

Smart Grid Legal News - High Voltage Insight on Smart Grid Issues

Published By Stevens & Lee

Posted on January 24, 2014 by [Linda R. Evers](#)

Florida PSC Supports Smart Meter Opt-Out Fees

In a recent press release, FPSC Chairman Art Graham states,

Smart meters reduce meter and billing costs, reduce billing errors, and help the utility quickly identify service issues, but we recognize that a handful of customers want to keep their ‘non-communicating’ meters. While these customers should expect to pay a fee to cover this added cost, we want to ensure that the associated charges are reasonable.

This comment sheds light on the [Commission’s denial](#) of Florida Power and Light Company’s (FPL) *Non-Standard Meter Rider (NSMR) as proposed*. However the utility has 10 days to refile its tariff with PSC recommended adjustments. Commission Staff estimates that the cost adjustments will reduce the customer enrollment fee by \$10 from \$105 to \$95 and monthly surcharge fee by \$3 from \$16 to \$13. Many utilities will find the opt-out cost elements attached to [Staff’s recommendations](#) helpful.

Since September 2009, FPL has installed more than 4.5 million smart meters for its residential and small business customers, making smart meters the standard in FPL’s service territory. However, to accommodate the estimated 12,000 customers not wanting the new meters, FPL requested PSC approval of the NSMR. In addition to the decision, readers may find the simple and straightforward FPSC [Smart Meter Briefing Paper](#) helpful. I think it strikes the right tone in explaining what is often a contentious issue.

By the way, next week I'm headed to the land of the Super Bowl-bound Seattle Seahawks. Join me as well as the Honorable Philip Jones, Commissioner of Washington Utilities & Transportation Commission, and Matthew Blizard, Director of NERC’s Critical Infrastructure Protection, at Law Seminars International’s “Cybersecurity Law and Strategies” conference January 27-28th in Seattle, Washington. I will present on "Electric Smart Grid Implementation" from a utility perspective as part of the "Challenges & Solutions: Addressing Additional Risks" panel. Click [here](#) to view more information about this conference and to register. Hopefully I'll see you in the Emerald City.

Posted on August 16, 2013 by [Linda R. Evers](#)

In Texas, Smart Meter Opt-Out Has a New Name — Non-Standard Meters

The Public Utility Commission of Texas (“Commission”) says that after years of vetting smart meter deployment through public hearings, workshops and four contested cases, no one objected to orders requiring full deployment and cost recovery of advanced meters. And when health and safety

concerns were subsequently raised, the Commission evaluated these issues and concluded they were [unwarranted](#). As a result, smart meters are standard in Texas. Usually this provides regulatory certainty.

But for an industry that provides for [eminent domain](#), things have gotten interesting. For example, approximately 40 of more than 2.2 million of CenterPoint Energy's customers object to smart meters and want the right to opt-out...and they are going to get it. For less than 0.002% of its customer base, CenterPoint must retain someone to read meters and put trucks on the road for move-ins/move-outs and other related services. They have to do this because the Texas Public Utility Commission recently decided that although smart meters are standard and safe, public interest requires transmission and distribution utilities to offer alternative metering to those who want to decline the benefits of advanced meters. This month [new amendments](#) were adopted to provide for Non-Standard Metering Service commonly known as opt-out. The new rules:

- Require a transmission and distribution utility ("TDU") to provide non-standard or alternative metering service.
- Require the TDU to obtain and retain written customer acknowledgement regarding the negative consequences of opting-out.
- Allows the TDU to separately charge for the costs associated with opting-out.

Regulatory certainty?

Posted on February 08, 2013 by [Linda R. Evers](#)

[Maryland PSC Will Examine Smart Meter Opt-Out Costs](#)

In [an Order](#) issued on January 7, 2013, the Maryland Public Service Commission ("MPSC" or "Commission") concluded the public interest required the customers of Potomac Electric Power Company ("Pepco"), Baltimore Gas and Electric Company ("BGE") and Delmarva Power and Light Company ("Delmarva") (collectively "Companies") be provided with an additional option related to the installation of smart meters in their homes. However, the order states additional proceedings are necessary to determine the preferred course. It appears the Commission is considering two options: (1) to allow customers the option of retaining their current analog meter, or (2) to require all customers to receive a smart meter but with the option to have that meter installed to operate in an "RF-free" or near RF-free manner. Sometimes options result in additional financial responsibility; the Commission made it clear customers that exercise the option will bear the appropriate costs.

The Order went on to state the MPSC did not believe the record was sufficient regarding the overall system, as well as the customer-specific, cost-differential between these two options, and would therefore conduct additional proceedings to resolve these remaining issues. In the meantime, the Companies were ordered to continue to a moratorium for those customers wanting to opt-out. Additionally, on or before July 1, 2013, the Companies were ordered to:

submit to the Commission their proposals regarding a) the overall additional costs associated with allowing customers to retain their current analog meter, b) their proposals regarding cost recovery of these additional costs from customers, and c) their proposals for recovery of costs related to offering customers different RF-free or RF-minimizing options related to the installation of their smart meters. Additionally, we ask the Companies to provide this information scaled for different levels of customer participation;

- Maryland Public Service Commission Order, page 10.

2013 is shaping up to be another interesting year for smart meter decisions.

Posted on January 25, 2013 by [Linda R. Evers](#)

[Pennsylvania Law Does Not Allow Smart Meter Opt-Out](#)

On January 24, 2013, the Pennsylvania Public Utility Commission (“PaPUC”) entered orders dismissing two formal complaints filed by PECO customers requesting to opt-out of smart meters. In the *Theresa Gavin v PECO Energy Company* case and *Maria Povacz v PECO Energy Company*, the Commission’s Orders adopt the Initial Decisions (“ID”) issued by the ALJs. In support of dismissing the complaints, here are some of the interesting points the orders make (emphasis added):

- Section 2807(f)(2) of the Public Utility Code, states
 - (2) Electric distribution companies **shall furnish smart meter technology** as follows:
 - (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.
 - (ii) In new building construction.
 - (iii) In accordance with a depreciation schedule not to exceed 15 years.
- In 66 Pa. C.S. §2807(f)(2), the use of the word “shall” in the statute indicates the General Assembly’s direction that **all customers will receive a smart meter**. The statute does not have a provision for customers to “opt out” of the smart meter installation.
- The Commission has interpreted current law to **require smart meter installation**. The Commission cannot regulate in violation of a statute.
- Pennsylvania electric utilities are following the law by not permitting customers to opt-out.

Yes, there are some jurisdictions who have said no to opt-out. Maybe this will be a new trend.

Posted on October 05, 2012 by [Linda R. Evers](#)

[New Hampshire Requires Smart Meter Opt-In](#)

New Hampshire passed a law this summer that in my view provides the most restrictive approach to the deployment of smart meters: Customers must opt-in by providing written permission! [RSA 374:62](#) states in part:

II.(a) No electric utility that sells or provides electricity within the state of New Hampshire shall install a smart meter gateway device on or in a person’s home or business without the written consent of the person or persons who own the home or business.

(b) An electric utility selling or providing electricity shall create a form that the person or persons who own the home or business must sign to opt-in to having a smart meter gateway device installed on or in his or her home or business. The form shall, in at least 12-point bold face type, state that:

- (1) The opt-in is optional and one’s service will not be affected if one elects not to opt-in; and

(2) The device is a “smart meter gateway device,” and provide the definition in subparagraph I(a).

Given the percentages associated with successful opt-ins, kiss your business case goodbye. Sporadic deployment will erode most reliability, theft of service, environmental and energy efficiency related benefits associated with advanced smart meters.

This law came to my attention when reviewing a recent New Hampshire Public Utility Commission (“NHPUC” or “Commission”) [order](#) denying a request for hearing on the installation of smart meters. The case involved a request by Ms. Wirth, a residential electric customer served by the New Hampshire Electric Cooperative (“NHEC”), to have a hearing because she wanted to opt-out of the smart meter being installed by NHEC. While I was stunned to learn of the above law, the order is well written and is worth reading because of its unique approach to the RF issue. After determining the meters installed by NHEC are not subject to the opt-in requirements of RSA 374:62 because they are not “smart meter gateway devices” as defined in the law, the Commission found the meters met the FCC’s limits on exposure to RF radiation. The Commission then set out to determine whether or not to accept the FCC’s standard or adopt a separate RF standard for New Hampshire. The NHPUC relied on case law regarding RF limits and the cell phone industry to ultimately conclude that the FCC limits pre-empt a separate and potentially conflicting state standard.

In *Farina v. Nokia Inc.*, 625 F3d 97 (3d Cir. 2010) the United States Court of Appeals for the Third Circuit upheld the dismissal of a case brought by a group of consumers claiming that cellular telephones caused adverse health effects due to their RF emissions. The court found that the FCC regulations required a balance between safety and the rapid development of an efficient communications system. As a result, the Farina court found that the FCC limits on RF radiation exposure, codified at 47 C.F.R. § 2.1093(d), pre-empted state guidelines.

Posted on August 29, 2012 by [Linda R. Evers](#)

[DC Public Service Commission Declined Opt-Out Investigation](#)

Although the [order](#) was issued earlier this year, as one of the few Commissions to say no to smart meter opt-outs, I thought it was worth reporting. On December 7, 2011, the Office of Peoples Counsel petitioned the District of Columbia Public Service Commission to initiate a formal investigation to determine whether it is reasonable for Pepco to offer an opt-out provision to its AMI program. In its response, Pepco cites a number of reasons against creating an opt-out provision, including the fact that the ARRA grant it received is contingent upon *full* implementation of AMI. Most importantly, Pepco pointed out that the DC Council approved AMI for “*all*” consumers and did not include an opt-out provision. Therefore, creating an opt-out provision is beyond the authority of the Commission. The DC PSC agreed:

Once the Commission determined that Pepco had received sufficient ARRA funding, Pepco had statutory authority to implement an Advanced Metering Infrastructure for “all” consumers. OPC does not cite, nor are we aware of anything in the statute or its legislative history that reflects a legislative intent to give the word “all” anything other than its common meaning. The word “all” means every member, without exclusion. Where the language of the statute is plain and unambiguous, there is nothing for this Commission to do but apply the statute according to its terms.

Posted on July 26, 2012 by [Linda R. Evers](#)

[Appellate Court Orders Maine PUC to Address Smart Meter Health and Safety Concerns](#)

The Maine Public Utility Commission shocked the industry when it was one of the first states to open an [opt-out investigation](#) and subsequently [order a smart meter opt-out](#). Despite taking these steps that many in the utility industry disagree with, the Maine Supreme Judicial Court recently [told](#) the MPUC it failed to adequately address the health and safety concerns raised regarding smart meters. This stems from an appeal taken by a customer of Central Maine Power over a dismissed complaint regarding the Commission's opt-out order.

The complaint by 19 CMP customers requested a new investigation due to "new and important evidence specifically addressing non-ionizing radiation of the type emitted by smart meters." The complaint states there was a May 31, 2011 [press release](#) from the World Health Organization that classified RF radiation as possibly carcinogenic to humans. The Appellate Court held the Commission erred in dismissing the complaint because it did not adequately address the health and safety concerns. The MPUC concluded the appropriate entity to consider potential RF health impacts is the FCC in consultation with the Food and Drug Administration. In spite of conducting an investigation, the Commission made no determination on the merits of health, safety, privacy or security concerns regarding wireless smart meters. Without considering the health and safety issues, the Court concluded the Commission could not find the opt-out fee was not reasonable.

Despite the yo-yo effect, this decision will be beneficial to utilities in the long run. It will finally force the industry to engage in independent research to address the health concerns. Then maybe we can all live smart.

Posted on July 11, 2012 by [Linda R. Evers](#)

[PaPUC Chairman Powelson on Smart Meters and Pennsylvania's Energy Future](#)

I recently had the opportunity to interview the Chairman of the Pennsylvania Public Utility Commission, [Robert F. Powelson](#), regarding his views on smart meter opt-outs and other issues affecting Pennsylvania's energy future. Because I live and practice in Pennsylvania, I may be biased but I think Smart Grid Legal News readers will agree it is refreshing and rare to hear regulators like Chairman Powelson promote smart meters, energy efficiency and other practices that advance our energy future.



***Evers:** Chairman Powelson, thank you for taking the time to discuss smart meters with me. Why is it important for customers to have smart meters?*

Powelson: Act 129 of 2008 has really paved the way for the rollout of smart meters, also referred to as Advanced Metering Infrastructure (AMI), and the implementation of Act 129 continues to benefit Pennsylvania customers. As I see it, smart meter technology is a "win-win" situation for the Commonwealth – both electricity customers and electricity providers alike reap the benefits of advanced meters.

Smart meters give customers greater control over their energy consumption by allowing them to measure their energy usage, monitor real-time electricity prices, and adjust their consumption and behavior in order to realize significant savings on monthly bills.

Customers can even shut down appliances during peak periods or pre-program appliances and devices to operate only at predetermined (and lower cost) timeframes if they so choose.

Similarly, electricity providers also benefit from increased smart meter deployment. The two key concepts here are efficiency and reliability. AMI makes meter reading quicker and more efficient by eliminating the current practice of estimated meter readings. Additionally, with smart meters, utilities have the ability to monitor distribution networks to allow for the immediate detection of irregularities, which leads to drastically reduced response time in addressing outages.

Finally, smart meters can help reduce both overall electricity use and peak demand use, leading to lower emissions from fossil power plants that will not have to generate as much power – a direct environmental benefit.

***Evers:** Chairman, across the country several states have implemented an opt-out process due to customers concerns about health and privacy. I am concerned about the impact of an opt-out process as people relocate in and out of homes with smart meters. I call it a smart meter mosaic. I joke that real estate disclosure forms will soon have to start indicating the home's level of smartness. Seriously, I think the implementation and long-term management of such a process could eventually put upward pressure on rates for everyone. What are your views regarding a smart meter opt-out process?*

Powelson: In May, I [testified](#) before the Pennsylvania House of Representatives Consumer Affairs Committee on a proposal to partially repeal Act 129 and permit smart meter “opt-out” programs in the Commonwealth. My testimony addressed two pieces of legislation – House Bill 2186, which would allow consumers to opt out of having smart meters installed at their premises, and House Bill 2188, which would require consumer consent in order to share information from electric meters with government agencies. These bills represent a significant step backward in policy, with the potential to negate all of the reductions already achieved under Act 129.

The proliferation of opt-out requirements for AMI deployment has the potential to cripple efforts to modernize grid technology. Maine has received a lot of attention regarding its AMI opt-out, and Central Maine Power (CMP) has considered, analyzed and provided substantial cost information relating to a variety of potential solutions or mitigation measures for customers seeking to opt out of CMP’s Smart Meter Program. CMP estimates these incremental infrastructure and support costs to be as high as \$70 million over the life of the AMI project – and that is assuming only 1 to 2 percent of CMP customers opt out. At an opt-out level of 10 percent, these incremental costs grow to hundreds of millions of dollars – exceeding the costs of CMP’s advanced meter project.

While I appreciate that there are consumers who have security and privacy concerns with respect to AMI, the PUC, legislature, and Electric Distribution Companies (EDCs) may be able to help alleviate these concerns through increased education and outreach. It is worth noting that many EDCs and their customers have had AMI in place for years, namely PPL and PECO. Additionally, we are already facilitating the continued implementation of smart grid technology by establishing rules that more precisely address conduct in the areas of reliability, privacy and security. California and Ontario have undertaken similar efforts through a “Privacy by Design” rulebook, which was integral to customer support for advanced meter roll out.

In sum, opt-outs cause operational gaps that will lead to additional costs for companies and their customers, defeating the stated purposes of Act 129. Such a system reduces reliability for all customers, as well as the benefits of a completely modernized electric grid. Simply put, there is no compelling reason for an “opt-out” program.

***Evers:** Smart meters have received a lot of attention but there is so much more to the concept of smart grid. Beyond smart meters, what do you see as other benefits as utilities upgrade their systems?*

Powelson: Nationally, billions of dollars are being invested in smart grid technology because of the many benefits to consumers and utilities, as well as the positive impact on the environment through increased energy efficiency. (By way of background, federal support for the development of smart meter systems began with the Energy Policy Act of 2005, was supplemented with passage of the Energy Independence and Security Act of 2007, and funded by the American Recovery and Reinvestment Act of 2009 – which set aside \$11 billion for the creation of a smart grid.)

For me it is not just about the technology. The most important objective is to better serve the needs of consumers and build stronger, more vibrant communities in which to live, work, and play. Smart meter and smart grid programs will be much more efficient in delivering electricity to homes and businesses; responding to outages and other emergencies; monitoring and seeking to curtail usage, especially during peak periods; preventing theft and fraud; and helping electric customers save dollars on their monthly bill. In short, the benefits to Pennsylvanians will continue to grow.

***Evers:** Recently many utilities have partnered with Opower and Facebook to allow customers to form teams for energy saving contests and compare energy usage with friends, hopefully creating positive peer pressure. Why are innovations like this important to our energy future?*

Powelson: Any method of educating consumers and raising consumer awareness is vital. The real benefits will come when people start to realize that we are all in this together, and everyone contributing a little adds up to significant decreases in demand, which then puts a downward pressure on prices.

I particularly like this idea of comparing energy usage with neighbors and friends, as it dovetails nicely with the idea of “competition” in Pennsylvania’s electricity market. The more customers learn about competitive electricity providers, and the benefits and potential price savings available in the marketplace, the better. Increased dialogue that leads to decreased energy usage is exactly what we are looking for under Act 129.

***Evers:** Are there any other thoughts regarding Pennsylvania's energy future you would like to share?*

Powelson: Pennsylvania has really embraced a two-pronged approach in considering its energy future. On one hand, we are doing all that we can as regulators, providers, and consumers to comply with Act 129 and become more energy efficient. On the other hand, we are strengthening Pennsylvania’s competitive marketplace to increase competition among electric generation suppliers and produce better pricing and greater savings for the Commonwealth’s 5.6 million electric customers.

In addition to fulfilling its regulatory and oversight responsibilities, the Pennsylvania PUC will continue to educate consumers on the benefits of both energy efficiency and

conservation, including smart meter technology, as well the advantages of shopping with competitive suppliers for their electric generation.

Posted on June 14, 2012 by [Linda R. Evers](#)

CPUC Considers a Community Out-Of Option and the Americans with Disabilities Act's Impact on Smart Meter Deployment

For those who have been surprised by the wave of opt-out rulings, buckle up! The California Public Utility Commission is about to begin Phase 2 of its opt-out proceedings and it promises to be a thriller. Of course the traditional issues such as cost and cost allocation will be addressed and while important, I believe these issues will be upstaged by two concepts I have yet to see explored: 1) A community opt-out option and 2) the Americans with Disabilities Act's Impact on Smart Meter Deployment.

In a recent [ruling](#), Commissioner Peevey states:

I believe that parties should brief the issue of whether the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who are required to have an analog meter for medical reasons. Consequently, parties are requested to brief the following questions. For each of the questions, the party shall cite to the specific legal or statutory authority in support of its response.

1. Does an opt-out fee, which is assessed on every residential customer who elects to not have a wireless smart meter installed in his/her location, violate the Americans with Disabilities Act or Pub. Util. Code § 453(b)?
2. Do the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who elect to have an analog meter for medical reasons?

Questions presented regarding the community opt-out include:

1. Should the opt-out option be extended to local governments and communities?
2. Will the costs associated with this option and the fees to be charged to community opt-out participants be different than those assessed for individual opt-out participants?
3. Are there statutory or contractual restrictions associated with allowing local governments or multi-unit dwellings to participate in a community opt-out option?
4. How would non-residential customers or customers who wish to have a wireless smart meter be accommodated?

Wow! Very interesting. Quite a few additional questions immediately come to mind. Here are some of the more pressing: How will a community opt-out affect the utility's business case, including but not limited to reliability, environmental and billing system changes? Can a community opt in once it has opted out? How many times can a community or person opt in and out?

Opening Briefs on the questions raised by the Commission are due June 29, 2012, and Reply Briefs on July 13, 2012. With pleadings this interesting, who needs a summer reading list?

Posted on May 31, 2012 by [Linda R. Evers](#)

[NV Energy Files Trial Opt-out Tariff](#)

Recently, the Public Utilities Commission of Nevada conducted an investigation regarding NV Energy's advanced service delivery program. It considered four alternatives to smart meters:

1. Analog Meter
2. Digital Meter
3. Non-communicating AMI Meter
4. Communicating AMI Meter with Limited Radio Transmissions

And the winner is: Digital Meter. The benefits cited by the Commission for this option are: (1) It provides a meter that does not store data and (2) it retains some economic benefits by reducing the number of meter readers necessary to read meters because of the drive by capability.

The Commission then [ordered](#) NV Energy to file a trial opt-out tariff to allow customers to opt-out of smart meters with a digital meter. These digital meters are what I call the first generation of smart meters. The meters can be read with drive-by meter reading technology. Although it is 179 pages, NV Energy's [opt-out tariff filing](#) is worth reading. Beyond addressing the cost for the opt-out, it provides great insight into other issues such as the cost to reinstall a smart meter, who can opt out in a landlord-tenant situation, privacy and sample customer communications material.

Posted on May 25, 2012 by [Linda R. Evers](#)

[Idaho Says No to Smart Meter Opt-Out](#)

In the case of BONNIE MENTH AND VICKY DAVIS, COMPLAINANTS, VS. IDAHO POWER COMPANY, RESPONDENT (Case No. IPC-E-12-04), the Idaho Public Utilities Commission dismissed the [complaints](#) finding that the complainants have not provided sufficient demonstrable, credible, factual evidence to support a finding that meters present legitimate safety or potentially inappropriate communication concerns. The Commission's [order](#) found the AMI meters installed by Idaho Power do not have the capability to control appliances or other devices, nor initiate surveillance of electrical usage at individual customer residences. It is important to note the AMI meters installed by Idaho Power are not wireless, yet they still offer many benefits.

In its [answer](#) to the complaints, Idaho Power does a great job of explaining the cost of a potential opt-out. It also explains the many benefits of the new meters, including the ability of customers to drill down to understand their energy use. The figure below is one of the examples provided.

Daily And Hourly Energy Use

What day and what hour are you using the most electricity? Find ways to save by going to the [Savings Center](#). Click on the links below to learn how you are using electricity.

- [View Daily Energy Use](#)
- [View Hourly Energy Use](#)



Some of the operating benefits cited by Idaho Power include:

- Elimination of billing estimations and meter read errors
- The removal of 75 vehicles from service
- A reduction in more than a million miles of driving each year
- Valuable outage scoping and restoration data
- Voltage monitoring and meter and service failure detection

Posted on May 17, 2012 by [Linda R. Evers](#)

[Vermont Allows Free Smart Meter Opt-Out](#)

[S.214](#) also known as the Vermont Energy Act of 2012 was recently passed by the House and Senate and sent to the governor on May 14, 2012. It covers many energy related issues including updated renewable energy standards. However, many Smart Grid Legal News readers will find Section 2311 Smart Meters; Customers Rights; Reports most interesting. It requires an electric utility company to:

1. Provide customers with written notice before installing a wireless smart meter

2. Allow customers to opt-out of having a wireless smart meter at no additional monthly or other charge
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 charges for the removal

With regards to the third option, I wonder how many times this can occur? If customers change their minds about the opt-out, will there be a fee to have one installed?

In addition to the opt-out, several interesting reports are required, including a joint report to the Commissioner of Health and the Commissioner of Public Service. The report will (a) update a previous report entitled *Radio Frequency Radiation and Health*; (b) provide a summary of post deployment radio frequency level testing; and (c) provide evidence based on the potential health effects of wireless smart meters. The commissioners are to retain an independent expert to research and write the report which is due on January 15, 2013.

Posted on May 11, 2012 by [Linda R. Evers](#)

[Maryland PSC Considers Smart Meter Opt-Out](#)

It may not be an epidemic but the number of states to consider smart meter opt-outs is spreading. No one doubts the importance of reliability and the need to update the electric grid. However, it is a surprise to the industry that due to a vocal minority, many utilities face having to upgrade while retaining the capability to service analog meters. Smart Grid Legal News has reported on the several states to consider or implement some form of smart meter opt-out. On May 22, 2012, the Maryland Public Service Commission will hold legislative-style hearings on whether to require utilities to offer customers an opportunity to opt out of receiving a smart meter. The [Notice](#) states the Commission has received correspondence from ratepayers expressing concern about health and privacy issues associated with smart meters.

In its comments, Commission Staff provides a nice overview and analysis of the concerns. At the end of the day, Staff empathizes with the concerns of citizens but for good factual reasons does not support an opt-out. One reason being:

An Opt-out provision makes it impossible for utilities to achieve such benefits as theft of service detection and a full understanding of grid usage (for example, voltage levels at the premises and distribution transformer loading) for those customers who opt out.

- *Staff comments, page 12*

I think Commissions should address concerns of citizens in their states, and hearings like this are positive. More open forums to discuss the issues related to smart meters with those ***outside of the industry*** (customers) are necessary. Utilities who have not yet deployed smart meters take heed: Communicate early and often with your customers. A bill insert after your regulatory approval is not enough. This area is crying out for more communication. Fears should be addressed with factual information. Hopefully after hearing the concerns, there will be a new wave of Commission decisions based on facts instead of the fears of a few. While I generally don't like to hear it, it will be refreshing to hear "NO" for a change.

Posted on April 24, 2012 by [Linda R. Evers](#)

[Southern California Edison and San Diego Gas & Electric Now Offer Smart Meter Opt-Out](#)

The California Public Utilities Commission (“CPUC”) recently modified [Southern California Edison's \(SCE\)](#) and [San Diego Gas & Electric's](#) advanced metering programs to include an option for those residential customers who do not wish to have a wireless Smart Meter installed at their location. Customers participating in the opt-out option will be assessed an initial fee of \$75 and a monthly charge of \$10 thereafter. Customers enrolled in the CPUC’s low income program (California Alternate Rates for Energy (CARE)) electing to opt-out will be assessed an initial fee of \$10 and a monthly charge of \$5. The CPUC cautioned that the initial fee and monthly charge are interim to allow residential customers to begin selecting the opt-out option immediately. The costs are subject to adjustment upon conclusion of a second phase where issues concerning the actual costs associated with offering an analog opt-out option will be addressed. The opt-out option is for residential customers only; the Commission declined a request to allow commercial customers an opt-out option. The Commission explains in both decisions that the opt-out option is a *service*.

This opt-out option is a service because the standard for metering has been transitioned throughout the country and for the most part the world from the older technology, analog meters, to today’s technology, smart meters. In this decision we are not reversing that transition, however, we do approve an option for those customers who, for whatever reason, would prefer to not have a wireless smart meter. ...As a result, this decision further finds that customers electing the opt-out option shall be responsible for costs associated with providing the option.

Posted on March 14, 2012 by [Linda R. Evers](#)

[Georgia Senate Passes Smart Meter Opt-Out Bill](#)

Rather than let the experts at the Georgia Public Service Commission address the issue, lawmakers in Georgia have decided to address consumer smart meter concerns with the passage of [Senate Bill 459](#). What is most concerning about the bill is that it fails to acknowledge the financial implication of smart meter opt-outs. Well, that is not completely true. This bill goes where no state has gone before in that it recognizes there could be fiscal issues related to opting out of smart meters; it simply refuses to apportion *any* responsibility on those making the opt-out decision. Below is key language from the bill:

(i) Notwithstanding any other provision of this title, the commission is authorized to provide that consumers may elect not to use smart meters of any investor owned electric light and power company subject to regulation by the commission; provided, however, that **the commission shall not create and regulate a surcharge for consumers who make such an election.**

Posted on February 23, 2012 by [Linda R. Evers](#)

[Lone Star State Considers Smart Meter Opt-Out](#)

I said 2011 was the year of the opt-out, but based on a couple of recent Commission orders, 2011 may have been a preamble. Texas, a state known for a robust competitive electric market and with millions

of smart meters already installed, has decided to conduct an investigation to formally address the opt-out issue. When a decision has been made, smartgridlegalnews.com will let you know.

In the meantime, I thought this well-written March 2011 [Smart Grid Technical Advisory Project](#) authored by the Lawrence Berkeley National Laboratory would shed some light on the importance of smart meters to the smart grid. The slide on page 16 presents some great questions for regulators to consider as they address the opt-out issue:

- Should advanced meters be mandatory or voluntary?
- How do you craft a potential opt-out option that does not undermine either the advanced metering business case or utility system smart grid operation?
- How should the cost of any opt-out provision be allocated?
- Should costs be allocated to those that opt-out? or
- Should costs be “socialized” and distributed across all customers?
- What implications does a metering opt-out provision have for rate, demand response, electric vehicle and other smart grid initiatives?

Bonus: For those who read the full report, you will learn that you can be advanced, but not smart.

Posted on February 16, 2012 by [Linda R. Evers](#)

[California Orders Smart Meter Opt-Out; Wireless Industry Urged to Speak](#)

Recently the California Public Utility Commission issued an [order](#) that modifies PG&E’s SmartMeter Program, requiring the utility to include an opt-out option for residential customers. Here are the highlights of the 41-page decision:

- The opt-out option means offering an analog meter, not a radio-off option on the smart meter
- Customers can opt-out for *any* reason
- Customers electing the opt-out option will pay an initial fee of \$75.00 and a monthly charge of \$10.00. CARE customers will pay an initial fee of \$10.00 and a monthly charge of \$5.00
- There will be a phase II in order to determine who ultimately pays for the opt-out

“Issues concerning the actual costs associated with offering the analog opt-out option and whether some portion of these costs should also be allocated to all ratepayers or PG&E shareholders will be addressed in a separate phase of this proceeding.” *Decision, page 2.*

In spite of the above, I think it is worth highlighting some major points from Commissioner Simon’s Concurrence:

“Contrary to anti-wireless activist health concerns, as described in the Decision, neither the Institute of Electrical and Electronics Engineers (IEEE), the National Council on Radiation Protection and Measurements (NCRP), the California Council on Science and Technology (CCST), the U.S. Environmental Protection Agency (EPA), nor the Food and Drug Administration (FDA) have expressed concerns about human exposure to SmartMeter radio frequency emissions. I find no reason to distrust the data dismissing the existence of health impacts of this important global technology. I hope going forward, more awareness of the societal benefits will counterbalance the one-sided objections voiced at this Commission.

As I have pointed out in speeches and meetings in the Silicon Valley and in wireless industry forums, I am astonished that beneficiaries of wireless technologies—including, for example, programmers of iPhone and Android applications, analysts who mine and aggregate usage data to hedge commodity risks, retailers who offer internet access and their customers who seek out public WiFi—have been “radio silent” throughout this proceeding and in the general public forum. I urge them to come forward and to speak in support of their beneficial interests.” *Commissioner Timothy Alan Simon*

Wireless industry, where are you? I join Commissioner Simon in encouraging you to speak on this issue. It is an important component of our energy future.

Posted on May 25, 2011 by [Linda R. Evers](#)

Maine PUC Says Sound Public Policy Requires Smart Meter Opt Out

On May 19, 2011, after taking into consideration all public correspondence and filings, the Maine Public Utilities Commission issued a [Part 1 Order](#) requiring Central Maine Power to implement an opt out program. What is interesting about the order is that it seems to go beyond addressing the RF issues and requires more than what is necessary to comfort those customers with smart meter health concerns. As stated in its [press release](#), CMP will provide residential and small commercial customers with four choices:

1. the default smart meter which will become the standard meter in CMP territory;
2. the ability to select a smart meter with the transmitter-off;
3. the ability to keep the customer’s existing analog meter; or,
4. the ability to move the new smart meters elsewhere on their property at the customer’s expense.

This decision seems to be a long way from the Commission’s [order in February](#) 2010 where the Commission approved this very same CMP AMI program that is now the subject of an opt out order that not only provides for the transmitter to be off, but even requires CMP to keep in use analog meters. In February 2010, the Commission stated that CMP’s AMI program would, “improve customer service, enhance storm restoration efforts, reduce utility operational costs, save ratepayer and utility costs, and ultimately provide customers with necessary tools to use electricity more efficiently.” It will be interesting to see the extent of the anticipated reduction in utility operational costs as CMP maintains the systems and networks to support both analog and smart meters.

In Maine the Commission can issue an order in two parts. The first providing the decision and the latter providing the background, analyses and reasoning underlying the Commission’s decision. I’m looking forward to reading the Part II Order to see if it addresses my questions after reading the Part I Order:

- What happens when people move? It is possible that customers will relocate within and outside of CMP’s service territory. At some point, radio off customers will move into transmitter on homes or analog metered homes and vice versa. Who pays for the administrative and operational cost of what will eventually become an opt-in and opt-out mosaic with two subparts?
- Can CMP’s customers relocating within Maine but outside of CMP’s service territory expect to have the same opt-out option at their new home?
- Why have an opt-out option when the FCC and FDA have approved the smart meters for use?

- Analog? Really? When the analog meters are ready for replacement will CMP be required to purchase analog meters for the chosen few 10 or 15 years down the road? Admittedly, functional yet used meters should be on sale as other utilities abandon analog just like the FCC did with our television transmission.

The costs to customers for the various options will be:

1. For the electro-mechanical meter option: an initial, one-time charge of \$40.00 and a recurring monthly charge of \$12.00
2. For the standard wireless “smart meter” with the NIC operating in receive-only mode: an initial, one-time charge of \$20.00 and a recurring monthly charge of \$10.50
3. For any customer that does not enroll in the opt-out program within the 30 period specified above and later chooses to do so: a \$25.00 surcharge. CMP may waive the surcharge if it determines there is a sufficient reason for the customer’s failure to notify CMP within the 30-day period

I suggest realtors in Maine begin to prepare new disclosure forms to alert potential buyers to the home’s level of smartness.

Smart Grid Legal News

Stevens & Lee

*111 North Sixth Street Reading, PA 19601 17 North Second Street, 16th Floor Harrisburg, PA 17101
1818 Market Street, 29th Floor Philadelphia, PA 19103*

Copyright © 2014, Stevens & Lee. All Rights Reserved.

[Strategy, design, marketing and support by LexBlog™](#)