

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

IR 15-135

EVERSOURCE ENERGY

Complaint by Jesse Mertz against Eversource Energy

Order Finding No Further Action Warranted

ORDER NO. 25,802

July 29, 2015

In this order, we find that no further action against Eversource Energy is warranted regarding Jesse Mertz's complaint that Eversource installed "smart meter gateway devices" (SMGDs) at his property without his consent. RSA 374:62 does not apply because the meters are not actively performing the functions necessary to qualify as SMGDs.

I. PROCEDURAL HISTORY

Jesse Mertz filed a complaint alleging Eversource Energy installed meters at his property that are "smart meter gateway devices" without obtaining his consent in violation of [RSA 374:62](#), II. The Commission forwarded the complaint to Eversource pursuant to [N.H. Admin. Rule Puc 204.05](#). Eversource filed a response with attachments that included the affidavit of Michael Coit, a Senior Engineer in Eversource's Substation and Meter Engineering department (Coit Affidavit). All filings in this docket, other than any information for which confidential treatment was requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-135.html>.¹

¹ Mr. Mertz's complaint is part of the docket entry dated May 7, 2015, and labeled, "Sec Ltr addressing complaint by Jesse Mertz against Eversource Energy."

II. POSITIONS OF THE PARTIES AND STAFF

A. Jesse Mertz

Mr. Mertz argues that the meters Eversource installed at his properties are SMGDs because they contain “ZigBee” chips that are capable of performing the functions of an SMGD. Mr. Mertz alleged that “the ZigBee radio chip is physically present, as installed as non-optional standard equipment from the manufacturer, Itron.” Mertz Complaint at 6. Mr. Mertz described the capabilities of the ZigBee chip and attached and quoted literature from the manufacturer: “ZigBee is specifically designed to facilitate monitoring, control and sensor application;” “the ZigBee capability in AMI systems delivers energy management benefits both in front of as well as behind the meter.” *Id.* at 5. Mr. Mertz argues the meters are capable of the advanced communication required to be an SMGD and that the meter’s capability, and not its actual use, should determine whether it is an SMGD.

[T]he fact that . . . “PSNH has stated the meter(s) installed at your premise are not going to be used as a smart meters” does not change the fact that they are indeed present and installed, and do in fact physically contain ZigBee “smart meter gateway device(s).” To illustrate, the fact that I am not using the pen in my pocket to type this letter today makes it no less a pen in my pocket.

Id. at 2. Mr. Mertz requests an order directing Eversource to remove the meters because he did not consent to their installation. *Id.* at 7.

B. Eversource Energy

Eversource argues that the meters installed at Mr. Mertz’s property are not performing the functions necessary to be considered SMGDs under RSA 374:62. According to Eversource, for purposes of this case, there are three types of “smart” meters. The least capable basic smart meters merely automate the meter reading process by wirelessly transmitting to a vehicle the usage information that a meter reader otherwise would obtain by looking at an analog meter.

Eversource's version of the basic smart meter is the CENTRON C1SR R400 (the R400 meter). Coit Affidavit at ¶4. The R400 meter is not an SMGD and is not at issue in this docket. The most capable type of smart meter "communicates with, monitors, or controls" household appliances, such as remotely turning on and off devices as part of a demand response program, and thus satisfies the statutory requirements of an SMGD. RSA 374:62, I(a). Although Eversource acknowledges that its vendor makes such a meter, called the OpenWay CENTRON meter (OpenWay meter), Eversource states that it has not purchased any OpenWay meters. Coit Affidavit at ¶6.

The third type of smart meter is what Eversource says it installed at Mr. Mertz's property, the CENTRON Bridge meter (Bridge meter). Eversource states that the Bridge meter provides "some functions that are more advanced than the ... R400 meters, but those [additional functions] are limited to the ability to remotely (from a nearby vehicle or location) disconnect or reconnect electrical service via a switch in the meter." *Id.* at ¶5. Eversource acknowledges that the Bridge meter and the OpenWay meter look the same. "[T]he OpenWay CENTRON meter [has] essentially the same hardware as a CENTRON Bridge meter and both show the term 'OpenWay' on their faces." *Id.* at ¶6. Eversource also acknowledges that the Bridge meters "do have a ZigBee chip or module installed." *Id.* at ¶5. According to Eversource, however, there are significant differences between the OpenWay and Bridge meters. The "firmware" in the Bridge meter does not allow it to "communicate with, individually monitor, or control such appliances, equipment or devices." *Id.* Mr. Coit explained: "Should a willing customer install equipment capable of communicating with a meter, such equipment could not communicate with Eversource's [Bridge] meters because they are not configured to allow such communication." *Id.* Mr. Coit stated that at the "completion of the AMR [automatic meter reading] project [during

which Eversource will replace 550,000 meters] Eversource will not have any meters that are configured to communicate with customer devices.” *Id.* at ¶¶4, 6. Eversource thus argues that the Bridge meters do not perform the advanced functions necessary to be SMGDs. In the alternative, Eversource argues that even if the statutory standard is whether the meters are capable of performing the SMGD functions, the Bridge meters do not have that capability.

III. COMMISSION ANALYSIS

The issue is whether the meters Eversource installed are SMGDs as defined by the statute. If they are, then RSA 374:62, II, requires Eversource to have obtained Mr. Mertz’s prior consent.

“Smart meter gateway device” means any electric utility meter ... which is located at an end-user’s residence or business, *and which serves as a communications gateway or portal to electrical appliances, electrical equipment, or electrical devices within the end-user’s residence or business, or which otherwise communicates with, monitors, or controls* such electrical appliances, electrical equipment, or electrical devices.

RSA 374:62, I(a) (emphasis added). Through its use of the active verbs “serves,” “communicates,” “monitors,” and “controls,” the plain language of the statute requires a device to be performing one or more of these functions in order to be an SMGD and trigger the consent requirement. Having the capability to perform those functions in the future does not meet the statutory definition.

Appeal of Town of Seabrook, 163 N.H. 635 (2012), supports this interpretation of the active verbs in RSA 374:62. In that case, the Supreme Court addressed whether equipment at Seabrook Station designed to “collect, contain, and process airborne contaminants that would otherwise be released to the atmosphere during and subsequent to abnormal operating conditions” qualified for a property tax exemption under RSA 72:12-a. *Appeal of*

Town of Seabrook, 163 N.H. at 644. The statute exempted the value of such “air pollution control equipment” from property taxes “for the period of years in which the [equipment] *is used* in accordance with the provisions of this section.” RSA 72:12-a, I (emphasis added). In *Appeal of Town of Seabrook*, the court found that the facilities in question were not being used, but were to protect against an emergency. “Thus, the only thing that can be said with certainty is that these facilities have the potential to treat something in the case of an accident.” 163 N.H. at 646. The court concluded that the facilities’ potential use, rather than actual use, rendered them ineligible for the tax exemption. *Id.*

The Legislature, if it so intends, knows how to include language that would support Mr. Mertz’s interpretation that RSA 374:62 applies to meters capable of performing the functions of an SMGD. *See, e.g.*, RSA 146-A:2 (“Oil pipeline facility’ means any intrastate pipeline structure ... that *is used or capable of being used* for pumping ... or storing oil”) (emphasis added); RSA 260:75 (“Apportionable vehicle’ means ... any power unit that *is used or intended for use* in 2 or more member jurisdictions”) (emphasis added). The Legislature did not put such language in RSA 374:62 and we cannot add what the Legislature chose not to include. *State v Thompson*, 164 N.H. 447, 448 (2012).²

We find convincing the evidence provided in Mr. Coit’s affidavit that the Bridge meters at Mr. Mertz’s property are not serving as a communications gateway or portal to Mr. Mertz’s electric devices. The only function they can perform beyond simple meter reading is to remotely disconnect or reconnect electrical service through a switch in the meter. Therefore, we find that

² Although legislative history is relevant only after finding a statute to be ambiguous, *In re Alex C.*, 161 N.H. 231, 240-241 (2010), and we do not find the relevant portion of RSA 374:62, I(a) ambiguous, we note that two bills failed to pass that would have amended RSA 374:62 in a manner supporting Mr. Mertz’s position. In 2013, [HB 454](#) required consent to install any “smart meter” and broadly defined “smart meter” to include even the basic smart meters. This year, [HB 342](#) proposed a definition of SMGD that included a “device *capable of* being read through a wired or wireless network.” (Emphasis added.) Both bills were deemed “inexpedient to legislate.”

they are not SMGDs and Eversource did not have to obtain Mr. Mertz's consent. Mr. Mertz's argument that we should look at the meter's capabilities fails in light of the clear statutory language that the definition turns on their current function. The statute's plain words also obviate the need to address Eversource's alternative argument that the Bridge meters did not even have SMGD potential.

This finding is not inconsistent with *New Hampshire Electric Cooperative*, Order No. 25,409 (Sept. 6, 2012), where a customer similarly complained that the New Hampshire Electric Cooperative (NHEC) installed an SMGD without her consent. NHEC explained that it had two types of smart meters – a basic meter similar to Eversource's R400 meter and an advanced meter similar to the OpenWay meter. NHEC's advanced meter had a ZigBee transmitter. *Id.* at 4-5. Mr. Mertz cites and relies on the following statement from Order No. 25,409:

NHEC properly recognizes its Zigbee-equipped Elster Type R2S meters as smart meter gateway devices pursuant to RSA 374:62. According to NHEC, it only provides its Zigbee-equipped Elster Type R2S meters to customers who have volunteered to have them as part of a pilot program. Those meters are not at issue in this proceeding.


Id. at 9 (emphasis added). Mr. Mertz characterizes the first sentence as an acknowledgement by the Commission that *any* ZigBee-equipped meter is an SMGD. Mertz Complaint at 3. That is incorrect. The Commission merely accepted NHEC's admission that its Elster Type R2S meter is an SMGD. As described by Mr. Coit, two meters with a ZigBee chip can have very different capabilities, depending on how the chip and meter are configured. Order No. 25,409 does not support Mr. Mertz's claim.

Based upon the foregoing, it is hereby

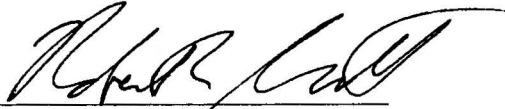
ORDERED, that Mr. Mertz's complaint does not "warrant further action against"

Eversource Energy. Puc 204.05(a).

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of
July, 2015.

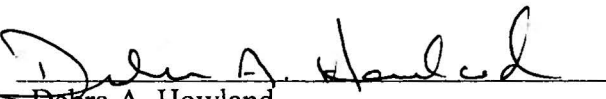


Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director