

Plaintiffs ROBERT CORDTS and JENNIFER CORDTS are individuals and consumers who reside in the State of Texas within Oncor's service area. Each member of the Putative Class of Persons and/or Entities Similarly Situated with Plaintiffs ROBERT CORDTS and JENNIFER CORDTS (the "Putative Class") is located within Oncor's service area in Texas.¹ The precise identity of each member of the Putative Class is currently unknown to Plaintiffs, but will be learned when Oncor furnishes its records in connection with this case.

III. JURISDICTION AND VENUE

Jurisdiction is proper because Plaintiffs ROBERT CORDTS and JENNIFER CORDTS and the Putative Class seek damages in excess of the minimum jurisdictional limits of this Court, but less than Seventy-Five Thousand Dollars (\$75,000.00) each. Venue is proper in Dallas County, Texas pursuant to Section 15.002 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because all or a substantial part of the events or omissions giving rise to this cause of action occurred in Dallas County, Texas and because ONCOR'S principal office is located in Dallas County, Texas.

IV. STATEMENT OF FACTS²

A. THE "SMART" METERS APPARENTLY AIN'T SO "SMART"

Skyrocketing electricity bills are crushing innocent Texas consumers as a result of ONCOR'S installation of "Smart" Meters. Plaintiffs ROBERT CORDTS and JENNIFER CORDTS had electric bills between \$400 and \$700 per month before a "Smart" Meter was installed at their home. Once a "Smart" Meter was installed, they received multiple electric bills in excess of \$1,800 per month. ONCOR shrugs its shoulders, notes that it's been cold lately and insists there is nothing wrong with the "Smart" Meter. That's not a very "Smart" explanation.

¹ For the sake of brevity, Plaintiffs Robert and Jennifer Cordts and the Putative Class are occasionally referenced collectively in this Petition as the "Plaintiffs."

² The facts and allegations contained in this Petition are based on information and belief at the time of filing and may be amended and/or supplemented as additional information becomes available.

The Cordts family is not alone. The Putative Class is comprised of homeowners and business owners within ONCOR'S service area who have seen a dramatic and unreasonable rise in their electric bill since receiving a "Smart" Meter.

Plaintiffs deserve honest answers to legitimate questions concerning grossly inflated electric bills. Instead of looking the Texas consumer in the eye and providing a truthful explanation for exorbitant overbilling, ONCOR is giving everyone the run-around. Consumers are tired of being told that a 200% overnight increase in their electric bill following installation of a "Smart" Meter is due to an "unusually cold winter" or a change in their energy consumption choices.

With superior resources and a profit motive, ONCOR'S spin doctors have sought to bamboozle the public with smoke and mirrors. The jig is officially up and it's time for ONCOR to come clean and concede that the "Smart" Meters Ain't So "Smart."

B. WHAT IS A "SMART" METER?

Most homes and businesses in Texas and throughout the United States are equipped with traditional electric meters. Traditional electric meters measure a customer's total electric consumption. Meter readers make periodic rounds of traditional meters to collect and record the total number of kilowatt hours of energy consumed by each customer during a billing cycle. The utility company then multiplies the total number of kilowatt hours of energy consumed by the applicable rate and sends the consumer a bill.

With the deregulation of the electric industry, utility providers have looked for ways to line their pockets with additional profits. Enter the "Smart" Meter. Like their traditional counterpart, "Smart" Meters measure the consumption of electricity at a home or business.

Unlike traditional meters, however, “Smart” Meters record *when* energy is consumed and then communicate that information back to the utility provider for monitoring and billing purposes.

Companies like ONCOR market the “Smart” Meter as an environmentally advantageous technology that will enhance lives. According to ONCOR, installation of “Smart” Meters will “reduce demand and achieve cost savings and environmental results through emissions reductions.” While there may be certain potential benefits to the “Smart” Meters, ONCOR is not advertising that customers with “Smart” Meters will ultimately be charged different rates depending on *when* energy is consumed.

Installation of “Smart” Meters will enable ONCOR to substantially increase its profits because consumers will be charged different rates per kilowatt hour based on their “Time of Use,” and rates will be highest during “peak” periods during the day when most energy is traditionally consumed.

C. ONCOR IS A GOLIATH IN THE ELECTRICITY INDUSTRY

Defendant ONCOR is the largest electricity transmission and distribution company in the State of Texas. Although ONCOR operates principally in the DFW Metroplex, its operational territory includes Waco, Wichita Falls, Odessa, Midland, Tyler, Temple and Killeen. ONCOR estimates that its service area has an estimated population in excess of seven million, about one-third of the population of Texas, and includes approximately three million homes and businesses.

D. ONCOR IS FLUSH WITH RICHES

While hard-working Texans struggle to make ends meet in this difficult economy, Defendant ONCOR recently reported Operating Revenues of \$2,690,000,000 (Two BILLION Six Hundred Ninety Million) in 2009 (See <http://www.oncor.com/news/secfilings.aspx>).

E. "SMART" METERS SUBSIDIZED ON BACKS OF CONSUMERS

Despite its riches, Defendant ONCOR asked the Public Utility Commission of Texas ("PUCT") for permission to pass the cost of "Smart" Meter installation on to its customers. The PUCT gave ONCOR permission to impose on customers a surcharge of \$2.21 each month for the next eleven (11) years. The rate is higher for ONCOR'S non-residential customers. The surcharges were initiated in January of 2009.

F. INSTALLATION OF "SMART" METERS BEGINS

Defendant ONCOR recently began the rapid installation of "Smart" Meters throughout its service area. As of December 31, 2009, ONCOR reported installation of approximately 660,000 "Smart" Meters. By March 25, 2010, ONCOR says it has installed an additional 168,747 "Smart" Meters, bringing the total to 828,747.

G. DISCRIMINATORY ROLL OUT OF "SMART" METERS

Perhaps more interesting than the number of "Smart" Meters installed is *where* the "Smart" Meters have been installed. The "Smart" Meter Deployment Schedule, available on ONCOR'S website, evidences a discriminatory roll out. The Deployment Schedule evidences an initial roll out aimed at some of the most economically disadvantaged areas of ONCOR'S service area, including Oak Cliff, Wilmer, Hutchins, Garland, Mesquite and Seagoville. More affluent areas of ONCOR'S service area, including Plano, Frisco, Allen, McKinney and Denton, are not scheduled to receive "Smart" Meters until 2012.

H. TROUBLE IN PARADISE – PLAINTIFFS' SKYROCKETING ELECTRIC BILLS

Soon after "Smart" Meters were deployed, consumers saw their electricity bills go through the roof. Plaintiffs ROBERT CORDTS and JENNIFER CORDTS own a home located within ONCOR'S service area that they purchased about a year and a half ago.

Prior to receiving a “Smart” Meter, the Cordts family saw relatively stable and predictable electric bills between \$400 and \$700 per month. Reasonable fluctuation in the amount of their bill was predictable based on weather conditions and consumption choices.

After a “Smart” Meter was installed at their property, the Cordts family received an electric bill of over \$1,800 (ONE THOUSAND EIGHT HUNDRED DOLLARS). The outrageous bill alleged that the Cordts’ consumed over 11,000 kilowatt hours of energy.

Like any reasonable homeowner under the circumstances, the Cordts family immediately contacted their retail provider to find out what on earth was going on. The retail provider referred the Cordts’ to ONCOR, the party responsible for the “Smart” Meter. ONCOR proceeded to give the Cordts family the same run-around they have given to other members of the Putative Class.

Mr. and Mrs. Cordts were told that their bill in excess of \$1,800 was due to an “unseasonably cold winter.”⁴ When that explanation failed to sufficiently resonate, ONCOR condescendingly questioned the Cordts’ energy consumption practices. Pursuant to the same intellectually dishonest script that so many others have heard, the Cordts’ were questioned about Christmas lights and the temperature at which they maintain their thermostat.

In an effort at appeasement while the situation was being “investigated,” the Cordts’ received a bill for the subsequent month with an “estimated” charge for \$900. A technician sent to the property to investigate advised the Cordts’ that they were on pace to receive yet another \$1,800 bill. Sure enough, the Cordts’ received another bill in excess of \$1,800.

The Cordts’ have now received three months of bills totaling just under \$5,000. The part of this story that is more absurd than the objectively egregious amount of the billing is ONCOR’S explanation – geez, it’s sure been pretty cold lately.

Note to ONCOR in the words of Abraham Lincoln: “You can fool some of the people all of the time, and all of the people some of the time, but you cannot fool all of the people all of the time.”

I. THE PUTATIVE CLASS

The debacle involving the Cordts family is not an isolated example. The Putative Class contains the same story again and again. The names are different, but the fundamental issue is the same – skyrocketing electric bills following installation of “Smart” Meters.

J. SMART UTILITY REFORM CITIZENS

A grass roots organization, Smart Utility Reform Citizens (“Smart UR Citizens”), was created by two courageous and passionate women who reside in Oak Cliff. Smart UR Citizens operates a website and blog at <http://www.smarturcitizens.com>. This organization has been instrumental in shining a light on the incomprehensible overbilling of the economically disadvantaged.

K. CENTERPOINT ADMITS PROBLEMS WITH “REGISTER OF ELECTRIC USAGE”

While ONCOR is installing “Smart” Meters throughout its service area, CenterPoint Energy Houston Electric, LLC (“CenterPoint”) is deploying “Smart” Meters throughout the Houston area. In a filing made with the PUCT on March 15, 2010, CenterPoint publicly admitted certain problems and irregularities involving the “Smart” Meter technology.

CenterPoint reported technological glitches involving “communications firmware” and issues “impact[ing] the register of electricity usage recorded by a certain number of meters.” In other words, the “Smart” Meter technology, including the communication and/or software systems, was not accurately reporting consumer usage of electricity and improperly overbilling consumers for electricity they had not consumed.

L. THE DOG AND PONY “SIDE-BY-SIDE” METER SHOW

ONCOR has been very willing to conduct so-called “side-by-side” meter tests in an effort to convince the public that there is nothing wrong with the “Smart” Meter technology. These “side-by-side” tests only assess whether a given “Smart” Meter measures electricity in the same manner as a traditional meter. It does not shed any light as to whether the communication and/or software system associated with the “Smart” Meter is accurately transmitting data to the point at which consumer bills are generated.

Given CenterPoint’s concession regarding problems with the communication and/or software systems associated with “Smart” Meters, ONCOR’S “side-by-side” tests appear to be nothing more than a thinly veiled ruse calculated for public consumption devoid of scrutiny.

M. “SMART” METERS AFFECTING REAL PEOPLE IN SIGNIFICANT WAYS

It is not an understatement to say that “Smart” Meters are significantly affecting real people’s lives. Faced with insurmountable electric bills, many consumers are moving out of homes and apartments with “Smart” Meters and relocating to places with traditional meters. Those without the means to move and unable to pay the exorbitant bills live in a perpetual state of fear that their electricity will be terminated and/or their credit destroyed. As consumers struggle, ONCOR is laughing all the way to the bank.

V. PLAINTIFFS' CAUSES OF ACTION AGAINST DEFENDANT ONCOR

A. FRAUD BY NON-DISCLOSURE

Plaintiffs incorporate by reference and re-allege all preceding sections of this Petition and would further show that Defendant ONCOR is liable to Plaintiffs for Fraud by Non-Disclosure because:

1. Defendant ONCOR has concealed from Plaintiffs and failed to disclose to Plaintiffs certain facts, including, among other things, the reason(s) why Plaintiffs' electric bills have substantially increased since installation of "Smart" Meters;

2. Defendant ONCOR has a duty to disclose the truth to Plaintiffs about the reason(s) why Plaintiffs' electric bills have substantially increased since installation of "Smart" Meters;

3. The true reason(s) why Plaintiffs' electric bills have substantially increased since installation of "Smart" Meters are important, significant and material to Plaintiffs;

4. While Defendant ONCOR wages a deceptive campaign of misinformation and propaganda upon the public, ONCOR knows that: (a) Plaintiffs are ignorant of the true reason(s) why their electric bills have substantially increased since installation of "Smart" Meters; and (b) Plaintiffs do not have an equal opportunity to discover the true reason(s) why their electric bills have substantially increased since installation of "Smart" Meters;

5. Defendant ONCOR has in the past and continues to be deliberately silent regarding the true reason(s) why Plaintiffs' electric bills have substantially increased since installation of "Smart" Meters, and they have a duty to speak up and be honest with consumers;

6. By failing to disclose the truth, Defendant ONCOR intends for Plaintiffs to be complacent, pay their exorbitant bills and refrain from taking action to rectify this unlawful fleecing of the Texas consumer;

7. Plaintiffs have relied on Defendant ONCOR'S non-disclosure of truthful information regarding the reason(s) why Plaintiffs' electric bills have substantially increased since installation of "Smart" Meters; and

8. Plaintiffs have suffered damages, most significantly in the form of grossly inflated and erroneous electric bills, as a direct and proximate result of acting without the knowledge of the undisclosed facts that Defendant ONCOR continues to conceal.

B. FRAUD

Plaintiffs incorporate by reference and re-allege all preceding sections of this Petition and would further show that Defendant ONCOR is liable to Plaintiffs for Fraud because they have engaged in a pattern of fraudulent and deceptive conduct aimed at fleecing the Texas consumers within its service area. Plaintiffs have suffered reasonably foreseeable damages, most significantly in the form of grossly inflated and erroneous electric bills, as a direct and proximate result of Defendant ONCOR'S Fraud.

C. NEGLIGENCE

Plaintiffs incorporate by reference and re-allege all preceding sections of this Petition and would further show that Defendant ONCOR is liable to Plaintiffs for its Negligence. Defendant ONCOR owes Plaintiffs a duty of ordinary care in connection with the installation and administration of "Smart" Meters. Defendant ONCOR has an obligation to make sure "Smart" Meters function properly and do not improperly overcharge the very consumers who are shouldering the significant costs associated with the "Smart" Meter roll out.

Defendant ONCOR breached its duty of ordinary care to Plaintiffs through both affirmative actions and material omissions in connection with installation and administration of "Smart" Meters. Plaintiffs have suffered reasonably foreseeable damages, most significantly in the form of

grossly inflated and erroneous electric bills, as a direct and proximate result of Defendant ONCOR'S Negligent conduct.

D. NEGLIGENCE PER SE

Plaintiffs incorporate by reference and re-allege all preceding sections of this Petition and would further show that Defendant ONCOR is liable to Plaintiffs for Negligence Per Se. Defendant ONCOR owes Plaintiffs duties derived from statute, including Section 38.021 of the Texas Public Utility Regulatory Act (the "Act"). Entitled "Unreasonable Preference or Prejudice Concerning Services Prohibited," Section 38.021 of the Act provides as follows:

Sec. 38.021. UNREASONABLE PREFERENCE OR PREJUDICE CONCERNING SERVICE PROHIBITED.

In providing a service to persons in a classification, an electric utility may not: (1) grant an unreasonable preference or advantage to a person in the classification; or (2) subject a person in the classification to an unreasonable prejudice or disadvantage. (V.A.C.S. Art. 1446c-0, Sec. 2.214 (part).)

4 In this case, Defendant ONCOR violated the foregoing statutory provision because it subjected consumers in the predominantly African American and Latino neighborhoods of its service area to an "unreasonable prejudice or disadvantage." By deploying the "Smart" Meters in a discriminatory manner, Defendant ONCOR unreasonably made minorities guinea pigs for a defective technology that places consumers at a substantial disadvantage vis-à-vis the non-minorities who are not scheduled to receive "Smart" Meters until 2012.

Defendant ONCOR'S violation of this statute constitutes a breach of duty owed to Plaintiffs. Plaintiffs have suffered reasonably foreseeable damages, most significantly in the form of grossly inflated and erroneous electric bills, as a direct and proximate result of Defendant ONCOR'S Negligence Per Se.

Defendant ONCOR is also liable to Plaintiffs under a Negligence Per Se theory for its violation of the PUCT Rules, Chapter 25, Subchapter F, Section 25.130 (the “Rule”). In 2005, the Texas Legislature passed legislation authorizing electric utilities to implement a surcharge to recover costs incurred in deploying “Smart” Meters.

In 2007, the PUCT issued the Rule. This Rule outlines the minimum required functionality for an electric utility’s “Smart” Meters to qualify for cost recovery under a surcharge. In other words, if the “Smart” Meters fall below the standards set out in the Rule, then ONCOR’S collection of the surcharge is unlawful.

The considerable problems and irregularities associated with Defendant ONCOR’S “Smart” Meter technology falls below the minimum requirements established by the Rule and constitutes a breach of ONCOR’S duty to Plaintiffs. Plaintiffs’ damages relative to this breach include the surcharge that is only permissible if ONCOR complies with the Rule.

VI. THE PUTATIVE CLASS MEETS ALL REQUIREMENTS AND SHOULD BE CERTIFIED

A. RULE 42(a) OF THE TEXAS RULES OF CIVIL PROCEDURE SATISFIED

The Putative Class satisfies all of the following four threshold requirements set out in Rule 42(a) of the TEXAS RULES OF CIVIL PROCEDURE: (1) **Numerosity** – the class is so numerous that joinder of all members is impracticable; (2) **Commonality** – there are questions of law or fact common to the class; (3) **Typicality** – the claims or defenses of the representative parties are typical of the claims of defenses of the class; and (4) **Adequacy of Representation** – the representative parties will fairly and adequately protect the interests of the class. TEX. R. CIV. P. 42(a).

B. RULE 42(b) OF THE TEXAS RULES OF CIVIL PROCEDURE SATISFIED

In addition to the requirements of Rule 42(a) of the TEXAS RULES OF CIVIL PROCEDURE, class actions must satisfy at least one of four subdivisions of Rule 42(b). Certification of this class is appropriate under Rule 42(b)(4), which authorizes certification of class actions where common questions of law or fact common to the class predominate over questions affecting only individual members and that class treatment be superior to other available methods for the fair and efficient adjudication of the controversy. TEX. R. CIV. P. 42(b)(4).

VII. CONDITIONS PRECEDENT

Plaintiffs incorporate by reference and re-allege all preceding sections of this Petition and would further show that all conditions precedent necessary to maintaining this action have been performed or have occurred. Alternatively, the Defendant has wholly waived and is estopped to assert rights to any conditions precedent.

VIII. PREJUDGMENT AND POST-JUDGMENT INTEREST

Plaintiffs incorporate by reference and re-allege all preceding sections of this Petition and would further show that many of their damages may be determined by known standards of value and accepted rules of interest as damages during the period beginning on the 180th day after the date Defendant received notice of the claim or on the day suit was filed, whichever occurred first, and ending on the day preceding the date judgment is rendered, or as the Court otherwise directs, calculated at the legal rate, or as otherwise set by the TEXAS FINANCE CODE, any statute or the common law.

IX. ALTERNATIVE PLEADING

Plaintiffs incorporate by reference and re-allege all preceding sections of this Petition and would further show that all pleadings herein, if deemed inconsistent, are made and should be construed in accordance with Rule 48 of the TEXAS RULES OF CIVIL PROCEDURE.

X. REQUEST FOR COURT REPORTER AT ALL PROCEEDINGS

Plaintiffs request a court reporter for all proceedings in this case, including without limitation any and all hearings, voir dire, bench conferences and trial.

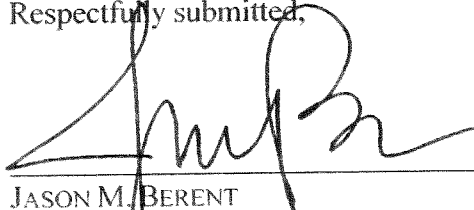
XI. REQUEST FOR JURY TRIAL

Plaintiffs demand a trial by jury and have paid the appropriate fees contemporaneously with this filing.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that Defendant ONCOR be duly cited to appear and answer herein and that, after trial, Plaintiffs recover judgment against Defendant ONCOR for the following:

1. Actual damages;
2. Attorney's fees and expenses;
3. Pre-judgment and Post-judgment interest;
4. Costs of Court; and
5. Such other and further relief to which Plaintiffs may be entitled.

Respectfully submitted,



JASON M. BERENT
Texas Bar No. 24027143
jberent@berentwilson.com

MICHAEL S. WILSON
Texas Bar No. 24008285
mwilson@berentwilson.com

BERENT & WILSON, LP
7557 Rambler Road, Suite 560
Dallas, Texas 75231
(214) 692-5800
FAX NO. (214) 692-5806
www.berentwilson.com

COUNSEL FOR PLAINTIFFS