

June 8, 2011

Roger R. Therriault, Esq.
48 Front Street
Bath, ME 04530

Dear Roger,

Our firm has been retained by Central Maine Power Company with respect to the Moratorium Ordinance passed by the Bath City Council. Ken Farber at CMP asked that we write this letter as a follow-up to your telephone conversation with Ken last week. As you discussed with Ken, it is CMP's position that the Ordinance is (i) inconsistent with the Maine Public Utilities Commission's (PUC) orders regarding smart meters (ii) not in the interest of CMP's customers in Bath who, as a result of the Ordinance, will be required to pay the opt-out fees unless they affirmatively ask to have a smart meter and (iii) in conflict with state and federal law. CMP requests that the Council rescind the ordinance immediately. If not, CMP is prepared to take necessary legal measures in federal and/or state court to challenge the legality of the Ordinance. CMP hopes that such a legal challenge is unnecessary, however, in light of recent PUC orders covering the very issues of concern cited in the ordinance.

First, the three concerns that motivated the ordinance have either been addressed by the PUC, or are within the exclusive province of federal agencies such as the Federal Communications Commission. The first concern, the effect of radiofrequency and microwave radiation on medical devices (i.e., radiofrequency interference), is covered by 47 U.S.C. § 302a(a)(1), which authorizes the FCC to make regulations "governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications[.]" Courts have uniformly found that claims of harm caused by emission of radio energy fall within the FCC's exclusive jurisdiction. See *Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2nd Cir. 2000) and *Southwestern Bell Wireless Inc. v. Johnson County Board of County Commissioners*, 199 F.3d 1185 (10th Cir. 1999) (Congress intended federal regulation of RFI issues to be so pervasive as to occupy the field). The second concern, cyber safety issues, has been addressed by CMP through submittal of an extensive cyber security plan to the U.S.

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Page 2

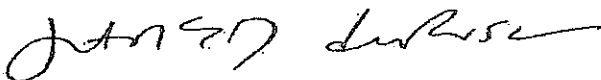
Department of Energy (DOE) as part of the Company's Smart Grid grant process. That plan underwent substantial review by the DOE, and the PUC has not required further action. And the third concern, fire safety, was the subject of a recently dismissed PUC complaint where the PUC found that CMP had taken adequate measures to ensure safe installation of the meters, and that the meters had also been inspected by the relevant national safety standard organizations. *See Averyl D. Hill et al., Request for Commission Investigation into Fires Associated with Smart Meter Installation, Docket 2010-346 (May 31, 2011).*

Second, recognizing that the smart meter is now the standard meter equipment for all CMP customers, the PUC has directed CMP to provide an "opt-out" option for customers, and in addition to develop a communication plan to inform customers about the opt-out program.¹ The Bath Ordinance simply is not needed to give customers in Bath the choice of whether or not to receive a smart meter, and indeed, will impose an obligation on Bath residents to pay the extra cost of a non-standard meter unless they affirmatively request what the PUC has determined is standard equipment.

Third, CMP strongly believes that the Moratorium Ordinance will not survive a court challenge based on state and federal preemption. The Ordinance conflicts with both the FCC's exclusive jurisdiction discussed above and the PUC's mandate under Maine law to establish smart grid policy in the State. Moreover, given the PUC's Order allowing customers to opt out of the smart meter program and requiring CMP to develop a communication plan to inform customers of that option, CMP further believes that the Ordinance is unnecessary to protect Bath consumers. In the interest of avoiding the expense and effort of litigation, CMP accordingly urges the Council to reconsider and rescind the Moratorium Ordinance immediately.

Thank you in advance for sharing this letter with the Council members.

Sincerely,



Jared S. des Rosiers

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¹ CMP understands that among the reasons for the City Council's passage of the Ordinance was the concern that CMP might challenge the PUC's decision to allow opt-outs, and, if the Company prevailed, residents might lose their opportunity to refuse the installation of a smart meter. A Commission decision must be appealed no later than 21 days after the issuance of an Order – in this case, no later than June 9th. CMP does not intend to challenge the Commission's decision, and in any event will soon be precluded from doing so. The Company has already submitted revised Terms and Conditions to comply with the Commission's order.