

'Smart Meters'... The New Silent Killer - Pt 2

By Devvy
9-2-11



At the end of Part I , I posed these questions:

Can you opt out of having a 'smart meter' in your state?
What if I already have one installed? Should I file a lawsuit?
Is there a state or federal law requiring a 'smart meter' be installed on your home or business?

This mess is a complicated issue with states around the country doing one thing while another is doing nothing.

Regarding lawsuits: One thing I have learned over the past two decades from brilliant constitutional attorneys who have become dear friends - never, ever go into court poorly prepared because the end result is bad case law on the books.

We when feel threatened or harmed, the first inclination is to file a lawsuit. But, due to millions of laws on the books at both the federal and state level, one becomes frustrated and driven to insanity by tracing one statute to the next from one bureaucracy to another. Here in Texas, a lawsuit over the 'smart meter' failed because of jurisdiction. On Aug. 13, 2010, Texas Civil District Court judge Lorraine Raggio dismissed a class action lawsuit against ONCOR. That case was about new smart meters overcharging customers by ONCOR. Judge Raggio ruled that the Public Utility Commission of Texas (PUCT) was the entity that had to be approached for looking into and ruling on the accuracy of the meters.

There was another unsuccessful lawsuit filed earlier this year, Cynthia Johnson v ONCOR, which had a lot of good arguments, but, again, wrong jurisdiction. There is a central theme regarding the 'smart meter' onslaught which appears in the filings in the Johnson case. The first I read about it was in the letter from ONCOR to me:

In ONCOR's response to Ms. Johnson, they, of course, make the claim there are no health risks involved, but also bring forward the pesky little jurisdictional issue - page 18. ONCOR falls under the jurisdiction of the Texas PUC. On page 20, the discussion begins regarding something known as PURA. As you can see on page one of the letter to me from ONCOR, they talk about PURPA. All of this revolves around whether or not there is a federal or state law which requires anyone to have the specific 'smart meter'. Now, I spent

a considerable amount of time researching this, including the law cited by ONCOR in their letter to me, H.B. 2129, which uses the word "encourages" not mandatory.

I also was sent this very valuable piece of comprehensive research on this important question:

Smart Meters: No Federal Mandate

How about here in Texas? In ONCOR's letter, they site the previously mentioned bill, H.B. 2129

Please note this part of that law:

SECTION 6. Chapter 31, Utilities Code, is amended by adding Section 31.005 to read as follows:

Sec. 31.005. CUSTOMER-OPTION PROGRAMS. (a) This section applies to:

- (1) a municipally owned electric utility;
- (2) an electric cooperative;
- (3) an electric utility;
- (4) a power marketer;
- (5) a retail electric provider; and
- (6) a transmission and distribution utility.

And:

- (5) a program that encourages the deployment of advanced electricity meters;

Encourages does not mean mandatory.

On August 29, 2011, my state representative, Jim Landtroop, forwarded me email from Gabriel Cardenas, Legislative Assistant, Governmental Relations Division, Public Utility Commission of Texas, who opened his email with this statement:

As you may know, in 2005, the federal government passed legislation that required states to consider the adoption of advanced metering infrastructure (Energy Policy Act of 2005). That same year, the Texas Legislature adopted law that encouraged the deployment of new advanced metering technology.

The Public Utility Commission of Texas (PUC) then established standards for the features and deployment of the smart meters (PUC Substantive Rules 25.130).

Consider and encouraged does not mean mandatory.

Going to the URL provided by Mr. Cardenas, here, one sees this on page one for 25.130:

(d) Deployment and use of advanced meters.

(1) Deployment and use of AMS by an electric utility is voluntary unless otherwise ordered by the commission.

So far, I cannot find any such order by the Texas PUC.

There is one other source I need to cite and wish to thank Debra Medina (who ran for Governor here last year against Rick Perry; I voted for her) for bringing it to my attention: Texas Utilities Code - Section 39.107.

Metering And Billing Services

Debra was told by JP Urban at the PUC that Sec. 39.107 of the Utilities Code provides the authority for installation of the meters and in fact, "he said, was the directive to install the meters." Debra disagrees with his statement and after reading it, so do I.

Now, let's go back to page two of ONCOR's letter to me (image above). They provide fine print stating they have the right to enter a retail customer's premises to do this that and the other. I am not a retail premise nor is my personal residence.

So, where do we stand legally? Citizens in dozens of states are fighting with their utility companies. They are sending letters telling the utility company to stay off their property. They are putting locks on their old analog meters so a utility company's installer can't remove their old meter. They are spending money to purchase kits (\$299.00) in an effort to keep the 'smart meter' from functioning the way it is supposed to when installed. However, in my opinion, the utility companies are going to find out and come after the homeowner for tampering with their equipment and then the homeowner will have even more legal problems.

First thing you must do is research the rules and laws set by your state's PUC (Public Utility Commission).

The aforementioned lawsuits were thrown out because the plaintiffs did not take their case to the PUC first. I can't tell anyone what to do, but based on those couple of court decisions already on the books, I would not recommend filing a lawsuit until you exhaust your right to petition your state PUC and see what they rule. You can retain legal counsel and ask others in your state to become petitioners (see below). There are a lot of lawyer jokes out there, but when you're dealing with state bureaucracies where billions of dollars (and political cloud is purchased by lobbyists), you absolutely need qualified legal counsel to represent you.

Many folks are printing out some of the expert opinions listed at the bottom of my first column and presenting them at city council meetings to let folks know how dangerous

those meters are. However, as has been the case over and over in California with almost two dozen counties banning the meters, I'm afraid it's largely symbolic as it all goes back to the PUC. Out there, PG & E continues to install those meters regardless of what city councils have voted because they know the California PUC has jurisdiction. It's good to attend a city council meeting and hand out a nice flyer with facts, but the real fight has to be with your state PUC first while you petition your state representative.

I recommend you write a snail mail letter to your state representative (regardless if they're out of session or not) if you have or are experiencing new health issues that did not exist before the 'smart meter' was attached to your home. List your new health problems. Tell your state representative that your legislature must step up now and pass a simple law that says no citizen, owner of an apartment building or retail or commercial building can be forced to have one of those 'smart meters' forcibly installed. You can print out (or simply dump all onto a CD) the expert opinions provided at the bottom of my first column and include it with your letter. Putting it onto a CD is more cost effective and your state rep can just pop it into his/her computer. Politely remind your state rep next year is an election year and do they want one of those dangerous things on their home?

You can notify your utility carrier that you refuse to have them install the meter, but, they can and will shut off your power.

As I said in my first column, the only reason there isn't a 'smart meter' now attached to my home is I have locks on my six foot fences and ONCOR can't get into the back yard unless I unlock the gates. At this point in time, they have lied about access to our home, but that will be addressed at our hearing. Here in Texas, the PUC has a law on the books that utility companies cannot shut off the power to a home that has a disabled person residing there. That is the only thing that has kept ONCOR from flipping the switch and turning off my power because my husband has a long list of serious health problems. ONCOR was notified of this prior to their July 20, 2011, letter via certified mail.

Of course, that didn't stop ONCOR in their letter; image two at the bottom of the page where they threaten to 'suspend' delivery of power to my home knowing full well they would be in violation of PUC law. My case can be the second landmark case in the country. Texas is a huge state compared to Maine as far as getting a favorable decision for the rest of the country. PUC's watch what other ones are doing throughout the country.

If you read my first column, you know I have retained legal counsel to present our arguments to the Texas PUC. My husband and I are petitioners. Hiring legal counsel costs a great deal of money and like many, John and I live on a fixed income. A few people have come forward who are able to contribute financially to my case and are now petitioners. They have sent their checks in various amounts. We are pooling those funds so the financial burden gets shared, just as the folks did in Maine. Tommy Cryer is our attorney representing us as petitioners. He will be filing for a hearing in front of the Texas PUC. I am still gathering some documentation for him and checking a few more things

with the Texas PUC, so this isn't going to happen tomorrow. We only have one shot at this so we need to be fully prepared.

If you would like to become a petitioner in my case as a few others have done, please contact me by email: devvyk@earthlink.net and I will give you the specifics as well as what we can expect as far as the financial burden. In the end, John and I will be responsible if not enough funds are available at the end of the case. But, the more petitioners we have who can contribute financially to the legal defense fund, well, the easier it will be for all of us. I have been doing all the research so far regarding health issues and the information provided above regarding laws here in Texas to cut down on billable hours, but Tommy will have to do the legal part.

To date, the utility companies here in Texas (and elsewhere) are simply picking people off one by one. The more numbers we have as petitioners in front of the PUC, the more clout we will have and not just financially.

If you decide to join my case here in Texas and become a petitioner, you will not have to appear at the hearing as Tommy will be representing all of us. No hearing date is set yet, but all petitioners in my case will be kept up to date as we carefully proceed.

If you live in the State of Texas, this case is very important and can have a tremendous impact in other states. We will have two issues before the PUC:

1. Can any utility company in Texas force you to allow them to install a 'smart meter' on your home against your wishes even though there is no federal or state law requiring installation?

With the amount of expert opinions warning 'smart meters' are a "ticking time bomb against human beings," I believe we can win this argument because as far as I can find from all my research, there is no mandatory requirement for the specific 'smart meter'. This is all about massive amounts of money for the utility companies and that 'smart grid'.

2. Your utility company installed a 'smart meter' on your property without your knowledge and without informing you of the very real risks involved. Can the Texas PUC legally force the utility company to remove the 'smart meter' and reinstall the analog meters (which I have on my house)? Can the PUC force the cost of such replacement onto the utility company or will the people in Texas get reamed like they did in Maine as discussed above?

If you are unable, and I do understand, to become a petitioner in my case, perhaps you can make a donation that's comfortable for your situation. As long time readers of my columns and old newsletter dating back to the mid-1990s know, I am always up front in projects I undertake and for the rare occasion when I ask for donations, every penny goes

only for that project. If you would like to make a donation, which will be greatly appreciated, please send your check or MO to:

Tommy Cryer - Attorney at Law
7330 Fern Ave., Suite 1102
Shreveport, LA 71105

In the memo section, please write: smart meter defense fund

devvyk@earthlink.net

<http://www.devy.com>. You may also sign up for her free email alerts.