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Smart meter opponents argue to overturn Maine PUC decision

By [Walter Wuthmann](#) on November 4, 2015 [@wwuthmann](#)

PORTLAND — For the second time in three years, the Maine Supreme Judicial Court heard arguments about the alleged health risks of “smart” electric meters.

At issue Tuesday was whether the Public Utilities Commission, the state agency that regulates utilities, incorrectly deemed the meters safe.

Central Maine Power Co., the utility serving the majority of western Maine, began installing smart meters in 2009, aided by \$96 million from the federal Economic Stimulus Act.

Unlike traditional electric meters, smart meters convey usage data wirelessly throughout the day, allowing the utility to “optimize” its service, according to a CMP representative.

CMP has installed more than 600,000 smart meters in its coverage area, serving nearly all of its customers.

Opponents have argued that the radio frequency emitted by the wireless meters causes a range of health effects, from nausea to cancer.

They point to studies, including findings from the [World Health Organization and International Agency for Research on Cancer](#), that say such radiation is “possibly carcinogenic” at some levels.

The high court ordered the PUC to [reopen a health investigation in 2012](#) into the risks of smart meters. After a 2 1/2-year review, the agency concluded there is “(no) credible threat to the health and safety of CMP’s customers.”

Opponents, led by Ed Friedman and the Maine Coalition to Stop Smart Meters, [appealed that decision to the state supreme court in May](#).

On Tuesday at the Cumberland County Courthouse, appellants’ attorney Bruce McGlaflin argued that PUC Commissioner David Littell recognized many of the studies cited by opponents

in his written opinion, saying there was “credible evidence” of potential harm. These findings in the record, he argued, conflict with the final ruling of no threat of harm.

“There are multiple reasons ... (this ruling) must be vacated,” McGlaufflin said. The decision, he argued, lacked a rational basis, exhibited multiple errors of law, such as shifting the burden of proof to the complainants, and was not supported by substantial evidence.

The justices, however, pressed McGlaufflin about whether the issue is preempted by federal law. [The Federal Communications Commission sets exposure limits for RF radiation](#), and the Maine PUC found in its investigation that smart meter emissions fall under the federal threshold.

McGlaufflin argued that in doing a safety investigation that lasted more than two years, the PUC itself made the decision that preemption did not apply. And, he added, Littell said the FCC exposure levels, set in 1996, were “outdated.”

But “FCC regulations are valid, they are the law,” Justice Jeffrey Hjelm responded.

Later, attorneys for the PUC argued the body’s ruling was in “complete accord” with the FCC and “every other state and federal agency” that has addressed the question.

But justices pressed PUC counsel on whether there was substantial evidence supporting the decision of safety. In measuring RF emissions from CMP’s smart meters, “do we know that in fact that the threat of harm is less?,” Chief Justice Leigh Saufley asked.

After the 30-minute oral arguments concluded, more than a dozen members of the Coalition to Stop Smart Meters gathered outside the courthouse.

Some of them said they suffer from a condition called electromagnetic hypersensitivity, or EHS, which the WHO characterizes as “a variety of non-specific symptoms, which afflicted individuals attribute to exposure to (electromagnetic fields).” One woman in the assembled group wore a head-to-toe blue suit, which she said was lined with silver and aluminum mesh to deflect electromagnetic waves.

As the afternoon light faded, the group unfurled a banner urging recall of smart meters before dispersing.

McGlaufflin, the group’s attorney, said they would have to wait anywhere from two weeks to a year for a court ruling, although, in his experience, a couple months is “fairly typical.”

He added that he thought it would be “odd” to see a decision of federal preemption, after the court ordered the PUC take up the issue of health risks in 2012.

“We’d have wasted the last 2 1/2 years,” he said. “Otherwise, why do it?”

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Members of the Maine Coalition to Stop Smart Meters gather outside the Cumberland County Courthouse Tuesday, Nov. 3, after the state Supreme Judicial Court heard oral arguments on the alleged health risks of smart meters.