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MADISON WATER UTILITY

1818 Winchester Street
Madison, WI 53704
dakester@sbcglobal.net
July 5, 2012

Public Service Commission of Wisconsin
RECEIVED: 07/05/12, 10:36:05 AM

Public Service Commission of Wisconsin
610 N. Whitney Way
Madison, WI 53705

Re: Petition for an investigation into the health and safety and other aspects of AMI systems and need for a customer bill of rights;
Docket No. _____

Dear Commissioners:

Enclosed please find a request of 33 customers of the Madison Water Utility for the Commission to open a general investigation into certain aspects of AMI systems. This petition arises in connection with the Madison Water Utility's imminent implementation of an AMI metering system commencing in July of 2012, but the petition's issues are wider. Petitioners wish to invoke the Commission's oversight and guidance in the public interest concerning a number of customer rights in relation to AMI systems, including policies for any opt out processes, and the Commission's involvement in any determination of general parameters for creating such policies that will be fair and reasonable for all utility customers affected by AMI systems. A number of other states have conducted similar investigations.

Petitioners' concerns have arisen in part by the delay in the Madison Water Utility's creation of a viable, fair, and reasonable opt out procedure for its customers prior to launching its installation of this new system. Earlier this week, Petitioners were pleased to learn that the Madison Water Utility (hereafter, MWU) has now announced a timetable for development of a meter opt out policy. Their timetable is included among the attachments to this filing. However, MWU's delay in creating any policy for opting out of its wireless meters leaves customers slated for early installation of these meters in limbo, since installation will commence prior to the opt out policy development and implementation.

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Petitioners' concerns have arisen in part by the delay in the Madison Water Utility's creation of a viable, fair, and reasonable opt out procedure for its customers prior to launching its installation of this new system. Earlier this week, Petitioners were pleased to learn that the Madison Water Utility (hereafter, MWU) has now announced a timetable for development of a meter opt out policy. Their timetable is included among the attachments to this filing. However, MWU's delay in creating any policy for opting out of its wireless meters leaves customers slated for early installation of these meters in limbo, since installation will commence prior to the opt out policy development and implementation.

It is not Petitioners' wish to be adversarial in requesting this investigation. Rather, in a problem-solving spirit, Petitioners wish to invoke the Commission's oversight and guidance concerning customer rights, including any opt out processes, as has been done recently in a number of other states, and Petitioners seek the Commission's involvement in any determination of whether or not any such policies are fair and reasonable for all customers of MWU.


In this petition we are not asking the Commission to address any specific fees that may be proposed by MWU in connection with exercising such an opt out option, since this costing element and its impact on rates will be placed in issue when the MWU files its next rate application later this summer—more or less concurrently with the Commission's wider investigation of these issues, should the Commissioners agree with Petitioners' requests. Even with a viable opt out policy, this petition presents additional questions for the Commission's review and consideration, which Petitioners believe merit investigation.

Accordingly, Petitioners ask the MWU to consider voluntarily halting further installation of meters in this AMI system unless and until a viable, fair, and reasonable opt out policy and procedure are in place.

If the Commission agrees with Petitioners that an investigation should be opened in regard to these wider questions, separate and apart from the specific items that would form a Customer Bill of Rights, Petitioners are open to any reasonable timetable for proceeding in this matter that permits MWU to develop its opt out policy and procedure before addressing the other issues presented in this request for investigation and complaint, so long as no customers of MWU would be prejudiced or otherwise harmed by a timetable for proceeding that is mutually agreed upon by the parties.

Thank you for your consideration of the concerns brought forward by Petitioners in the attached petition for investigation.

Sincerely,

A handwritten signature in black ink that reads "Dolores Kester". The signature is written in a cursive style with a large initial "D" and "K".

D. A. (Dolores) Kester
Lead Petitioner
Customer of the Madison Water Utility

cc: Madison Water Utility
Madison City Attorney
Mayor of Madison

**IN RE: PETITION OF 33 CUSTOMERS
OF THE MADISON WATER UTILITY
FOR INVESTIGATION BY THE
COMMISSION INTO THE HEALTH
AND SAFETY, COST, PRIVACY,
AND SECURITY OF AMI SYSTEMS
AND NEED FOR A CUSTOMER BILL OF
RIGHTS TO PROTECT THE PUBLIC
INTEREST**

DOCKET NO. _____

STATEMENT OF THE CASE

Petitioners, customers of the Madison Water Utility, hereby petition the Wisconsin Public Service Commission under Sec. 196.26 and Sec. 196.37(2), Wis. Stats., and PSC Sec. 2.07 and 2.08, Wisconsin Administrative Code, for an investigation to evaluate the health, safety, cost, privacy, security, and need for a customer bill of rights, to protect the public interest in implementation of any Advanced Metering Infrastructure (hereafter, AMI) system.

Petitioners particularly request that the Commission determine whether the Madison Water Utility fully complied with all PSC prerequisites before implementing its AMI project, and whether this project implementation is fair and reasonable for all customers of the Madison Water Utility.

Over recent months, Petitioners have made numerous and varied communications with the Madison Water Utility, the Madison Common

Council, the Mayor of Madison, and the City Water Utility Board, expressing concerns about its AMI project, including but not limited to the meeting of the Madison Common Council on June 19, 2012, and meetings of the Madison Water Utility Board on May 22, 2012 and June 26, 2012. The Madison Water Utility has stated its intention to commence implementation of this project during the month of July 2012.

Letters have already gone out to customers about the timetable for installation of these meters, yet it appears that the Madison Water Utility has prepared no information for customers about their rights in connection with this meter project, nor does it appear that the Water Utility has filed anything with the Public Service Commission about this subject.

Accordingly, Petitioners request that the Commission open an investigation to protect the health and safety of all Madison Water Utility customers and to ensure the fairness of cost of services to customers of the Madison Water Utility, including but not limited to developing a Customer Bill of Rights during the implementation of this smart meter project and at all times subsequent to its implementation.

Finally, Petitioners request the Commission to consider ordering a moratorium on enforcement of any Madison “access” ordinance which, as drafted, sets unreasonable setback and access requirements for installation and maintenance of the new wireless meters, and would impose excessive fines up to

\$1,000 per day in addition to water shutoff for any customer not complying with the provisions of this unreasonable ordinance, whether intentionally or accidentally.

I. IT APPEARS THAT THE MADISON WATER UTILITY DID NOT FILE ANY CONSTRUCTION APPLICATION FOR THE \$13 MILLION IN ADDITIONS TO ITS CAPITAL STRUCTURE RELATED TO ITS AMI METERING PROJECT, AS REQUIRED UNDER PSC CH. 184, WIS. ADMIN. CODE.

It appears that the MWU did not file any construction application with the Commission for approval of the additions to its capital structure related to its AMI metering project, as required by PSC Ch. 184, Wis. Admin. Code.

The PSC's rate order dated 12-22-2009 in Case No. 3280 WR 111 permitted the Madison Water Utility to proceed with its AMI project as outlined in its monthly billing plan submitted as part of the above-referenced rate proceeding. Subsequently, however, it appears that the Madison Water Utility has failed to comply with further construction approval requirements established by the Commission prior to actually implementing its AMI metering project by constructing the AMI system's grid, which represents an addition to the Madison Water Utility's plant and a capital improvement at a cost of millions of dollars. In other words, it appears that the Madison Water Utility has not received any construction order to proceed with its AMI project, as required by PSC CH. 184, Wis. Admin. Code.

The effect of this omission is significant because the failure of Madison Water Utility to submit the information specified in PSC Sec. 184.04 has deprived the Commission of the opportunity to review detailed data and explanations regarding the purpose and necessity of this project, the effect of the project on quality and reliability of service, and alternatives to the project, among other determinations specified in Sec. 184.04. Because no construction application was filed, the Commission had no opportunity to determine the particulars to determine “whether public convenience and necessity require the project.” See, PSC Sec. 184.05(1)(b), Wis. Admin. Code.

Petitioners believe that compliance with PSC CH. 184 was all the more necessary because almost three years had elapsed since the original rate order authorizing this AMI system in concept on 12-22-2009, cited above, and the actual commencement of this construction project in July of 2012. As a result of this omission, the public lacks the Commission’s determination concerning whether this project was necessary, and whether there were alternatives.

Accordingly, petitioners request the Commission to investigate whether the Madison Water Utility has the necessary legal authority at the present time to carry out its AMI project in light of its noncompliance with PSC Ch. 184.

II. FACTS AND ARGUMENTS IN SUPPORT OF INVESTIGATION OF HEALTH, SAFETY, AND OTHER CONCERNS RELATED TO AMI SYSTEMS, AND NEED FOR CUSTOMER BILL OF RIGHTS

Over the last few years numerous questions have been raised in connection with implementation of AMI systems. Public regulatory commissions in a number of states have conducted investigations into various aspects of AMI systems, including California, Connecticut, Florida, Maine, Maryland, Michigan, Nevada, and Texas. (See, Attachment 1.) In May of 2012 the State of Vermont passed a statute creating a bill of rights for utility customers in regard to smart meters, and calling for a joint investigation by its commission of health and commissioner of public service into the potential health effects of smart meters. (See, Attachment 2.)

A few of the questions about the health and safety of smart meters raised in various states and in various studies and reports are as follows:

- Will we be seeing more deaths attributable to failed pacemakers and defibrillators, or more cardiac arrhythmias, as a result of this grid?
- Will we be seeing more blindness and sterility caused by damaged eyes and testes?
- Will any of us with implanted knee, heart, hip, or other prostheses be at greater risk?
- What about the effect on prosthetic limbs, metal or otherwise?
- Will epileptics or Parkinson's patients with deep-brain stimulators have their electrodes shut down by the electromagnetic fields created by this wireless smart meter grid? Will these deep-brain devices need to be periodically reprogrammed?
- Will the electromagnetic fields generated by this grid make our dogs and cats sick?

- **What about the reports of fires and explosions (e.g. Australia) caused by Itron smart meters? If the Madison Water Utility compels homes and businesses to have these meters and they explode or catch fire, who will pay for that damage? Will our home or business insurance policy reimburse us for our damaged property? Will the City of Madison or the Water Utility be required to indemnify us for such losses if our insurance policies do not do so?**
- **What are the electromagnetic exposures attributable to the collectors and repeaters placed on light poles for transmission of the wireless signals generated by the meters, vs. the exposures attributable to the meters themselves?**
- **What if any precautions is the Madison Water Utility taking to warn the public of risks of such exposures, and of the locations of this transmission equipment, via signage or other means, so that members of the public can better protect themselves against these risks?**

(See, Attachment 3: links to reports and studies on health and safety of AMI.)

Additional concerns of customers where AMI/smart metering systems have been introduced in other states include but are not limited to the following: privacy, security, cost, and impact on rates. Petitioners request that the Commission also investigate the impact on customers of these concerns.

Any upward pressure on rates attributable to introduction of AMI/smart metering programs for all classes of customers, and particularly for residential customers, needs to be addressed in the interest of the public, although Petitioners recognize that this costing element and its impact on rates will be placed in issue when the MWU files its next rate application later this summer and such proceedings may be a better context for the

Commission's review of those solely financial aspects of AMI metering systems.

III. NEED FOR CUSTOMER BILL OF RIGHTS RELATED TO AMI/SMART METERING SYSTEMS

The Wisconsin Public Service Commission has a customer bill of rights related to billing issues, but up to the present time no customer bill of rights has been developed related to AMI/smart metering systems.

Questions regarding the rights of utility customers in regard to implementation of any AMI metering system include but are not limited to the following:

- Do customers have a right to water as a basic human right?**
- What rights do customers have to say no to the installation of a wireless smart meter on their property?**
- Are there health and safety concerns about the smart meter grids, and what rights do customers have to protect their own health and safety, their families' health and safety, or the health and safety of their employees connected to AMI meters?**
- What rights do customers and citizens and visitors in Madison have to protect their health and safety, their families' health and safety, or the health and safety of their employees from transmission equipment used to**

create communication from individual AMI meters to receivers, via banks of transmission collectors and repeaters placed on light poles throughout the city?

- **What obligation or duty does the utility have to inform customers of the risks and benefits of these smart meters, the transmission equipment used to facilitate transference of the wireless signals, and of the customers' rights in regard to these installations?**
- **Do the city and the utility agree to indemnify its customers or any other persons, such as visitors to the city, or business owners, for any harm to their health and safety or to their property, or any harm to their employees, caused by exposure to these wireless smart meters or their associated banks of transmission collectors and repeaters placed throughout the city?**
- **In lieu of a mandatory program with opt outs, would it make better sense to consider an opt in program with rate incentives based on time of day use?**
- **Do customers have the right to opt out of having a smart meter installed on their property?**
- **Can customers who do not want a wireless smart meter installed at their location retain the meter currently installed at their location or receive an analog meter or a non-analog, non-smart digital meter that had been**

at the customer's location prior to the installation of a wireless smart meter?

- **Can a customer choose not to have a wireless smart meter installed, at no additional monthly or other charge?**
- **Can a customer require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal?**
- **If customers have a right to opt out of having a smart meter, are there any terms and conditions that may reasonably be attached to the exercise of that right? For example, is it fair and equitable to require such customers opting out to pay a fee over and above what other customers pay who consent to have a smart meter installed on their property?**
- **What limitations may be properly placed on the utility's use of the data generated from customers in connection with this smart meter program? What rights do customers have to obtain these and any other such data from the utility?**

To answer these and other questions, Petitioners request the Commission to develop a Customer Bill of Rights related to wireless smart meters.

As noted in the cover letter to this petition, Petitioners were pleased to learn that the Madison Water Utility (hereafter, MWU) has now announced a

timetable for development of a smart meter opt out policy. The announcement of the MWU's timetable is included here as Attachment 4.

Pending receipt of MWU's policy for an opt out procedure, Petitioners wish to invoke the Commission's oversight and guidance concerning customer rights, including any opt out processes, for MWU customers and for other utility customers in Wisconsin. As stated earlier in this petition, involvement of the state utility regulatory commission in similar processes has been invoked recently in a number of other states. Petitioners seek the Commission's involvement and oversight in any determination of whether or not any such policies are in the public interest and are fair and reasonable for all utility customers.

The Madison Water Utility's implementation of its AMI system is imminent. As of June 19, 2012, no smart meters had yet been installed. (See, Attachment 5.) On or about June 29, 2012, letters were received from MWU by all customers stating MWU's timetable for installation of its AMI system, commencing July 9, 2012. (See, Attachment 6.) As stated in Petitioners' cover letter, MWU's delay in creating any policy for opting out of its wireless meters leaves customers slated for early installation of these meters in limbo, since installation will commence prior to the opt out policy development and implementation.

Petitioners appreciate the responsiveness that MWU has shown in taking the initiative to create an opt out policy, albeit at the eleventh hour, for its customers not wishing to have a smart meter on their property. Petitioners are concerned, however, that no customers of MWU be prejudiced or otherwise harmed by this timetable, if they have no knowledge of their right to opt out of having such a smart meter before it is actually installed on their premises. (See, Attachment 7 and its accompanying Fact Sheet for a summary of many of these concerns, including cost and rates.)

IV. THE COMMISSION SHOULD BE ABLE TO TAKE ADVANTAGE OF INFORMATION AND OTHER RESOURCES FROM THE OTHER STATES WHICH HAVE ALREADY ADDRESSED THESE OR SIMILAR ISSUES

A number of other states have preceded Wisconsin in implementing wireless smart meter programs. At the present time approximately fourteen states have addressed customer rights in one form or another, and at least eight states have opt out programs. Various states have imposed or are considering imposing requirements on utilities to inform their customers of their rights, including specifying the existence of certain rights in connection with these metering programs, the procedure whereby customers may invoke these rights, and the terms and conditions, if any, involved in opt-out programs for customers wishing not to have a smart meter installed on their

property. Some states have investigated health and safety factors involved in such programs. Many states have also investigated recurring complaints of overbilling, billing inaccuracies, meter malfunctions, and other customer problems arising from the operation of these wireless smart meter programs. (See, Attachments 1, 2, 3, and 7.)

Thus, the Wisconsin Public Service Commission can benefit from this body of experience in reaching its own conclusions about what is fair and equitable for customers of any Wisconsin utilities, such as the Madison Water Utility, which may have embarked upon such wireless smart meter programs or may consider them in future.

V. PETITIONERS REQUEST THE COMMISSION TO PLACE A MORATORIUM ON ANY ENFORCEMENT OF THE PROPOSED MADISON “ACCESS” ORDINANCE, UNTIL THE COMMISSION HAS CONCLUDED ITS INVESTIGATION OF THIS MATTER, UNLESS MWU IS WILLING TO VOLUNTARILY TAKE ANY MEASURES NEEDED TO AVOID PREJUDICE TO CUSTOMERS

At the meeting of the Madison Water Utility Board on May 22, 2012, the Madison Water Utility considered a proposed Madison access ordinance which would require unreasonable space clearances in customers’ basements for installation and access to any wireless smart meter, and which also contains provisions for unreasonable daily fines up to \$1,000 per day and for water shutoff for any customers who deny access to their premises or impede

transmission of the wireless signal, whether accidentally or intentionally. (See, Attachment 8.) This same proposed ordinance, with minor modifications (see, Attachment 9), was again on the agenda of the Water Utility Board on June 26, 2012, at which time the Board voted to refer further consideration of this ordinance to its next monthly meeting scheduled for July 24, 2012.

It does not appear that the Madison Water Utility has informed the Public Service Commission of any such ordinance.

Depending on the timing of the promulgation of MWU's opt out policy in relation to the promulgation of this access ordinance, some MWU customers may be at risk of having heavy sanctions imposed for not submitting to installation of a smart meter on their property, without having clarification of their rights to refuse to have such a meter, and regardless of any customer's wish not to have such a meter, whether based on health, safety, privacy, or any other consideration.

For the above reasons, the Petitioners have suggested in their cover letter that the Madison Water Utility consider voluntarily halting its installation of meters until its opt out policy has been developed, promulgated, and implemented. Petitioners believe there should be no further installation of any AMI smart meters, until and unless customers are protected by a Customer Bill of Rights which spells out the customers' rights to choose not to have a smart

meter installed on their property, and other terms or conditions, if any, related to their exercise of the opt out alternative, as set forth earlier in this petition.

In the event that the Madison Water Utility chooses not to postpone its AMI installation voluntarily, Petitioners request an order from the Commission that the Madison Water Utility cease and desist from further communications with customers or installations of meters unless and until customers have been informed of their rights including their right to opt out of these meters.

Otherwise, it may be necessary for MWU to remove wireless smart meters from customers' property upon request and without cost, or for MWU to have to move banks of transmission equipment upon request and without cost, if any such transmission equipment is located too close to customers' living or working quarters to accommodate the reasonable distances necessary to provide adequate margins to protect health and safety.

VI. FURTHER EXPENDITURE OF FUNDS BY THE WATER UTILITY ON THIS AMI PROJECT SHOULD BE HALTED PENDING CREATION AND IMPLEMENTATION OF A CUSTOMER BILL OF RIGHTS

Up to the present time, the Madison Water Utility has received city budget authorization for \$13 million, plus an additional \$400,000 in 2013, to implement its AMI smart meter program, but as noted above, has not yet actually installed any smart meters as of the date of the filing of this petition.

Thus its expenditures on this project have to date been minimal in nature. If no moratorium on further expenditures is issued by the Commission, the Madison Water Utility will be making significant expenditures in the immediate future—an estimated \$15,000 for installation of transmission equipment on MG&E and WP&L light poles, and an unknown amount for purchase of smart meters or other transmission equipment for installation within the “pilot area” commencing on or about July 9, 2012. Costs will be unnecessarily increased if newly installed meters or other equipment have to be removed because they contravene the provisions of a customer bill of rights.

The more funds are expended on this AMI system, the greater the costs that Petitioners and other customers of the Madison Water Utility will have to support in the form of rate increases for water service attributable to the costs of this AMI system.

Petitioners request the Commission to order a moratorium on further expenditures and further implementation of this smart meter program by the Madison Water Utility, pending investigation and determination regarding all matters necessarily related to the protection of customers’ interests in regard to any such wireless smart metering program.

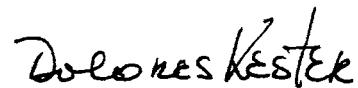
CONCLUSION

Petitioners respectfully request the Commission to open an investigation into all relevant issues necessary to protect the rights and interests of customers of any utility, including the Madison Water Utility, in connection with its implementation of an AMI wireless metering system, including determination of a customers' bill of rights, a reasonable opt out choice for customers, and other factors related to fair and equitable rates and terms of service provided by the utility in implementing such a system.

Petitioners submit that a number of other state regulatory commissions have imposed a moratorium on further implementation of any such AMI system when entertaining similar customer petitions (e.g. Maryland, Michigan; see Attachments 1 and 2), in order to prevent needless expenditure of funds, pending conclusion of an investigation and determination of the issues.

Respectfully submitted this 5th day of July, 2012.

PETITIONERS:



D. A. (Dolores) Kester
1818 Winchester Street
Madison, Wisconsin 53704-3457
(608) 770-7061

On behalf of all Petitioners
whose names and addresses are
provided in Attachment 10.

ATTACHMENT 1



Smart Meter Opposition Actions across the United States

as of 5/29/12

California

- Installation of smart meters began in 2007.
- On February 1, 2012, the California Public Utilities Commission agreed to allow electric customers to keep their current analog meter or reinstall an analog meter if a smart meter had been installed.¹
- On April 19, 2012 the California Public Utilities Commission unanimously approved opt-out proposals and allow customers to have their smart meters removed at an additional cost.
- Principal of CPUC: ***“Ms. Dorman agreed that there is no law mandating smart meter installation- and that the right to install a smart meter was “just an assumption” by the PUC and the utilities, and not based in law.”***

Connecticut

- Installation of smart meter began in 2009.
- On August 30, 2011, Connecticut’s Department of Energy and Environmental Protection (“DEEP”) asked the Public Utilities Regulatory Agency (“PURA”) to suspend actions in smart meter cases until it could develop a policy on smart meters as required by Connecticut Public Act 11-80.
- On or about October 4, 2011, Connecticut’s Attorney General upheld the decision of DEEP and PURA.

District of Columbia

- The Washington, DC Office of the People’s Counsel requested to the Washington, DC Public Service Commission that technical and economic feasibility of an opt-out program for Advanced Metering Infrastructure be investigated. In February 2012, the PSC announced that that no investigation was necessary. In response, on March 19, 2012, the Office of the People’s Counsel filed an application for reconsideration in case 1065 arguing that the PSC is not fulfilling its public interest obligation. The request was denied.

¹ California Public Utilities Commission’s Decision Modifying Pacific Gas and Electric Company’s SmartMeter Program to Include an Opt-out Plan: http://docs.cpuc.ca.gov/word_pdf/AGENDA_DECISION/158309.pdf

Florida	<ul style="list-style-type: none"> • Installation of smart meters began in 2009. • As of May 1, 2012 the following counties have passed anti smart meter resolutions: Indian River, Volusia, Brevard, and Charlotte • Brevard County Commissioners requested of Florida Power & Light (“FPL”) a smart meter opt-out plan for its residents and called upon the Florida Public Service Commission to hold public hearings on the issue of smart meters and their potential benefits and/or potential hazards to Florida residents. FPL is about 20% complete of its smart meter installation in Brevard County.² • The Florida Public Service Commission announced it will have an opt-out workshop at an unspecified date.
Georgia	<ul style="list-style-type: none"> • Installation of smart meters began in 2007. • Legislation allowing customers to elect not to have a smart meter installed on their property passed the State Senate but stalled in the State House (S.B. 459).³
Hawaii	<ul style="list-style-type: none"> • Installation of smart meters began in 2012. • March 2012, opt out approved. • On April 25, 2012, at a federal hearing, the parties agreed the preliminary injunction motion was rendered moot as a result of the defendant utility’s oral agreement that it would refrain from installing a smart meter on the plaintiff’s home.⁴
Illinois	<ul style="list-style-type: none"> • Federal injunction filed. • Hearing to be held on May 31, 2012 has been postponed. No new court date has been announced.
Louisiana	<ul style="list-style-type: none"> • Installation of smart meters began in 2011. • On February 28, 2012, the City-Parish city council voted to allow Lafayette Utilities System customers to opt-out of smart meters.⁵
Maine	<ul style="list-style-type: none"> • Installation of smart meters began in 2010. • Maine Public Utilities Commission allows for customers to opt-out of receiving a smart meter.⁶ • On May 10, 2012, the Maine Supreme Judicial Court heard oral arguments in a case to oppose opt-out fees.⁷

² See Brevard County, Florida, Board of Commissioners Meeting of May 1, 2012, Minute Packet at pp. 14-18: http://brevardcountyfl.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1144

³ S.B. 459: http://www1.legis.ga.gov/legis/2011_12/sum/sb459.htm

⁴ *Adam Asquith v. Kauai Island Utility Cooperative*, 12-cv-00134-HG-RLP (D. Hawaii 2012)

⁵ “Council opt-outs on sales tax, opts-in on “opt-out” KATC, February 28, 2012: <http://www.katc.com/news/council-opts-out-on-sales-tax-opts-in-on-opt-out/>

⁶ See “PUC decision puts smart meter choice in consumer’s hands” WCSH, May 18, 2011: <http://south.wcsh6.com/news/news/puc-decision-puts-smart-meter-choice-consumers-hands/65253>

Maryland	<ul style="list-style-type: none"> • Installation of smart meters began in 2011. • On May 24, 2012, the Maryland Public Service Commission (“MPSC”) entered an order allowing individual who are opposed to smart meters to defer installation until MPSC issues a final, permanent order on whether to allow customers to opt-out of receiving a smart meter.⁸
Michigan	<ul style="list-style-type: none"> • Installation of smart meters is set to begin in August 2012. • Michigan Attorney General Bill Schuette issued a report on smart meters to the Michigan Public Service Commission, stating, “There must be a sufficient demonstration that implementation of the smart meter programs will actually produce a net economic benefit to customers. Second, customers must be afforded a meaningful and fair opportunity to opt out of smart meter installation without being penalized by unwarranted and excessive costs.”⁹ • On January 12, 2012, the Michigan Public Service Commission opened a review of smart meters.¹⁰ • Introduced HB 5411 that requires utilities to allow customers to reject a smart meter, remove a previously installed smart meter from a home, and refrain from selling smart meter data to a third party. • Introduced HB 5439 that provides incentives for having a smart meter and disincentives for opting out. There is a \$50 smart meter removal fee; however, this bill does not allow monthly fees imposed on those retaining an analog meter • 21 anti-smart meter resolutions and moratoriums have passed in Michigan.
Nevada	<ul style="list-style-type: none"> • Installation of smart meters began in 2010. • In February 2012, Nevada Public Utilities Commission approves smart meter opt-out plan.¹¹
Oregon	<ul style="list-style-type: none"> • Installation of smart meters began in 2009. • On August 10, 2011, Portland General Electric Company offers smart meter opt-out option.¹² • On May 17, 2012, City of Ashland offers customers to opt-out at no additional fee

⁷ *Friedman v. Maine Public Utilities Comm.*, Law Docket No. PUC-11-532

⁸ Maryland Public Service Commission announcement of Order #84926 dated May 24, 2012:

http://webapp.psc.state.md.us/Intranet/sitesearch/Whats_new/Maryland%20PSC%20Issues%20Interim%20Order%20On%20Smart%20Meter%20Opt%20Outs.pdf

⁹ Michigan Attorney General Bill Schuette’s report to Michigan Public Service Commission:

<http://efile.mpsc.state.mi.us/efile/docs/17000/0408.pdf>

¹⁰ Michigan Public Service Commission, Order Opening Docket U-17000:

<http://efile.mpsc.state.mi.us/efile/docs/17000/0001.pdf>

¹¹ “Nevada PUC approves smart meter opt-out plan” Las Vegas Herald-Review, February 29, 2012:

<http://www.lvrj.com/business/nevada-puc-approves-smart-meter-opt-out-plan-140941433.html>

¹² Portland General Electric Company’s Smart Meter Opt-Out Program:

http://www.portlandgeneral.com/our_company/corporate_info/regulatory_documents/pdfs/tariff_updates/U_pdate_08_10_11.pdf

Pennsylvania

- Installation of smart meters began in 2012.
- In May of 2012, HB 2188 was introduced in the PA General Assembly that allows consumers to opt out of smart-meters. 13

Texas

- Installation of smart meters began in 2010.
- The author of legislation authorizing smart metering in Texas, State Representative Dennis Bonnen sent a letter to the Public Utilities Commission clarifying the intent of the HB212914 was not to force smart meters on any customer.15
- On February 16, 2012, the Public Utilities Commission opened a project case entitled "PUC Proceeding to evaluate the feasibility of instituting a smart meter opt-out program."16

Vermont

- Installation of smart meters began in 2004.
- On May 18, 2012, Governor Peter Shumlin signed into law S. 214 (Act 0170) allowing for smart meter installation if utility company (1) provides prior written notice to the customer indicating that the meter will use radio or other wireless means for two-way communication between the meter and the company and informing the customer of his or her rights; (2) allows a customer to choose not to have a wireless smart meter installed, at no additional monthly or other charge; and (3) allows a customer to require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal.17
- S. 214 (Act 0170) requires the commissioner of health and commissioner of public service issue a joint report by January 15, 2013, which shall include the potential health effects of wireless smart meters.18

Virginia

- At a hearing before the Virginia State Corporation Commission on March 6, 2012 about demand side management, concerned citizens, members of the Center for Safer Wireless, and members of the Richmond Tea Party, expressed their concerns and outrage at mandatory smart meters in Virginia.
- Dominion Power, the power company serving the most customers in Virginia, announced in a letter dated May 15, and cc'd to VA State Corporation Commission, that it "plans to offer opt out offerings, or offerings, before

13 Text of HB 2188:

<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=DOC&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=2188&pn=3071>

14 Text of HB2149: <http://www.capitol.state.tx.us/tlodocs/79R/billtext/pdf/HB02129F.pdf#navpanes=0>.

15 State Representative Dennis Bonnen's letter to the Public Utility Commission of Texas dated February 10, 2012: http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40190_12_720818.PDF.

16 See Public Utility Commission of Texas Proceeding to Evaluation the Feasibility of Instituting a Smart Meter Opt-Out Program:

http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40190_1_718594.PDF.

17 S. 214 (Act 0170), AN ACT RELATING TO VERMONT ENERGY ACT OF 2012, at pp. 61-63: <http://www.leg.state.vt.us/docs/2012/Acts/ACT170.pdf>

18 *Id* at p. 62

deploying smart meters beyond our planned demonstrations areas.”

Note: This document was created in cooperation with members of Naperville Smart Meter Awareness and Maryland Smart Meter Awareness.

ATTACHMENT 2

- | | |
|--------------------|--|
| California | <ul style="list-style-type: none">• Installation of smart meters began in 2007.• On February 1, 2012, the California Public Utilities Commission agreed to allow electric customers to keep their current analog meter or reinstall an analog meter if a smart meter had been installed.¹ |
| Connecticut | <ul style="list-style-type: none">• Installation of smart meter began in 2009.• On August 30, 2011, Connecticut's Department of Energy and Environmental Protection ("DEEP") asked the Public Utilities Regulatory Agency ("PURA") to suspend actions in smart meter cases until it could develop a policy on smart meters as required by Connecticut Public Act 11-80.• On or about October 4, 2011, Connecticut's Attorney General upheld the decision of DEEP and PURA. |
| Florida | <ul style="list-style-type: none">• Installation of smart meters began in 2009.• Brevard County Commissioners requested of Florida Power & Light ("FPL") a smart meter opt-out plan for its residents and called upon the Florida Public Service Commission to hold public hearings on the issue of smart meters and their potential benefits and/or potential hazards to Florida residents. FPL is about 20% complete of its smart meter installation in Brevard County.² |
| Georgia | <ul style="list-style-type: none">• Installation of smart meters began in 2007.• Legislation allowing customers to elect not to have a smart meter installed on their property passed the State Senate but stalled in the State House (S.B. 459).³ |
| Hawaii | <ul style="list-style-type: none">• Installation of smart meters began in 2012.• On April 25, 2012, at a federal hearing, the parties agreed the preliminary injunction motion was rendered moot as a result of the defendant utility's oral agreement that it would refrain from installing a smart meter on the plaintiff's home.⁴ |
| Louisiana | <ul style="list-style-type: none">• Installation of smart meters began in 2011.• On February 28, 2012, the City-Parish city council voted to allow Lafayette Utilities System customers to opt-out of smart meters.⁵ |

¹ California Public Utilities Commission's Decision Modifying Pacific Gas and Electric Company's Smart Meter Program to Include an Opt-out Plan:

http://docs.cpuc.ca.gov/word_pdf/AGENDA_DECISION/158309.pdf

² See Brevard County, Florida, Board of Commissioners Meeting of May 1, 2012, Minute Packet at pp. 14-18: http://brevardcountyfl.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1144

³ S.B. 459: http://www1.legis.ga.gov/legis/2011_12/sum/sb459.htm

⁴ *Adam Asquith v. Kauai Island Utility Cooperative*, 12-cv-00134-HG-RLP (D. Hawaii 2012)

⁵ "Council opt-outs on sales tax, opts-in on "opt-out" KATC, February 28, 2012:

<http://www.katc.com/news/council-opts-out-on-sales-tax-opts-in-on-opt-out/>

Maine	<ul style="list-style-type: none"> • Installation of smart meters began in 2010. • Maine Public Utilities Commission allows for customers to opt-out of receiving a smart meter.⁶ • On May 10, 2012, the Maine Supreme Judicial Court heard oral arguments in a case raising issues substantially similar to those raised by Plaintiffs.⁷
Maryland	<ul style="list-style-type: none"> • Installation of smart meters began in 2011. • On May 24, 2012, the Maryland Public Service Commission (“MPSC”) entered an order allowing individual who are opposed to smart meters to defer installation until MPSC issues a final, permanent rider on whether to allow customers to opt-out of receiving a smart meter.⁸
Michigan	<ul style="list-style-type: none"> • Installation of smart meters is set to begin in August 2012. • Michigan Attorney General Bill Schuette issued a report on smart meters to the Michigan Public Service Commission, stating, “There must be a sufficient demonstration that implementation of the smart meter programs will actually produce a net economic benefit to customers. Second, customers must be afforded a meaningful and fair opportunity to opt out of smart meter installation without being penalized by unwarranted and excessive costs.”⁹ • On January 12, 2012, the Michigan Public Service Commission opened a review of smart meters.¹⁰
Nevada	<ul style="list-style-type: none"> • Installation of smart meters began in 2010. • Nevada Public Utilities Commission approves smart meter opt-out plan.¹¹
Oregon	<ul style="list-style-type: none"> • Installation of smart meters began in 2009. • On August 10, 2011, Portland General Electric Company offers smart meter opt-out option.¹²

⁶ See “PUC decision puts smart meter choice in consumer’s hands” WCSH, May 18, 2011:
<http://south.wcsh6.com/news/news/puc-decision-puts-smart-meter-choice-consumers-hands/65253>

⁷ *Friedman v. Maine Public Utilities Comm.*, Law Docket No. PUC-11-532

⁸ Maryland Public Service Commission announcement of Order #84926 dated May 24, 2012:
http://webapp.psc.state.md.us/Intranet/sitesearch/Whats_new/Maryland%20PSC%20Issues%20Interim%20Order%20On%20Smart%20Meter%20Opt%20Outs.pdf

⁹ Michigan Attorney General Bill Schuette’s report to Michigan Public Service Commission:
<http://efile.mpsc.state.mi.us/efile/docs/17000/0408.pdf>.

¹⁰ Michigan Public Service Commission, Order Opening Docket U-17000:
<http://efile.mpsc.state.mi.us/efile/docs/17000/0001.pdf>

¹¹ “Nevada PUC approves smart meter opt-out plan” Las Vegas Herald-Review, February 29, 2012:
<http://www.lvrj.com/business/nevada-puc-approves-smart-meter-opt-out-plan-140941433.html>

¹² Portland General Electric Company’s Smart Meter Opt-Out Program:
http://www.portlandgeneral.com/our_company/corporate_info/regulatory_documents/pdfs/tariff_updates/Update_08_10_11.pdf

Pennsylvania

- Installation of smart meters began in 2012.
- In May of 2012, a plan allowing consumers to opt out of smart-metering systems has been proposed in Pennsylvania's General Assembly.¹³

Texas

- Installation of smart meters began in 2010.
- The author of legislation authorizing smart metering in Texas, State Representative Dennis Bonnen sent a letter to the Public Utilities Commission clarifying the intent of the HB2129¹⁴ was not to force smart meters on any customer.¹⁵
- On February 16, 2012, the Public Utilities Commission opened a project case entitled "PUC Proceeding to evaluate the feasibility of instituting a smart meter opt-out program."¹⁶

Vermont

- Installation of smart meters began in 2004.
- On May 18, 2012, Governor Peter Shumlin signed into law S. 214 (Act 0170) allowing for smart meter installation if utility company (1) provides prior written notice to the customer indicating that the meter will use radio or other wireless means for two-way communication between the meter and the company and informing the customer of his or her rights; (2) allows a customer to choose not to have a wireless smart meter installed, at no additional monthly or other charge; and (3) allows a customer to require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal.¹⁷
- S. 214 (Act 0170) requires the commissioner of health and commissioner of public service issue a joint report by January 15, 2013, which shall include the potential health effects of wireless smart meters.¹⁸

¹³ Text of HB 2188:

<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=DOC&sessYr=2011&sessInd=0&billBody=H&billTyp=B&billNbr=2188&pn=3071>

¹⁴ Text of HB2149: <http://www.capitol.state.tx.us/tlodocs/79R/billtext/pdf/HB02129F.pdf#navpanes=0>.

¹⁵ State Representative Dennis Bonnen's letter to the Public Utility Commission of Texas dated February 10, 2012: http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40190_12_720818.PDF.

¹⁶ See Public Utility Commission of Texas Proceeding to Evaluation the Feasibility of Instituting a Smart Meter Opt-Out Program:

http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40190_1_718594.PDF.

¹⁷ S. 214 (Act 0170), AN ACT RELATING TO VERMONT ENERGY ACT OF 2012, at pp. 61-63: <http://www.leg.state.vt.us/docs/2012/Acts/ACT170.pdf>

¹⁸ *Id* at p. 62

ATTACHMENT 3

LINKS TO A FEW STUDIES AND REPORTS ON HEALTH AND SAFETY OF AMI WIRELESS METERING SYSTEMS

Health

California CCST report:

<http://www.ccst.us/publications/2011/2011smartA.pdf>

Also at <http://www.ccst.us/news/2011/20110111smart.php>

Links to numerous responses to California CCST report:

<http://www.ccst.us/projects/smart2>

Serious health risks and damage caused by AMI grids including the meters, the collectors, and the repeaters: <http://sagereports.com/smart-meter-rf/?p=474>

Briefing for Vermont legislature:

<http://emfsafetynetwork.org/wp-content/uploads/2012/02/Vermont-Briefing-Final-Jan-26-2012.ppt>

Summary of research on health in other countries [e.g. Australia, Russia, Sweden and the United Kingdom]:

<http://electromagneticsafety.org/wp-content/uploads/2011/08/Maret-CCST-Commentary-1-31-2011-final.docx/>

Safety of metering systems:

http://www.committeetobridgethegap.org/pdf/110212_RFrad_comments.pdf

Fires and explosions: http://emfsafetynetwork.org/?page_id=1280/

Effects of RFRs on Bees:

Mobile Phone Induced Honey-Bee Piping:

<http://www.springerlink.com/content/bx23551862212177/fulltext.pdf?MUD=MP>

Exposure to cell phone radiations produces biochemical changes in worker honey bees:

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3052591/?tool=pubmed>

Changes in honeybee behaviour and biology under the influence of cellphone radiation: http://cs-test.ias.ac.in/cs/Downloads/article_45415.pdf

Effects of EMFs on other insects & invertebrates:

Effects of weak electromagnetic irradiation on various types of behavior in the mealworm *Tenebrio molitor*.

<http://www.ncbi.nlm.nih.gov/pubmed/20680476?dopt=Abstract>

Effects of weak physical and chemical factors on morphogenetic processes in invertebrates

<http://www.ncbi.nlm.nih.gov/pubmed/20067193?dopt=Abstract>

Influence of weak electromagnetic field on different forms of behavior in grain beetle, *Tenebrio molitor*

<http://www.ncbi.nlm.nih.gov/pubmed/19795812?dopt=Abstract>

Effects of RFR on birds and wildlife:

**U.S. Fish & Wildlife Service Concerns Over Potential Radiation Impacts of Cellular Communication Towers on Migratory Birds and Other Wildlife
Albert M. Manville, II, Ph.D., Senior Wildlife Biologist, Division of Migratory Bird Management, USFWS**

May 10, 2007, “Congressional Staff Briefing on the Environmental and Human Health Effects of Radiofrequency (RF) Radiation,” House Capitol 5, Washington, DC

Link to powerpoint: http://www.hese-project.org/hese-uk/en/papers/manville_wildlife_towers.pdf

ATTACHMENT 4

Dolores Kester

From: northside-info-and-community-events@googlegroups.com on behalf of anitaweier@netscape.net
Sent: Monday, July 02, 2012 3:50 PM
To: northsidediscuss@yahoogroups.com; northside-info-and-community-events@googlegroups.com
Subject: [N.I.C.E.] Water Meter opt-out information sent to City Council

Dear Alders,

I am hearing from several folks that our Project H2O status briefing on June 19th was informative and helpful. Many thanks to Robin Piper for doing a great job in my absence.

As you are aware, several citizens are keenly interested in learning more about an opt out policy for the new metering system. While we maintain that the system is very safe, we understand that there are strong opinions and feelings on this matter. We want all of our customers to feel that they are being treated fairly, which is why we are developing a policy that we hope will be acceptable to our elected officials and the Public Service Commission. Here is our proposed schedule for the opt out policy development:

7/17 Council agenda for introduction and referral (perhaps by title only if the cost details have not been worked out)
7/24 Water Utility Board – discuss, modify, adopt
8/7 Council for adoption

Please feel free to share this information with your constituents.

Sincerely,

Tom Heikkinen
General Manager
Madison Water Utility



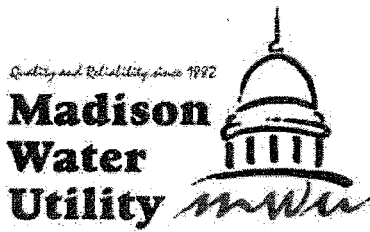
--
You received this message because you are subscribed to the Google Groups "northside-info-and-community-events" group.

To post to this group, send email to northside-info-and-community-events@googlegroups.com.

To unsubscribe from this group, send email to northside-info-and-community-events+unsubscribe@googlegroups.com.

For more options, visit this group at <http://groups.google.com/group/northside-info-and-community-events?hl=en>.

ATTACHMENT 5



www.madisonwater.org • 119 East Olin Avenue • Madison, WI 53713-1431 • TEL 608.266.4651 • FAX 608.266.4426

June 19, 2011

VIA EMAIL TRANSMISSION ONLY

Michael R. Christopher, Esq.
DEWITT ROSS & STEVENS, S.C.
Two East Mifflin Street, Suite 600
Madison, WI 53703-2865

RE: Smart Meters

Dear Attorney Christopher:

I am responding to your June 15 correspondence to City of Madison Water Utility Manager, Thomas Heikkinen. The City's responses to the questions you posed are as follows:

1. *Approximately how many "smart meters" have been installed so far? Approximately what is the total number of water meters in the City regardless of their property use?*

No smart meters have been installed. There are approximately 67,000 water meters in the City.

2. *What is the approximate cost of the "smart meter" as opposed to the cost of a more conventional meter?*

There is no fee charged to Water Utility customers for the AMI equipment or the installation of that equipment. The system is estimated to cost the utility approximately \$200 per home or a total of \$13 million dollars. New smart meters cost between \$105 and \$165 dollars with a \$60 cost for the end point equipment. Retrofitting existing meters costs about \$50 for the meter, \$37 for the new meter head, and \$60 for the end point equipment.

3. *Please send to me your request to the Mayor of the Water Utility's capital budget request for 2013. I understand that it is due on June 18, 2012, so it may not be completed as of yet, but I would appreciate it if you would please send it to me when it is.*

The City interprets your request as a request for records pursuant to §19.35 Wis. Stats. The requested document is not yet complete, so the City has no record to produce pursuant to §19.35 Wis. Stats. You may renew your request at a later date.

4. *It seems strange to me that there is now an informational presentation being made to the Common Council when some are arguing that "the train has already left the station." What efforts were made, at a much earlier stage, by the Water Utility to engage public participation?*

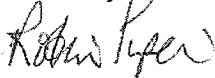
The "smart meter" process began in early 2009 with a white paper presented to the Water Utility Board. Since that time, information about Project H2O was sent to all Madison residents in the annual water quality reports for 2010 and 2011, press releases were issued and the various ordinances and resolutions relating to project H2O were introduced at Common Council and Water Utility Board meetings which were noticed to the public and which the public could attend. In addition, the public was able to comment on the advanced metering infrastructure during the capital budget hearings in November 2010. Regarding the presentation being made to the Common Council, this is actually the second presentation made to the Common Council. The first presentation occurred in November 2010. The presentation occurring on June 19, 2012 was actually placed on the Common Council's schedule in April 2012. I have attached the full AMI timeline and the Common Council e-mail for reference. Additionally, the Water Utility website, accessible to the public at www.cityofmadison.com/water has a page dedicated to the H2O project with links to the business case for smart meters, research on radio frequency metering and a public health report.

5. *What is your opinion of incorporating into this program an "opt-out" provision which would allow a property owner to not have a "smart meter" installed whether it is in their basement or on the outside of their home as opposed to keeping an analog meter?*

Property owners will have alternatives to having the smart meter installed inside the home as well as an "opt-out" provision. However, there will be an additional charge associated with any alternate installation method or with an "opt-out" provision. Those additional charges have yet to be determined.

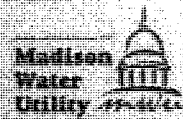
Finally, since you are representing Ms. Kester, please let your client know that any further communications with City personnel, with members of the Common Council, or with members of any committee, commission or board must be made through you.

Sincerely,

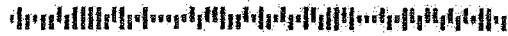


Robin Piper
Customer Service Manager

ATTACHMENT 6



*****AUTO**5-DIGIT 53704



SARA SANDBERG
4414 HOLLOW RIDGE RD
MADISON WI 53704-6190

30



Dear Valued Customer,

We are pleased to announce the start of **Project H₂O** beginning this July 2012. The Madison Water Utility along with our contractor, Corix Utilities, will begin the installation of a new Advanced Metering Infrastructure (AMI) system developed by Itron. The new equipment will help keep better track of water consumption, detect leaks more quickly, and eliminate the need for Water Utility employees to walk or drive from house to house to read the meters. The new system will help you save water and money and also help the utility operate our entire system more efficiently. You will have the opportunity to monitor your water usage daily rather than once every six months, and you'll soon be able to track your water consumption online.

The project will be scheduled by neighborhoods, beginning with an initial pilot phase of 700 addresses in the northeast section of the city. Please see the reverse side of this letter for our installation schedule and map. You will be contacted by mail and given the opportunity to arrange an installation appointment. Corix field service representatives will also begin making cold calls in your neighborhood approximately two weeks after the notices are mailed out. Employees and contractors involved with the project will be identified with badges that display the Project H₂O logo, as will their work vehicles. The installation typically should take no longer than 30 minutes. An adult resident (18yrs) must be present. There is no charge to the customer for the installation of the new system.

For more information about Project H₂O and its benefits, please visit our website at www.madisonwater.org and click on "Project H₂O."

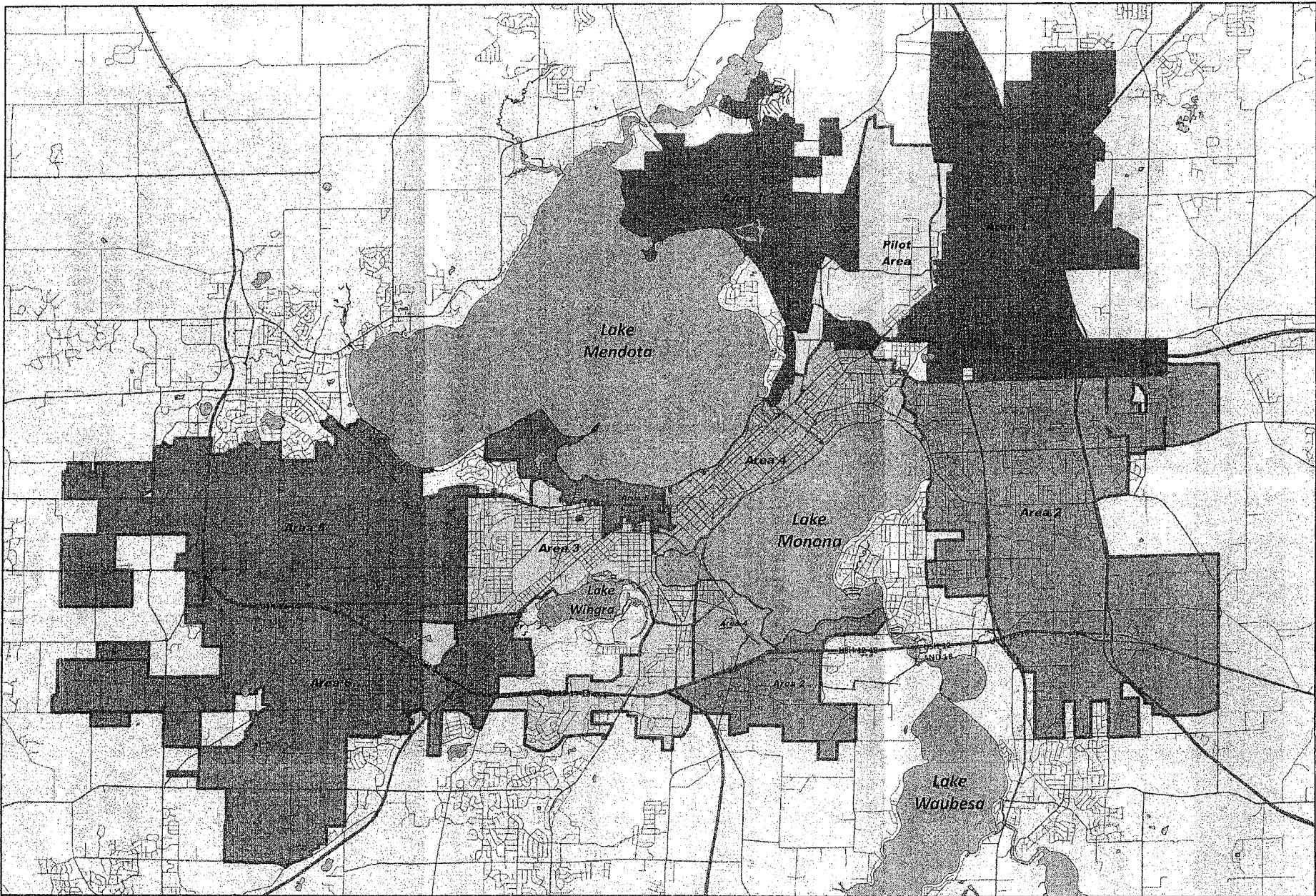
Sincerely,

Tom Heikkinen, General Manager

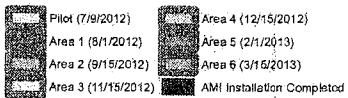
CORIX
Utilities

Itron

Quality and Reliability since 1982
**Madison
Water
Utility**



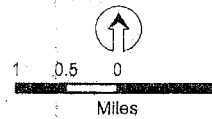
Projected Start Date



AMI Implementation Schedule

Madison Water Utility

4/30/2012



Disclaimer: The City of Madison makes no representation about the accuracy or completeness of these records and in no event shall the City be liable for any damages whatsoever resulting from the use of these records.

Please respond to: Capitol Square Office
Direct Line: 608-252-9365
Email: mrc@dewittross.com

June 19, 2012

HAND-DELIVERED

Mayor Paul R. Soglin
Members of the Common Council
City of Madison
210 Martin Luther King, Jr. Boulevard
Madison, WI 53709

RE: Project H₂O

Dear Mayor Soglin and Council Members:

I represent Dolores Kester who along with numerous other homeowners oppose the implementation of Project H₂O ("Project"). Although this Project has appeared as a line item in the Capital Budget for the Water Utility in 2011 and 2012, it is my understanding that there has been no public action implementing this \$15 million dollar project. The first step to doing so is contained in Agenda Item #62 before you tonight. Attached to this letter is a Fact Sheet which summarizes the arguments for the opposition.

We would ask that the Council refer Agenda Item #62 to the Water Utility Board and direct it to establish a meaningful plan for public participation and to have the feedback received available to you when you consider the 2013 Capital Budget. In the alternative, if you decide to move ahead with this project now, I would ask that you direct the Water Utility Board to develop an "opt-out" procedure for consumers who do not wish to have the "smart meters" installed.

Fiscal Impact of Project H₂O

Last month, Mayor Soglin directed Department and Division Heads to reduce their total requests for Capital Budget items by 20%. He has done so because the amount the City allocates to debt service compromises the City's ability to sustain basic operations. Because of the conflicting evidence regarding the health, safety and policy assumptions of this program, this is ample reason why the City should postpone implementation of this Project. Even though this program appeared in the 2011 and 2012 Capital Budget totaling \$15 million dollars, it is my understanding that only about \$220,000, mainly on consultants, has been spent so far. Therefore, to argue that "the train has already left the station" is not supported by the facts.

Mayor Paul R. Soglin
Members of the Common Council
June 19, 2012
Page 2

Opt-Out Amendment

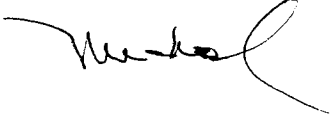
If the Council were to decide to go ahead with the Project at this time, we would request that an “opt-out” option be made available to the public. If a property owner feels that there is enough evidence that supports not having the “smart meter” installed inside their home, they should be able to not participate if they choose. Fourteen states agree, including California, Connecticut, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Michigan, Nevada, Oregon, Pennsylvania, Texas and Vermont since they have provided the right of consumers to opt-out of the “smart meter” program. The most recent state to do so, namely Vermont, adopted on May 18, 2012, a procedure that we would recommend.

Specifically, it provides for prior written notice to the customer indicating that the meter will use radio or other wireless means for two-way communication between the meter and the company and to allow a customer to choose not to have a “smart meter” installed at no additional charge. Even though the installation of “smart meters” was begun in 2004 in Vermont, this opt-out procedure was established, which also allows a customer to require removal of a previously installed wireless “smart meter” for any reason without incurring any charge for that removal. Since Madison has not even begun to implement this program, there is no reason why the opt-out option should not be made available now.

Thank you very much for your attention to this matter.

Sincerely,

DeWitt Ross & Stevens s.c.



Michael R. Christopher

MRC:dso
Enclosure

cc: Katie Crawley (w/encl. - via Hand-Delivery)
Tom Heikkinen, General Manager (w/encl. - via Hand-Delivery)

FACT SHEET REGARDING "SMART METERS"

AGENDA #62—Council meeting 6-19-12

- 1. Not too late to back away to get more information—this agenda #62 is the first tangible step toward installation of the smart meter grid in Madison—nothing is actually installed yet**
 - without this radiofrequency radiation (RFR) “juice” the riskiest components of this system do not exist

- 2. Collector units and repeaters have potential to harm health because they aggregate energy in a small space and intensify it**
 - Itron says its meters that transmit signals to collectors/repeaters operate at the very strongest transmission level—to communicate with equipment that may be located as far as a mile away
 - need specific disclosures from Itron and the water utility about the locations, power density, and safety record of these collectors/repeater units to quantify risk before you can make an informed decision whether to indemnify MG&E and WP&L

- 3. City health says no problem. Why should you be concerned?**
 - Scientific and medical evidence is mixed, but a growing number of peer-reviewed studies by PhD and MD scientific experts show radiofrequency radiation (RFR) levels emitted from Smart Meters (and their associated banks of repeaters/collectors) are associated with serious potential health problems and disease
 - can cause neurological and cognitive effects, altered immune function, reproductive problems, sleep disturbances, cancer, and numerous other health effects—even at levels tens to hundreds of times below current FCC standards.
 - children, fetuses, elderly, and those already ill are more vulnerable
 - low-income families and racial and ethnic minorities are among the most vulnerable populations in our society in terms of poor health and poor health outcomes, and will be most affected by any adverse health effects of RFR

- 4. Other risks include fires and explosions, malfunctions, problems with interference--43,000 “smart meter” problems in California in 2010 alone**
 - way too costly—more expensive than analog meters and last half as long--only 20 years
 - intensive need for city staff time including IT maintenance
 - battery is non-replaceable
 - endless cycle of repair and replacement—mammoth bureaucracy

- 5. Water Utility has not brought balanced information to the council or the public including the significant potential health risks—lack of transparency**
 - virtually no public discussion and debate about the controversy
 - need neighborhood summit to let the public know the minuses as well as the pluses of these meters

- 6. Expensive gamble when public funds are tight**
 - higher water rates will hit people on low or fixed incomes the hardest

- 7. Moratoriums and opt out provisions**
 - at least 56 local governments in California and Oregon have moratoriums or opt-out provisions for these meters
 - at least eight states (Michigan, Maine, Georgia, Maryland, Pennsylvania, Hawaii, Illinois & Vermont) have banned them, or have opt-out procedures or in process of adopting them

- 8. Can a non-Advanced Metering Infrastructure (AMI) system do as good a job of encouraging water conservation as compared with AMI (“smart meters”)?**
 - the Madison Water Utility has not been able to provide evidence that the “smartmeter” grid conserves water, nor does a literature search locate published studies documenting benefits resulting from their use [Monterey County, California Health Bureau report, at p. 5]
 - some “smart meters” have not provided accurate readings, which would impact reliable measurement of water consumption
 - “conservation” only targets individual customers, who represent just 30% of water use; in fact, 70% of water is used by “other” customers including commercial/wholesale—who get lower rates per gallon, the more water they use, thus being rewarded for consuming more water
 - “smart meter” technology could be accomplished without using radiofrequency radiation by using much safer power line, fiber optic or telephone communications technology, thereby achieving stated goals of this program without health risks [Maret, at p. 10]
 - can update the water meters without the risky RFR-emitting enhancements

- 9. Water Utility proposed ordinance for access violates privacy/civil rights of customers**
 - no way to opt out if you want to avoid health risks
 - forced intrusion into homes for installation and maintenance of meters
 - potential fines up to \$1,000 per day or having water turned off if customer refuses to let contractor into home to install/maintain the meter

ATTACHMENT 8



City of Madison

Legislative File Number 26301 (version 1)

Title

Repealing and recreating Section 13.06, creating Section 13.065, and amending Section 1.08 (3)(a) of the Madison General Ordinances regarding water meter access requirements, the maintenance of water meter pits, and establishing new bond schedules for these violations.

Body

DRAFTER'S ANALYSIS: This ordinance makes changes to Sec. 13.06 by expanding the requirements for customers to provide the Water Utility with access to water meters to facilitate the upgrading of water meters pursuant to the advanced metering infrastructure project. Under the amendments, any premises supplied by City water services must provide access to the water meter for inspection, upgrading and maintenance purposes. The amendments create a clear notice procedure that the Utility must follow, and require that not only must a clear path to the water meter be maintained, but that the meter itself is accessible and that any electronic signal emanating from the meter be attainable. An exception procedure is also established that would give the General Manager the ability to grant a person an exception to these new requirements under certain criteria, and the person would have the ability to appeal the determination to deny such an exception request. Additionally, new penalties and a bond schedule are created for this section that are consistent with other violations of Chapter 13. Finally, this ordinance splits off Section 13.06(2) to create a new Section 13.065 regarding the maintenance of water meter pits.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 13.06 entitled "Access to Premises and Maintenance of Water Meter Pits" of the Madison General Ordinances is repealed and recreated to read as follows:

"13.06 ACCESS TO THE PREMISES AND THE WATER METER.

- (1) The General Manager of the Water Utility and persons under the General Manager's direction shall have free access at all reasonable hours to any premises supplied with City water for the purposes of inspecting, upgrading, maintaining and examining the water service appliances, including the water meter and transmission equipment. No person, firm, corporation or other entity shall prevent, delay or interfere with a City employee or contractor while he or she is engaged in the performance of any duties pursuant to this section.
- (2) Notice of Access Request. Except in emergency situations in which immediate access to a premises is necessary pursuant to the rules of the Public Service Commission and the Water Utility, the Water Utility shall provide at least twenty-four (24)-hours notice of its need to access the water service appliances at a premises. Notice shall be deemed sufficient if sent to the billing address for the water service at the premises. However, if the billing address for the water service is not the address of the premises, efforts shall also be made, with at least twenty-four (24)-hours notice, to notify occupants of the premises of the Water Utility's need to access the water service appliances. This may be done by mail, personal contact, through the use of door tags, or other reasonable means.

- (3) Water Meter Access. In order to allow Water Utility staff or contractors sufficient access to the water meter at the time access is required, a clear path to the meter must be provided and a thirty-six inch (36") area to the front and sides of the meter must be clear of any debris or mechanicals. If access to the meter must be cut in (i.e. through drywall, paneling, etc.), the property owner or their designee must create a minimum opening of twenty-four inches by twenty-four inches (24" x 24") relative to the center of the meter. Removal of debris and repairs to the created access opening are the responsibility of the property owner.
- (4) Signal Access. If a hard-wired or wireless remote device is attached to the water meter for the purposes of communicating with the Water Utility about water usage, the signal to and from the meter must be attainable by the Water Utility. Transmission of the signal must not be blocked, altered or tampered with by any person.
- (5) Exceptions. A person violating any of the requirements of this section may request an exception from the Water Utility by making a written request to the Madison Water Utility General Manager or his/her appointed designee within three (3) business days of the Water Utility's determination that the requirements of this section have not been met. An exception may be granted if adequate access to the water meter is still possible and/or if the signal to and from the meter may be attained by another method. The decision whether to grant or deny a timely-filed request for an exception under this subsection shall be in writing, and the person may appeal this decision within seven (7) days of the mailing of the notice of denial of the exception request. The appeal shall be to the Water Utility Board. All requests for appeal shall be filed with the City Clerk and the General Manager, and must inform the Water Utility Board of the reasons for the appeal. Within forty-five (45) days, the Water Utility Board shall hold a hearing at which the parties may offer testimony and documents. Either at or within twenty (20) days of the hearing, the Water Utility Board shall affirm, modify or reverse the determination that the exception should be denied. Appeal from the action of the Water Utility Board shall be to Circuit Court within thirty (30) days of the determination of the Board.
- (6) Penalty. Any person who violates this section may be subject to a forfeiture of not less than one-hundred dollars (\$100) and not more than (\$1,000). Each day a violation continues may be considered a separate offense. In addition, failure to follow the requirements of this section may subject the premises to disconnection of service pursuant to the Water Utility's service rules and Wis. Admin Code ch. PSC 185.37. If water service is disconnected, a re-connection fee will be assessed."

2. Section 13.065 entitled "Maintenance of Water Meter Pits" of the Madison General Ordinances is created to read as follows:

"13.065 MAINTENANCE OF WATER METER PITS.

- (1) Water meter pits are the responsibility of the owner or operator of the property and the owner or operator bears the responsibility for all required pit maintenance and repairs. Water meter pits shall be maintained in a clean, dry and safe condition and shall be free from leaks or standing water. Water meter pits shall be maintained in a manner that provides for adequate accessibility, security, safety and for protection against freezing and flooding for the meter. No plants, landscaping or other physical objects shall limit the accessibility of the water meter pit. The water meter pit lid shall be maintained in safe condition and shall be capable of supporting the weight of pedestrians and lawn care equipment.

The owner or operator of the property shall provide for proper grading of the surface around the water meter pit so that water will not collect around or course over the water meter pit lid.

- (2) It shall be the responsibility of the owner or operator of the property to remove any standing water from a water meter pit, at the request of a City employee who is engaged in the performance of any duty pursuant to Sec. 13.06(1), MGO. Any owner or operator who fails to remove such standing water upon request shall be subject to the penalties contained in Sec. 13.23, MGO. The penalties in this subsection may be imposed in addition to any penalties that result from nonconformance with subsection (1) or any other applicable ordinance that does not conflict with this section.
- (3) Any water meter pit built after the effective date of this ordinance shall meet the standards and specifications of the Water Utility in effect at the time of construction. It shall be the responsibility of the owner or operator of the property to ensure that a water meter pit meets such standards and specifications. The Water Utility shall make its standards and specifications available for public inspection at the office of the Water Utility during normal business hours.
- (4) Repairs and modifications to existing water meter pits that are commenced after the effective date of this ordinance shall conform to the standards and specifications of the Water Utility in effect at the time of the repair or modification. The owner or operator of the property shall only use parts or materials approved by the Water Utility or contained in the Water Utility's standards and specifications. It shall be the responsibility of the owner or operator of the property to ensure that repairs and modifications meet such standards and specifications, or have such approval.
- (5) Abatement of Water Meter Pit Hazards. If the General Manager of the Water Utility, or his or her designee, determines that the design or condition of an existing water meter pit is a serious hazard to the health or safety of the Utility's employees or to the public, then the General Manager may order the owner or operator to repair or replace the water meter pit at the owner or operator's expense, pursuant to this section. An owner or operator may also comply with such an order by removing the water meter pit.
 - (a) Summary Abatement of Water Meter Pit Hazard.
 1. Order of Abatement. If the General Manager of the Water Utility determines that a water meter pit constitutes a public nuisance and that there is imminent danger to the public health, safety, peace, comfort or welfare, he or she may, without notice or hearing, issue an order to the owner and/or operator reciting the existence of a public nuisance constituting imminent danger to the public and requiring immediate action be taken as he or she deems necessary to abate the nuisance. Notwithstanding any other provisions of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply with the order immediately.
 2. Abatement by the Utility. Whenever the owner or operator shall refuse or neglect to remove or abate the condition described in the order, the General Manager of the Water Utility may, in her or his discretion, enter upon the property and cause the nuisance to be removed or abated and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred may be levied as a special

charge against the property.

(b) Nonsummary Abatement of Water Meter Pit Hazard.

1. Order to Abate Nuisance. If the General Manager of the Water Utility determines that a water meter pit constitutes a public nuisance but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, comfort or welfare, he or she shall issue an order reciting the existence of a public nuisance and requiring the owner and/or operator of the property to remove or abate the condition described in the order within the time period specified therein. The order shall be served personally on the owner of the property, as well as the operator if different from the owner and applicable to the described nuisance, or, at the option of the General Manager of the Water Utility, the notice may be mailed to the last known address of the person to be served by registered mail with return receipt requested. If the owner or the operator cannot be served, the order may be served by posting it on the main entrance of the premises and by publishing as a Class 1 notice under Wis. Stat. ch. 985. The time limit specified in the order runs from the date of service or publication.
2. Abatement by the Utility. If the owner or operator fails or refuses to comply within the time period prescribed, the General Manager of the Water Utility may enter upon the property and cause the nuisance to be removed or abated and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred may be levied as a special charge against the property.
3. Remedy from Order. The order of the General Manager of the Water Utility shall not be appealable to the Water Utility Board. Any person affected by orders issued under this subsection shall timely apply to the circuit court for an order restraining the Water Utility and the General Manager of the Water Utility from entering on the premises and abating or removing the nuisance, or be forever barred.

(c) Authority to Assess Costs. The cost of abatement or removal of a nuisance under this section shall be collected from the owner, operator or person causing, permitting or maintaining the nuisance and, if notice to abate the nuisance, if applicable, has been given to the owner, such cost, if not paid, may be levied as a special charge against the property.

(d) Abatement in Accordance with State Law. Nothing in this article shall be construed as prohibiting the abatement of public nuisances by the Water Utility or its officials in accordance with the laws of the state. The Water Utility or its officials may choose to proceed with an action under state law, upon authorization by the Water Utility Board.”

3. Subdivision (a) of Subsection (3) entitled “Schedule of Deposits” of Section 1.08 entitled “Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits” of the Madison General Ordinances is amended by deleting and creating therein the following:

<u>“Offense</u>	<u>Ord. No./Adopted Statute No. **</u>	<u>Deposit</u>
Interference with access to premises.	43.06	\$50

<u>Failure to provide access to premises.</u>	<u>13.06(1)</u>	<u>\$200</u>
<u>Failure to provide sufficient access to the water meter.</u>	<u>13.06(3)</u>	<u>\$100</u>
<u>Interference with water meter transmission signal.</u>	<u>13.06(4)</u>	<u>\$100</u>
<u>Maintenance of water meter pits.</u>	<u>13.065</u>	<u>\$50”</u>

EDITOR'S NOTES:

1. New bail deposits must be approved by the Municipal Judge prior to adoption. These deposits have been so approved.
2. Section 13.06 currently reads as follows:

“13.06 ACCESS TO PREMISES AND MAINTENANCE OF WATER METER PITS.

- (1) Access to Premises. The General Manager of the Water Utility and persons under the General Manager’s direction shall have free access at all reasonable hours to any premises supplied with City water for the purpose of inspecting and examining the water service appliances. No person, firm, corporation or other entity shall prevent, delay or interfere with a City employee while he or she is engaged in the performance of duty pursuant to this section.
- (2) Maintenance of Water Meter Pits.
 - (a) Water meter pits are the responsibility of the owner or operator of the property and the owner or operator bears the responsibility for all required pit maintenance and repairs. Water meter pits shall be maintained in a clean, dry and safe condition and shall be free from leaks or standing water. Water meter pits shall be maintained in a manner that provides for adequate accessibility, security, safety and for protection against freezing and flooding for the meter. No plants, landscaping or other physical objects shall limit the accessibility of the water meter pit. The water meter pit lid shall be maintained in safe condition and shall be capable of supporting the weight of pedestrians and lawn care equipment. The owner or operator of the property shall provide for proper grading of the surface around the water meter pit so that water will not collect around or course over the water meter pit lid.
 - (b) It shall be the responsibility of the owner or operator of the property to remove any standing water from a water meter pit, at the request of a City employee who is engaged in the performance of duty pursuant to Sec. 13.06(1), MGO. Any owner or operator who fails to remove such standing water upon request shall be subject to the penalties contained in Sec. 13.23, MGO. The penalties in this subsection may be imposed in addition to any penalties that result from nonconformance with Sec. 13.06(2)(a), MGO, or any other applicable ordinance that does not conflict with this subsection.
 - (c) Any water meter pit built after the effective date of this ordinance shall meet the standards and specifications of the Water Utility in effect at the time of construction. It shall be the responsibility of the owner or operator of the property to ensure that a water meter pit meets such standards and specifications. The Water Utility shall make its standards and specifications available for public inspection at the

- office of the Water Utility during normal business hours.
- (d) Repairs and modifications to existing water meter pits that are commenced after the effective date of this ordinance shall conform to the standards and specifications of the Water Utility in effect at the time of the repair or modification. The owner or operator of the property shall only use parts or materials approved by the Water Utility or contained in the Water Utility's standards and specifications. It shall be the responsibility of the owner or operator of the property to ensure that repairs and modifications meet such standards and specifications, or have such approval.
- (e) Abatement of Water Pit Hazards. If the General Manager of the Water Utility, or his or her designee, determines that the design or condition of an existing water meter pit is a serious hazard to the health or safety of the Utility's employees or to the public, then the General Manager may order the owner or operator to repair or replace the water meter pit at the owner or operator's expense, pursuant to this subsection. An owner or operator may also comply with such an order by removing the water pit.
1. Summary Abatement of Water Pit Hazard.
 - a. Order of Abatement. If the General Manager of the Water Utility determines that a water meter pit constitutes a public nuisance and that there is imminent danger to the public health, safety, peace, comfort or welfare, he or she may, without notice or hearing, issue an order to the owner and/or operator reciting the existence of a public nuisance constituting imminent danger to the public and requiring immediate action be taken as he or she deems necessary to abate the nuisance. Notwithstanding any other provisions of this subsection, the order shall be effective immediately. Any person to whom such order is directed shall comply with the order immediately.
 - b. Abatement by the Utility. Whenever the owner or operator shall refuse or neglect to remove or abate the condition described in the order, the Director of the Water Utility may, in her or his discretion, enter upon the property and cause the nuisance to be removed or abated and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred may be levied as a special charge against the property.
 2. Nonsummary Abatement of Water Pit Hazard.
 - a. Order to Abate Nuisance. If the Director of the Water Utility determines that a water meter pit constitutes a public nuisance but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, comfort or welfare, he or she shall issue an order reciting the existence of a public nuisance and requiring the owner and/or operator of the property to remove or abate the condition described in the order within the time period specified therein. The order shall be served personally on the owner of the property, as well as the operator if different from the owner and applicable to the

described nuisance, or, at the option of the Director of the Water Utility, the notice may be mailed to the last known address of the person to be served by registered mail with return receipt requested. If the owner or the operator cannot be served, the order may be served by posting it on the main entrance of the premises and by publishing as a class 1 notice under Chapter 985, Wis. Stats. The time limit specified in the order runs from the date of service or publication.

- b. Abatement by the Utility. If the owner or operator fails or refuses to comply within the time period prescribed, the Director of Water Utility may enter upon the property and cause the nuisance to be removed or abated and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred may be levied as a special charge against the property.
- c. Remedy from Order. The order of the Director of the Water Utility shall not be appealable to the Water Utility Board. Any person affected by orders issued under this subsection shall timely apply to the circuit court for an order restraining the Water Utility and the Director of the Water Utility from entering on the premises and abating or removing the nuisance, or be forever barred.

- (f) Authority to Assess Costs. The cost of abatement or removal of a nuisance under this section shall be collected from the owner, operator or person causing, permitting or maintaining the nuisance and, if notice to abate the nuisance, if applicable, has been given to the owner, such cost, if not paid, may be levied as a special charge against the property.

(g) Abatement in Accordance with State Law. Nothing in this article shall be construed as prohibiting the abatement of public nuisances by the Water Utility or its officials in accordance with the laws of the state. The Water Utility or its officials may choose to proceed with an action under state law, upon authorization by the Water Utility Board.”

Fiscal Note

There may be a small increase in General Fund revenues derived from forfeitures.

ATTACHMENT 9



City of Madison

Legislative File Number 26301 (version 2)

Title

SUBSTITUTE Repealing and recreating Section 13.06, creating Section 13.065, and amending Section 1.08(3)(a) of the Madison General Ordinances regarding water meter access requirements, the maintenance of water meter pits, and establishing new bond schedules for these violations.

Body

DRAFTER'S ANALYSIS: This ordinance makes changes to Sec. 13.06 by expanding the requirements for customers to provide the Water Utility with access to water meters to facilitate the upgrading of water meters pursuant to the advanced metering infrastructure project. Under the amendments, any premises supplied by City water services must provide access to the water meter for inspection, upgrading and maintenance purposes. The amendments create a clear notice procedure that the Utility must follow, and require that not only must a clear path to the water meter be maintained, but that the meter itself is accessible and that any electronic signal emanating from the meter be attainable. An exception procedure is also established that would give the General Manager the ability to grant a person an exception to these new requirements under certain criteria, and the person would have the ability to appeal the determination to deny such an exception request. Additionally, new penalties and a bond schedule are created for this section that are consistent with other violations of Chapter 13. Finally, this ordinance splits off Section 13.06(2) to create a new Section 13.065 regarding the maintenance of water meter pits.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 13.06 entitled "Access to Premises and Maintenance of Water Meter Pits" of the Madison General Ordinances is repealed and recreated to read as follows:

"13.06 ACCESS TO THE PREMISES AND THE WATER METER.

- (1) The General Manager of the Water Utility and persons under the General Manager's direction shall have free access at all reasonable hours to any premises supplied with City water for the purposes of inspecting, upgrading, maintaining and examining the water service appliances, including the water meter and transmission equipment. No person, firm, corporation or other entity shall prevent, delay or interfere with a City employee or contractor while he or she is engaged in the performance of any duties pursuant to this section.
- (2) Notice of Access Request. Except in emergency situations in which immediate access to a premises is necessary pursuant to the rules of the Public Service Commission and the Water Utility, the Water Utility shall provide at least twenty-four (24)-hours notice of its need to access the water service appliances at a premises. Notice shall be deemed sufficient if sent to the billing address for the water service at the premises. However, if the billing address for the water service is not the address of the premises, efforts shall also be made, with at least twenty-four (24)-hours notice, to notify occupants of the premises of the Water Utility's need to access the water service appliances. This may be done by mail, personal contact, through the use of door tags, or other reasonable

means.

- (3) Water Meter Access. In order to allow Water Utility staff or contractors sufficient access to the water meter at the time access is required, a clear path to the meter must be provided and the area surrounding the meter must be clear of any debris or mechanicals. If access to the meter must be cut in (i.e. through drywall, paneling, etc.), the property owner or their designee must create a minimum opening of twenty-four inches by twenty-four inches (24" x 24") relative to the center of the meter. Removal of debris and repairs to the created access opening are the responsibility of the property owner.
- (4) Signal Access. If a hard-wired or wireless remote device is attached to the water meter for the purposes of communicating with the Water Utility about water usage, the signal to and from the meter must be attainable by the Water Utility. Transmission of the signal must not be blocked, altered or tampered with by any person.
- (5) Exceptions. A person violating any of the requirements of this section may request an exception from the Water Utility by making a written request to the Madison Water Utility General Manager or his/her appointed designee within three (3) business days of the Water Utility's determination that the requirements of this section have not been met. An exception may be granted if adequate access to the water meter is still possible and/or if the signal to and from the meter may be attained by another method. The decision whether to grant or deny a timely-filed request for an exception under this subsection shall be in writing, and the person may appeal this decision within seven (7) days of the mailing of the notice of denial of the exception request. The appeal shall be to the Water Utility Board. All requests for appeal shall be filed with the City Clerk and the General Manager, and must inform the Water Utility Board of the reasons for the appeal. Within forty-five (45) days, the Water Utility Board shall hold a hearing at which the parties may offer testimony and documents. Either at or within twenty (20) days of the hearing, the Water Utility Board shall affirm, modify or reverse the determination that the exception should be denied. Appeal from the action of the Water Utility Board shall be to Circuit Court within thirty (30) days of the determination of the Board.
- (6) Penalty. Any person who violates this section may be subject to a forfeiture of not less than one-hundred dollars (\$100) and not more than (\$1,000). Each day a violation continues may be considered a separate offense. In addition, failure to follow the requirements of this section may subject the premises to disconnection of service pursuant to the Water Utility's service rules and Wis. Admin Code ch. PSC 185.37. If water service is disconnected, a re-connection fee will be assessed."

2. Section 13.065 entitled "Maintenance of Water Meter Pits" of the Madison General Ordinances is created to read as follows:

"13.065 MAINTENANCE OF WATER METER PITS.

- (1) Water meter pits are the responsibility of the owner or operator of the property and the owner or operator bears the responsibility for all required pit maintenance and repairs. Water meter pits shall be maintained in a clean, dry and safe condition and shall be free from leaks or standing water. Water meter pits shall be maintained in a manner that provides for adequate accessibility, security, safety and for protection against freezing and flooding for the meter. No plants, landscaping or other physical objects shall limit the accessibility of the water meter pit. The water meter pit lid shall be maintained in safe condition and shall be capable of supporting the weight of pedestrians and lawn care equipment.

The owner or operator of the property shall provide for proper grading of the surface around the water meter pit so that water will not collect around or course over the water meter pit lid.

- (2) It shall be the responsibility of the owner or operator of the property to remove any standing water from a water meter pit, at the request of a City employee who is engaged in the performance of any duty pursuant to Sec. 13.06(1), MGO. Any owner or operator who fails to remove such standing water upon request shall be subject to the penalties contained in Sec. 13.23, MGO. The penalties in this subsection may be imposed in addition to any penalties that result from nonconformance with subsection (1) or any other applicable ordinance that does not conflict with this section.
- (3) Any water meter pit built after the effective date of this ordinance shall meet the standards and specifications of the Water Utility in effect at the time of construction. It shall be the responsibility of the owner or operator of the property to ensure that a water meter pit meets such standards and specifications. The Water Utility shall make its standards and specifications available for public inspection at the office of the Water Utility during normal business hours.
- (4) Repairs and modifications to existing water meter pits that are commenced after the effective date of this ordinance shall conform to the standards and specifications of the Water Utility in effect at the time of the repair or modification. The owner or operator of the property shall only use parts or materials approved by the Water Utility or contained in the Water Utility's standards and specifications. It shall be the responsibility of the owner or operator of the property to ensure that repairs and modifications meet such standards and specifications, or have such approval.
- (5) Abatement of Water Meter Pit Hazards. If the General Manager of the Water Utility, or his or her designee, determines that the design or condition of an existing water meter pit is a serious hazard to the health or safety of the Utility's employees or to the public, then the General Manager may order the owner or operator to repair or replace the water meter pit at the owner or operator's expense, pursuant to this section. An owner or operator may also comply with such an order by removing the water meter pit.
 - (a) Summary Abatement of Water Meter Pit Hazard.
 1. Order of Abatement. If the General Manager of the Water Utility determines that a water meter pit constitutes a public nuisance and that there is imminent danger to the public health, safety, peace, comfort or welfare, he or she may, without notice or hearing, issue an order to the owner and/or operator reciting the existence of a public nuisance constituting imminent danger to the public and requiring immediate action be taken as he or she deems necessary to abate the nuisance. Notwithstanding any other provisions of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply with the order immediately.
 2. Abatement by the Utility. Whenever the owner or operator shall refuse or neglect to remove or abate the condition described in the order, the General Manager of the Water Utility may, in her or his discretion, enter upon the property and cause the nuisance to be removed or abated and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred may be levied as a special

charge against the property.

(b) Nonsummary Abatement of Water Meter Pit Hazard.

1. Order to Abate Nuisance. If the General Manager of the Water Utility determines that a water meter pit constitutes a public nuisance but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, comfort or welfare, he or she shall issue an order reciting the existence of a public nuisance and requiring the owner and/or operator of the property to remove or abate the condition described in the order within the time period specified therein. The order shall be served personally on the owner of the property, as well as the operator if different from the owner and applicable to the described nuisance, or, at the option of the General Manager of the Water Utility, the notice may be mailed to the last known address of the person to be served by registered mail with return receipt requested. If the owner or the operator cannot be served, the order may be served by posting it on the main entrance of the premises and by publishing as a Class 1 notice under Wis. Stat. ch. 985. The time limit specified in the order runs from the date of service or publication.
2. Abatement by the Utility. If the owner or operator fails or refuses to comply within the time period prescribed, the General Manager of the Water Utility may enter upon the property and cause the nuisance to be removed or abated and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred may be levied as a special charge against the property.
3. Remedy from Order. The order of the General Manager of the Water Utility shall not be appealable to the Water Utility Board. Any person affected by orders issued under this subsection shall timely apply to the circuit court for an order restraining the Water Utility and the General Manager of the Water Utility from entering on the premises and abating or removing the nuisance, or be forever barred.

(c) Authority to Assess Costs. The cost of abatement or removal of a nuisance under this section shall be collected from the owner, operator or person causing, permitting or maintaining the nuisance and, if notice to abate the nuisance, if applicable, has been given to the owner, such cost, if not paid, may be levied as a special charge against the property.

(d) Abatement in Accordance with State Law. Nothing in this article shall be construed as prohibiting the abatement of public nuisances by the Water Utility or its officials in accordance with the laws of the state. The Water Utility or its officials may choose to proceed with an action under state law, upon authorization by the Water Utility Board.”

3. Subdivision (a) of Subsection (3) entitled “Schedule of Deposits” of Section 1.08 entitled “Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits” of the Madison General Ordinances is amended by deleting and creating therein the following:

<u>Offense</u>	<u>Ord. No./Adopted Statute No.**</u>	<u>Deposit</u>
Interference with access to premises:	13.06	\$50

<u>Failure to provide access to premises.</u>	<u>13.06(1)</u>	<u>\$200</u>
<u>Failure to provide sufficient access to the water meter.</u>	<u>13.06(3)</u>	<u>\$100</u>
<u>Interference with water meter transmission signal.</u>	<u>13.06(4)</u>	<u>\$100</u>
<u>Maintenance of water meter pits.</u>	<u>13.065</u>	<u>\$50</u>

EDITOR'S NOTES:

1. New bail deposits must be approved by the Municipal Judge prior to adoption. These deposits have been so approved.
2. Section 13.06 currently reads as follows:

“13.06 ACCESS TO PREMISES AND MAINTENANCE OF WATER METER PITS.

- (1) Access to Premises. The General Manager of the Water Utility and persons under the General Manager’s direction shall have free access at all reasonable hours to any premises supplied with City water for the purpose of inspecting and examining the water service appliances. No person, firm, corporation or other entity shall prevent, delay or interfere with a City employee while he or she is engaged in the performance of duty pursuant to this section.
- (2) Maintenance of Water Meter Pits.
 - (a) Water meter pits are the responsibility of the owner or operator of the property and the owner or operator bears the responsibility for all required pit maintenance and repairs. Water meter pits shall be maintained in a clean, dry and safe condition and shall be free from leaks or standing water. Water meter pits shall be maintained in a manner that provides for adequate accessibility, security, safety and for protection against freezing and flooding for the meter. No plants, landscaping or other physical objects shall limit the accessibility of the water meter pit. The water meter pit lid shall be maintained in safe condition and shall be capable of supporting the weight of pedestrians and lawn care equipment. The owner or operator of the property shall provide for proper grading of the surface around the water meter pit so that water will not collect around or course over the water meter pit lid.
 - (b) It shall be the responsibility of the owner or operator of the property to remove any standing water from a water meter pit, at the request of a City employee who is engaged in the performance of duty pursuant to Sec. 13.06(1), MGO. Any owner or operator who fails to remove such standing water upon request shall be subject to the penalties contained in Sec. 13.23, MGO. The penalties in this subsection may be imposed in addition to any penalties that result from nonconformance with Sec. 13.06(2)(a), MGO, or any other applicable ordinance that does not conflict with this subsection.
 - (c) Any water meter pit built after the effective date of this ordinance shall meet the standards and specifications of the Water Utility in effect at the time of construction. It shall be the responsibility of the owner or operator of the property to ensure that a water meter pit meets such standards and specifications. The Water Utility shall make its standards and specifications available for public inspection at the

- office of the Water Utility during normal business hours.
- (d) Repairs and modifications to existing water meter pits that are commenced after the effective date of this ordinance shall conform to the standards and specifications of the Water Utility in effect at the time of the repair or modification. The owner or operator of the property shall only use parts or materials approved by the Water Utility or contained in the Water Utility's standards and specifications. It shall be the responsibility of the owner or operator of the property to ensure that repairs and modifications meet such standards and specifications, or have such approval.
- (e) Abatement of Water Pit Hazards. If the General Manager of the Water Utility, or his or her designee, determines that the design or condition of an existing water meter pit is a serious hazard to the health or safety of the Utility's employees or to the public, then the General Manager may order the owner or operator to repair or replace the water meter pit at the owner or operator's expense, pursuant to this subsection. An owner or operator may also comply with such an order by removing the water pit.
1. Summary Abatement of Water Pit Hazard.
 - a. Order of Abatement. If the General Manager of the Water Utility determines that a water meter pit constitutes a public nuisance and that there is imminent danger to the public health, safety, peace, comfort or welfare, he or she may, without notice or hearing, issue an order to the owner and/or operator reciting the existence of a public nuisance constituting imminent danger to the public and requiring immediate action be taken as he or she deems necessary to abate the nuisance. Notwithstanding any other provisions of this subsection, the order shall be effective immediately. Any person to whom such order is directed shall comply with the order immediately.
 - b. Abatement by the Utility. Whenever the owner or operator shall refuse or neglect to remove or abate the condition described in the order, the Director of the Water Utility may, in her or his discretion, enter upon the property and cause the nuisance to be removed or abated and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred may be levied as a special charge against the property.
 2. Nonsummary Abatement of Water Pit Hazard.
 - a. Order to Abate Nuisance. If the Director of the Water Utility determines that a water meter pit constitutes a public nuisance but that the nature of such nuisance is not such as to threaten imminent danger to the public health, safety, peace, comfort or welfare, he or she shall issue an order reciting the existence of a public nuisance and requiring the owner and/or operator of the property to remove or abate the condition described in the order within the time period specified therein. The order shall be served personally on the owner of the property, as well as the operator if different from the owner and applicable to the

described nuisance, or, at the option of the Director of the Water Utility, the notice may be mailed to the last known address of the person to be served by registered mail with return receipt requested. If the owner or the operator cannot be served, the order may be served by posting it on the main entrance of the premises and by publishing as a class 1 notice under Chapter 985, Wis. Stats. The time limit specified in the order runs from the date of service or publication.

- b. Abatement by the Utility. If the owner or operator fails or refuses to comply within the time period prescribed, the Director of Water Utility may enter upon the property and cause the nuisance to be removed or abated and the Water Utility shall recover the expenses incurred thereby from the owner or operator of the property. The expenses so incurred may be levied as a special charge against the property.
- c. Remedy from Order. The order of the Director of the Water Utility shall not be appealable to the Water Utility Board. Any person affected by orders issued under this subsection shall timely apply to the circuit court for an order restraining the Water Utility and the Director of the Water Utility from entering on the premises and abating or removing the nuisance, or be forever barred.
- (f) Authority to Assess Costs. The cost of abatement or removal of a nuisance under this section shall be collected from the owner, operator or person causing, permitting or maintaining the nuisance and, if notice to abate the nuisance, if applicable, has been given to the owner, such cost, if not paid, may be levied as a special charge against the property.
- (g) Abatement in Accordance with State Law. Nothing in this article shall be construed as prohibiting the abatement of public nuisances by the Water Utility or its officials in accordance with the laws of the state. The Water Utility or its officials may choose to proceed with an action under state law, upon authorization by the Water Utility Board.”

Fiscal Note

There may be a small increase in General Fund revenues derived from forfeitures.

ATTACHMENT 10

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