compromise meters with low-cost tools and software readily available on the Internet.”¹¹

118. On or about October 2, 2012, the City suffered a cyber-attack which disabled the City’s entire computer system, forced a shutdown of the City’s website, email system and other online features including the City’s auto bill pay feature for more than three (3) weeks.

119. The City admits it is on the receiving end of approximately half-a-million unauthorized attempts to access its computer system every day from outside the firewall.

120. The October 2012 virus attack reportedly came from the City’s side of the firewall.

121. The City had no plan in place to notify its residents of the October 2012 cyber-attack and continues to have no plan in place for any possible future cyber-attack on its smart grid.

122. Despite the abundance of publicly available information available to it, the City took no precautionary action to advise its residents of the potential privacy and security risks, or unlawful search issues associated with smart meters.

¹⁰ GAO, *Cybersecurity – Challenges in Securing the Modernized Electricity Grid*, February 28, 2012, available at: <http://www.gao.gov/products/GAO-12-507T>.

¹¹ Brian Krebs, “FBI: Smart Meter Hacks Likely to Spread,” *KrebsOnSecurity*, April 12, 2012.

Health Concerns Surrounding Smart Meters

123. Smart meters emit harmful RF radiation which has been known to cause headaches, heart palpitations, ringing in the ears, anxiety, sleep disorders, depression, and other symptoms, particularly in individuals who suffer from electromagnetic sensitivity.

124. NSMA members have significant and valuable liberty interests in their health, bodily integrity, and self-determination, not only with respect to themselves, but also with regard to all members of their families.

125. The City has admitted that it has not guaranteed, and can never guarantee that smart meters installed on NSMA members' residences present no risk of harm to the health and safety of residents.

126. The City has admitted it performed no testing to consider the non-thermal radiation effects of smart meters on its residents.

127. The City deployed NSGI despite no testing to evaluate the possible adverse non-thermal effects of low-level RF exposure.

128. The City's 96-page final testing report acknowledges that it "does not address or comment on potential health impacts of low power non-ionizing RF."¹²

129. Beginning in November of 2010, NSMA members repeatedly provided the City with scientific evidence of adverse health effects resulting from low-level RF exposure. The City ignored such evidence and continued deployment of NSGI.

130. At no time prior to commencing installation of smart meters did the City advise its residents of the health and safety risks associated with the devices.

¹² City of Naperville, Naperville Smart Grid Initiative (NSGI), Pilot 2 RF Emissions Testing – Plan and Results – V2.0, *Smart Meters, Household Equipment, and the General Environment*, September 22, 2011, http://naperville.il.us/emplibrary/Smart_Grid/Pilot2RFEmissionsTesting-Final.pdf, at page 6.

131. On April 12, 2012, the American Academy of Environmental Medicine (“AAEM”), a long-established and highly respected association with thousands of physician members, advised the City of its opposition to the installation of smart meters. (Exhibit C).

132. AAEM’s requests to the City included, “accommodation for health considerations regarding RF exposure, including exposure to wireless ‘Smart Meter’ technology including opt-out options for residents and communities,” and “immediate restoration of analog meters to residents requesting relief.” (Ex. C, p. 2.).

133. Based on a broad investigation into the peer-reviewed science, the World Health Organization (“WHO”) has classified wireless, non-ionizing radiation (the type of radiation emitted by cell phones and smart meters) as Group 2B, meaning “the agent is possibly carcinogenic to humans.”¹³

134. The Federal Communications Commission (“FCC”) has acknowledged “there is no federally developed national standard for safe levels of exposure to radiofrequency (RF) energy. . .”¹⁴ (Emphasis added).

135. There is no national standard for safe levels of RF radiation. Instead, the FCC has promulgated what are known as “exposure guidelines,” intended to protect against injury caused by acute exposure that results in tissue heating, electric shock or burn. The FCC “exposure guidelines” do not address chronic, non-thermal exposure situations.

136. A report by the U.S. Government Accountability Office (“GAO”), dated July 2012, states: “By not formally reassessing its current limit, FCC cannot ensure it is using a limit that reflects the latest research on RF energy exposure. FCC has also not reassessed its

¹³ WHO/International Agency for Research on Cancer (IARC) Press Release, N-208, May 31, 2011, available at: http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf.

¹⁴ FCC, *Wireless Devices and Health Concerns*, Consumer Facts pamphlet, available at: <http://transition.fcc.gov/cgb/consumerfacts/mobilephone.pdf>.

testing requirements to ensure that they identify the maximum RF energy exposure a user could experience.”¹⁵

137. On March 27, 2013, the FCC commenced a wide-ranging series of proceedings designed to reassess its rules regarding the effect of RF emissions on human health and safety.¹⁶

138. Dr. Martin C. Burke, Interim Chief, Section of Cardiology, and Director, Heart Rhythm Center at The University of Chicago Medicine sent a letter to Douglas Krieger, Naperville City Manager, on April 30, 2012, advising that with respect to one of his patients, a Naperville resident, the installation of a smart meter has the potential to “interfere with the function of her cardiac device.” Further, Dr. Burke advised the City “[u]ntil more reliable data can be collected on the health and safety of these ‘smart’ meters, it is not recommended that she has one of these installed in her home.” (Exhibit D).

139. Despite correspondence by medical professionals directed to the City, as well as an abundance of other scientific publications on the risks and dangers of smart meters publicly available to the City and as provided to the City by NSMA, the City took no action to advise its residents of the adverse health effects from RF radiation emitted by smart meters.

140. The City admits that it has allowed certain residents to retain an analog meter due to concerns over potential negative health effects of smart meters, including, but not limited to, a smart meter’s potential interference with a medical device. However, the City

¹⁵ GAO, Report to Congressional Requesters, *Exposure and Testing Requirements for Mobile Phones Should be Reassessed*, July 2012, available at: <http://gao.gov/assets/600/592901.pdf>.

¹⁶ FCC, *Report and Order* and a *Further Notice of Proposed Rulemaking* in ET Docket No. 03-137, and a *Notice of Inquiry* in a new docket, ET Docket No. 13-84, March 27, 2012, available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0329/FCC-13-39A1.pdf.

has refused similar requests from NSMA members, even those who have provided the City with a letter from their treating physician urging that a smart meter not be installed on his/her patient's home.

**No Meaningful Relief Available For Damages for
Privacy, Unreasonable Search, Security and Health Violations**

141. The City is a "local public entity" as defined by the Local Governmental and Governmental Employees Tort Immunity Act (the "Tort Immunity Act"). (745 ILCS 10/1-206).

142. The Tort Immunity Act, states, in pertinent part:

"Sec. 2-102. Notwithstanding any other provision of law, a local public entity is not liable to pay punitive or exemplary damages in any action brought directly or indirectly against it by the injured party or a third party. In addition, no public official is liable to pay punitive or exemplary damages in any action arising out of an act or omission made by the public official while serving in an official executive, legislative, quasi-legislative or quasi-judicial capacity, brought directly or indirectly against him by the injured party or a third party." (745 ILCS 10/2-102).

143. The City's "Naperville Smart Grid Customer Bill of Rights" is an "enactment" as defined by the Tort Immunity Act. (745 ILCS 10/1-203).

144. The Tort Immunity Act, also states, in pertinent part:

"Sec. 2-103. A local public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law." (745 ILCS 10/2-103).

"Sec. 2-104. A local public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization where the entity or its employee is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked." (745 ILCS 10/2-104).

145. There is no meaningful judicial relief available to customers under the Naperville Smart Grid Customer Bill of Rights as any such relief is precluded by the Tort Immunity Act.

Non-Wireless Meter Alternative

146. Section 8-1C-8.1 of the City of Naperville Municipal Code, states:

“Unless otherwise provided under this Section, the Department will furnish and maintain as a standard metering installation, meters adequate to measure at a single point of delivery the demand and energy consumption of the entire premises for a single nonresidential customer, and a meter adequate to measure energy consumption at a single point of delivery for residential customers. Under the Naperville Smart Grid Initiative, standard meters are wireless meters. Non-standard non-wireless meters may be installed when requested by a property owner subject to payment of additional costs associated with their purchase and use.”

147. Section 8-1C-9:3 of the City of Naperville Municipal, states:

“If a non-standard non-wireless meter is requested by an owner of property within the City, such meter may be installed subject to a one-time charge of sixty-eight dollars and thirty-five cents (\$68.35) associated with the increased cost of the non-standard meter. In addition there shall be a monthly charge for the City to manually collect energy interval information from the non-standard meter for meter billing and utility operation purposes based on actual costs for that service. Said monthly charge is in addition to electric rate and customer charges assessed to all customers on a monthly basis.”

148. The City’s electric customers requesting the non-wireless meter alternative (“NWMA”) receive a smart meter which collects the same Interval Data in the same manner and detail as a wireless smart meter.

149. Pursuant to the NWMA, the smart meter is manufactured without antennas or transmitters, but the same highly detailed Interval Data is stored in the smart meter, and then manually collected by the City.

150. The City's electric customers utilizing the NWMA are subject to a one-time penalty charge of \$68.35 and an additional monthly penalty rate of \$24.75.

151. The City represented that as of March 2013, 260 electric customers were utilizing the NWMA.

152. No NSMA member is utilizing the NWMA as a truly free choice; rather it is a forced selection recognized as a marginally lesser harm exhibited from among two unsatisfactory alternatives.

153. The NWMA results in substantially the same unreasonable search and violation of privacy as the City's standard smart meter and therefore the NWMA does absolutely nothing to mitigate NSMA's federal and state constitutional claims.

154. In February of 2014, Commonwealth Edison, Illinois' largest electric utility, announced that its customers who wished to retain an analog meter could do so under its smart meter opt-out program which reportedly will remain available to customers until at least the year 2018.

**The City's Forced Installation of Smart Meters and
the Arrests of Jennifer Stahl and Kim Bendis**

155. The City commenced replacement of its customers' existing analog meters with smart meters beginning on January 4, 2012.

156. NSMA has actual knowledge that approximately 100 City electric customers notified the City that he or she did not consent to the installation of a smart meter, and such customers further advised the City of their desire to retain an analog meter at their residence.

157. NSMA members posted “Do Not Install” signs on their property which clearly advised the City not to install a smart meter on the subject property, but the City routinely ignored such signs.

158. On January 23, 2013, the City enlisted multiple members of its police force to accompany smart meter installers to the homes of NSMA’s then-President Kim Bendis (“Bendis”) and NSMA Board Member Jennifer Stahl (“Stahl”).

159. On January 23, 2013, the City’s personnel, without a warrant, scaled a fence in order to install the smart meter at Bendis’ home over her in-person objection.

160. The City made such installation despite having in its possession a note from Bendis’ treating physician which requested that a smart meter not be installed on Bendis’ residence for medical reasons.

161. Later in the day on January 23, 2013, the City’s personnel arrived at Stahl’s home where City police officers, again without a warrant, cut the chain on Stahl’s locked gate in order to achieve full access to Stahl’s property and the existing analog meter.

162. The City of Naperville Municipal Code, section 8-1C-3.26, requires, as follows:

“Enforcement: When inspections on private property are necessary for purposes of enforcing the provisions of this Chapter or Title, the Director of the Department or his or her designee shall first attempt to secure the permission of the owner or legal occupant of the property. If permission is refused, or if the owner or occupant is unavailable, the Director or his or her designee, with the assistance of the City Attorney, shall apply to the appropriate court for the issuance of an administrative search warrant.” (Emphasis added.)

163. The City never obtained an administrative search warrant prior to cutting the lock on Stahl’s property and forcibly entering her property without permission in order to

install a smart meter. Similarly, the City never obtained an administrative search warrant prior to cutting locks on gates and/or scaling fences for the purpose of forcibly entering private property and installing smart meters without consent at the residences of multiple other NSMA members.

164. Bendis traveled to Stahl's home to observe the interaction of smart meter installers at her colleague's residence.

165. City police officers arrested Stahl after she pleaded that a smart meter not be installed, stated she did not consent, and passively stood in front of her existing meter.

166. The City charged Stahl with violation of two city ordinances, i.e., "interfering with officer," pursuant to 10-2-1-6:2 of the City of Naperville Municipal Code, and "denying free access to customer's premises," pursuant to 8-1C-3:7 of the City of Naperville Municipal Code.

167. Bendis was arrested and charged by City police officers with one misdemeanor count of attempted eavesdropping, and one misdemeanor count of resisting a peace officer.

168. Both Stahl and Bendis were taken away in handcuffs and held in the City's jail until processed and released.

169. The City deferred prosecution of Stahl in exchange for her entering into a Pre-Trial Diversion and Deferral agreement with the City whereby Stahl was required to complete 40 hours of community service at a not-for-profit agency other than NSMA. Stahl went above and beyond the agreed requirement by performing at total of 59.5 hours of community service with four local not-for-profit organizations. Pursuant to Stahl's successful

completion of all terms of the Pre-Trial Diversion and Deferral agreement, the municipal charges against Stahl's were dismissed on February 19, 2014.

170. The eavesdropping charge against Bendis was dropped after the Illinois law was ruled unconstitutional, but prosecution on the charge of resisting a peace officer went on. A DuPage County jury found Bendis not guilty on that remaining charge on October 1, 2014.

The City's Treatment of NSMA Members

171. NSMA members have been singled out by the City for unequal and discriminatory treatment on the basis of their NSMA membership.

172. The City refused NSMA members' requests to retain their analog meter for medical, privacy, and/or security reasons, but has allowed other residents not affiliated with NSMA such relief.

173. At the City Council meeting of March 19, 2013, the City admitted that it had not installed a smart meter at some homes due to certain medical conditions of one or more occupants.

174. NSMA member and officer Bendis provided the City with a letter from her treating physician asking the City not to install a smart meter on the Bendis home. The City ignored the request.

175. NSMA member Mary Ann Gergits is afflicted with extreme sensitivity to EMF and RF emissions. Since the installation of multiple smart meters in close proximity to her condominium unit on or about May 24, 2012, she can no longer live or sleep in her condominium. Ms. Gergits' symptoms were relieved only when she was not in her condominium which she has been forced to vacate. (Exhibit E).

176. The City's "non-wireless meter alternative" is in fact not a serious alternative for former residents like Mary Ann Gergits who live in a condominium or apartment complex where multiple smart meters are in close proximity and where one or more other owners have elected to have an RF emitting and/or digital smart meter.

177. NSMA member Rebecca Olsen provided the City with a letter from her treating physician stating that she suffers from EMF-sensitivity. (Exhibit F).

178. A smart meter was forcibly installed on Ms. Olsen's home by the City without her consent.

179. Multiple other NSMA members have sworn as to their health and other concerns related to smart meters, but all were forced to receive a smart meter without consent. (*See e.g.*, Exhibit G).

180. The City denied NSMA member Amber Schoedel's request to not install a smart meter on her residence due to her son's disability and her desire to protect his health. Ms. Schoedel provided the City with a letter from her son's pediatrician along with her letter of no consent. (Exhibit H).

181. The City has completely ignored the rights of NSMA members who suffer from electromagnetic hypersensitivity ("EHS") while respecting the rights of persons not associated with NSMA who suffer from EHS.

182. The video archives of City Council meetings over the past years are replete with examples of City officials openly mocking and bullying NSMA members who merely sought to register their smart meter related concerns in public comment.

183. On February 8, 2013, City Councilman Bob Fieseler ("Fieseler") publicly posted on the *Daily Herald* comment section and on Facebook, the following derogatory

descriptions of Jo Malik and fellow NSMA members: “TEA-Smagger posse” and “erratic and amateurish.” On the same day and on the same forums, Fieseler wrote regarding NSMA member Gerard Schilling, “With friends like him, who needs enemies??”

184. Certain City officials have repeatedly used the derogatory acronym “SMAG” instead of the proper “NSMA” when referring to Naperville Smart Meter Awareness. “SMAG” is commonly cited and referenced online as meaning the following: “An abbreviation for a Small Asian Girl.” NSMA’s then-President Bendis is of Asian descent and is approximately 5 feet tall. NSMA has never referred to itself as “SMAG.”

185. The City used monitors to report back to the City on the movements of NSMA members involved in the Smart Meter Advisory Referendum petition drive in 2011.

186. The City admits it has employed a private investigator to conduct surveillance on NSMA members in order to prepare videos “regarding potential legal action.”

187. The City’s police force established a “Smart Meter Detail.”

188. The City caused the arrest of NSMA’s then-President Bendis for “attempted eavesdropping” purportedly for her alleged recording of the installation of a smart meter on a fellow NSMA member’s home where City police officers were present.

189. The City sent police officers to the homes of some of the more prominent members of NSMA to oversee the installation of the City’s smart meters.

190. On multiple occasions, the City has sought media coverage in its attempts to publicly embarrass and intimidate NSMA members.

191. City Councilman Grant Wehrli ordered City staff to assemble the costs associated with Freedom of Information Act (“FOIA”) requests solely from NSMA members

to “see what this group was costing us.” The City released the information sought by Wehrli to the press. (Exhibit D).

192. Councilman Wehrli publicly described NSMA members’ FOIA activities with respect to NSGI in these terms: “[a]t this point it’s just harassment and borderline abuse of the FOIA system.” City Councilman Steve Chirico accused NSMA members of “abusing” and “gaming the system.” (Ex. I, p. 2).

193. At the Naperville City Council meeting of November 15, 2011, Councilman Chirico responded to NSMA member Amber Schoedel’s public comments about her experience gathering petition signatures: “Would some of them just sign to get away from you?”

194. The City employed its own personnel and utilized public funds in order to recruit an objector for the specific purpose of filing an objection to NSMA members’ proposed Smart Meter Advisory Referendum. On information and belief, this was the first time in history the City had utilized City personnel and public funds to oppose a citizen-led ballot referendum.

CLAIMS AGAINST DEFENDANT

COUNT I

Violation of Right to Privacy and Unreasonable Search and Seizure – Fourth Amendment; 42 U.S.C. § 1983

195. NSMA reasserts and re-alleges paragraphs 1 through 194 as if fully recited herein.

196. The Fourth Amendment provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

197. As described in the preceding paragraphs, the City, without consent, has forcibly installed smart meters on the homes of NSMA members which are performing an unreasonable search of such homes in violation of the Fourth Amendment of the United States Constitution.

198. The City, in addition to its function as an electric utility, also has its own police force, and there is no meaningful separation between such police and the utility within the structure of the City’s municipal government.

199. The City, through one of its police officials, has already confirmed that information obtained through smart meters will be utilized in the pursuit of the City’s police function.

200. The City has already misused its law enforcement personnel to accomplish the forced installation of smart meters on NSMA members’ homes without consent and without an administrative warrant in violation of section 8-1C-3.26 of the City of Naperville Municipal Code.

201. The City has utilized its law enforcement personnel to forcibly enter the private property of NSMA members without permission or consent, and without an administrative warrant in violation of 8-1C-3.26 of the City of Naperville Municipal Code.

202. NSMA members have only consented to the basic delivery of electricity to their homes.

203. NSMA members have not consented to, and have no wish to allow the City to seize intimate details about their personal lives and living habits, and the collection of such

data far exceeds reasonable expectations as to what is required in order to provide satisfactory electrical service and bills to City customers.

204. As NSMA members have no meaningful choice in whether or not to provide extremely detailed personal data to the City, and further have not provided their consent, the subject smart meter installations constitute a violation of 42 U.S.C. § 1983, and represent an unlawful invasion of privacy as well as an unreasonable search and seizure in violation of the Fourth Amendment of the United States Constitution.

205. Because of the City's misconduct and omissions, NSMA members have suffered, and will continue to suffer, injury and irreparable harm.

COUNT II
Violation of Right to Privacy and Unreasonable Search and Seizure –
Illinois Constitution of 1970, Const. Article I, §§ 6, 12

206. NSMA re-asserts and re-alleges paragraphs 1 through 194 as if fully recited herein.

207. Article I, § 6 of the Illinois Constitution provides that: "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized."

208. Article I, § 12 of the Illinois Constitution provides that: "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly."

209. Article I, § 6 of the Illinois Constitution protects Illinoisans from unreasonable searches, seizures, and other technological invasions of their right to privacy.

210. Our courts have held that while state and federal constitutional clauses may be considered coextensive when the two clause are worded the same, this logic does not apply when the Illinois Constitution has an express clause, such as a specific right to privacy clause, which the federal constitution does not. *People v. Caballes*, 221 Ill. 2d 282, 289 (2006)(when a clause is unique to the state constitution, it “must be interpreted without reference to a federal counterpart”); *see also, People v. Nesbitt*, 405 Ill. App. 3d 823, 828 (2nd Dist. 2010).

211. Our courts have further held there is a constitutional right of privacy in Illinois in a person's phone and bank records. *See e.g., People v. DeLaire*, 240 Ill. App. 3d 1012, 1020 (2nd Dist. 1993)(fact that telephone company has access to telephone records "does not negate persons' expectation of privacy in the telephone records"); *People v. Jackson*, 116 Ill. App. 3d 430, 435 (1st Dist. 1983)(there is a constitutional right of privacy in Illinois in a person's bank records).

212. The installation of a smart meter on each customer’s residence is mandated by the City.

213. The City has unreasonably burdened NSMA members’ right to keep the intimate details about their activities within their home private and safe from unreasonable search, monitoring, collection and retention.

214. The City’s forced installation and use of a smart meter on NSMA members’ homes is an invasion of such right of privacy under the Illinois Constitution.

215. The City's use of a smart meter on NSMA members' homes without resident consent constitutes an unreasonable search under the Illinois Constitution.

216. The forced installation of a smart meter mandated by the City does not serve a compelling government interest and is not necessary to further any legitimate government interest that was not previously served by the installation and use of an analog meter, and does not provide a constitutionally adequate substitute for a warrant.

217. Nothing in the City's Ordinances limits the City's ability to access the intimate details about NSMA members' personal lives and living habits as contained in the Interval Data collected via a smart meter and retained indefinitely by the City.

218. Nothing in the City's Ordinances places any restriction on how the City may use the intimate details about NSMA members' personal lives and living habits contained in the Interval Data collected via the smart meter and retained indefinitely by the City.

219. Nothing in the City's Ordinance places any restrictions on the City's personnel, including the City's law enforcement personnel, from improper use of intimate details about NSMA members' personal lives and living habits contained in the Interval Data collected via the smart meter and retained indefinitely by the City.

220. The City has previously utilized its law enforcement personnel to forcibly enter the private property of NSMA members without permission or consent, and without an administrative warrant in violation of 8-1C-3.26 of the City of Naperville Municipal Code.

221. NSMA members have only consented to the basic delivery of electricity to their homes and the Interval Data is not being voluntarily shared with the City.

222. NSMA members have not consented to, and have no wish to allow the City to collect intimate details about their personal lives and living habits, and the collection of such

data far exceeds reasonable expectations as to what is required in order to provide satisfactory electrical service and/or billing to City customers.

223. As NSMA members have no meaningful choice in whether or not to provide extremely detailed personal data to the City, and further have not provided their consent, the subject smart meter installations constitute an impermissible invasion of privacy and unlawful search in violation of the Illinois Constitution.

224. Because of the City's misconduct and omissions, NSMA members have suffered, and will continue to suffer injury and irreparable harm.

COUNT III
Violation of Equal Protection –
Fourteenth Amendment; 42 U.S.C. § 1983

225. NSMA reasserts and re-alleges paragraphs 1 through 194 as if fully recited herein.

226. Section 8-1C-8.1 and section 8-1C-9:3 of the City of Naperville Municipal Code, as applied, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

227. Further, the City has singled out NSMA members for an additional level of unequal treatment under its own ordinances based upon sheer vindictiveness, maliciousness, animosity or spite stemming from NSMA members' exercise of their free speech rights accorded to them under the First Amendment of the U.S. Constitution.

228. The City, with spiteful and retaliatory motive, has denied the reasonable requests of NSMA members seeking to retain an analog meter, even when the subject NSMA member has advised the City he or she cannot tolerate a wireless smart meter for medical

reasons. The City is allowing individuals not associated with NSMA to retain their analog meter for medical reasons.

229. The court in *Esmail v. Macrane*, 53 F. 3d 176, 178 (7th Cir.1995)(a case also involving the City of Naperville), held that the equal protection clause provides a remedy when “a powerful public official picked on a person out of sheer vindictiveness.”

230. The City’s selective prosecution of NSMA’s then-President Kim Bendis for attempted eavesdropping on City police during the installation of a smart meter was just part of the City’s coordinated campaign of retaliation against members of NSMA.

231. The City’s utilization of the press to publicly ridicule members of NSMA for exercising their right to obtain documents through FOIA was solely a spiteful attempt to single out NSMA members who have been critical of the cost of the City’s NSGI.

232. Section 8-1C-8.1 and section 8-1C-9:3 of the City of Naperville Municipal Code, as applied, single out one group of people for unequal treatment without rational justification and for the very purpose of making them unequal to everyone else.

233. As a direct and proximate result of the City’s actions in violation of 42 U.S.C. § 1983, NSMA members were harmed and continue to suffer harm due to violation of their Fourteenth Amendment right to equal protection.

234. The City’s spite, malice, and dislike of NSMA’s activities have subjected NSMA members to unequal treatment without sufficient justification and for the very purpose of making them unequal to everyone else.

PRAYER FOR RELIEF

NSMA respectfully requests:

1. That this Court enter an injunction requiring the City to uninstall, upon an electric customer's request, the City-installed smart meter from such customer's residence, and to replace said smart meter with an analog meter at no additional cost to the customer.
2. That this Court grant NSMA such other and further relief, including costs, as is just and reasonable.

Dated: December 10, 2014

Respectfully submitted,

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