

For Immediate Release

Judge to Hear Smart Meter Disability Discrimination Case-Denies CMP Motion to Dismiss

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Portland, ME, April 1, 2021 –On July 7, 2020 Bowdoinham resident Ed Friedman filed a disability/discrimination lawsuit against Central Maine Power (CMP) in Portland’s U.S. District Court. The suit, brought under the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) and Rehabilitation Act of 1973 (Rehab Act) alleges smart meter opt out fees are discriminatory to those disabled customers whose condition may be exacerbated by emitted radiation from the meters. Friedman has lymphoplasmacytic lymphoma, an incurable form of cancer. CMP filed a Motion to Dismiss on several grounds. On Wednesday March 31, Judge Jon Levy issued a ruling denying CMP’s Motion on all counts. This allows the case to proceed and CMP has until April 14 to submit their answer to the original complaint.

While most people are familiar with the ADA, the FHA specifically protects against discrimination in the provision of housing services and the Rehab Act prohibits discrimination by recipients of federal funding. CMP received \$96 million in stimulus funding from the Department of Energy for their smart meter project.

For Friedman, opting out of the smart meter program is not a choice. His doctor recommends he not be exposed to any excess radiation in his home. According to Friedman’s oncologist, exposure to even low-level radiation from the meters may exacerbate “fatigue, cognitive difficulty, memory issues and multiple cancer types.”

CMP made three claims supporting their position the lawsuit should be dismissed: 1) that Friedman did not sufficiently allege the opt-out fee is discriminatory, 2) Friedman was precluded from relitigating the PUC’s 2016 determination that smart meters are “safe” and 3) that Friedman’s disparate impact Fair Housing Act claim must fail because the opt-out fee is a valid and generally applicable policy that the PUC requires CMP to implement.

Judge Levy noting the similarity in discrimination language between the ADA, FHA and Rehab Act, wrote: “If Friedman’s factual allegations are true—as I must assume on a motion to dismiss—then CMP’s refusal to waive the opt-out fee may constitute discrimination under all three statutes.”

In 2016 Friedman asked CMP to waive its’ opt out fees as their reasonable accommodation of his disability. CMP declined, writing there was “no basis for compromise.” When he refused to pay for the same access to safe electricity his neighbors without disabilities received without any surcharge, CMP disconnected his power and he has been without utility service since.

Levy responded to this stating: “Friedman alleges that without an analog meter, he cannot have the same “full and equal enjoyment”, 42 U.S.C.A. §12182(a), of CMP’s services made available to persons who do not have his medical condition because if he uses a smart meter, he pays the standard rate but bears a unique risk to his health. However, if he uses an analog meter, he has the same physical experience and peace of mind as a person without his disability, but with an added fee. Under this view, it is the plausible risk to Friedman’s health, not a probable physical toll, that makes a fee waiver “necessary” to afford him equal access to CMP’s services.”

CMP argued the opt-out fee is not discriminatory because they charge the same amount to everyone. But Friedman’s lawsuit responds that “this is no excuse at all. Suppose a store has both stairs and a wheelchair ramp, and it charges everyone a ‘stairs opt-out fee’ to use the ramp . . .the store is illegally discriminating against wheelchair users who, by virtue of their disability, require a ramp in order to access the store. This is true even if the store charges everyone the fee to use the ramp.”

“If CMP is going to do business in Maine, they need to follow the laws of the land – including those protecting their disabled ratepayers” said Friedman. “We are very happy with this well-reasoned decision and look forward to moving forward on this crucial matter” he added.

In a related matter, [docket 2019-00044](#) at the Maine PUC, CMP is attempting to replace ageing analog opt out meters with smart meters minus the 2-way communication module. The original PUC Opt Out orders ([2010-00345](#)) issued in 2011 required CMP to retain enough analog meters for any opt out customer requesting one. Despite no notification of their plan to the approximately 5,500 opt out customers, quite a few public comments have been filed in opposition; citing CMP’s obligation to supply analog meters, asking what happened to the company’s more than 600,000 electromechanical analog meters and pointing out the ready availability of refurbished analog meters and the need for CMP to set up a program of rolling meter refurbishments. Such a program, as other utilities engage in and at about \$10/meter, cost less and have less environmental and health effects than the new solid state smart meters CMP wants to switch to.

Mr. Friedman is represented by the [Law Offices of Bruce M. Merrill](#) and [Most & Associates](#)

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