

January 5, 2021

ELECTRICITY MAINE, LLC  
Application for License to Operate as a  
Competitive Electricity Provider

ORDER ON STIPULATION

BARTLETT<sup>1</sup>, Chairman; WILLIAMSON<sup>2</sup>, and DAVIS, Commissioners

---

**I. SUMMARY**

In this Order the Commission rejects a stipulation filed by Electricity Maine, LLC (Electricity Maine) and the Office of the Public Advocate (OPA) because the Commission concludes the stipulation does not satisfy the Commission's regulatory standards for approving stipulations. The Commission, therefore, directs the parties to file exceptions to the pending Examiners' Report within two weeks of the date of this Order, and provides parties with an opportunity to file a revised stipulation.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

On April 15, 2020, Commission Staff issued an Examiners' Report. The Examiners' Report recommends the Commission find and conclude that Electricity Maine, after having been put on notice of the serious nature of customer complaints against it, repeatedly engaged in false and deceptive statements associated with its door-to-door marketing activities in violation of the customer protection standards set forth in 35-A M.R.S. § 3203 and Chapter 305 of the Commission's Rules. The Examiners' Report recommends, among other things, revocation of Electricity Maine's license to operate as a competitive electricity provider (CEP) following the transfer of its customers to an alternative CEP or to standard offer service. Staff provided parties with a May 8, 2020 deadline to file exceptions.

On May 1, 2020, new counsel entered an appearance on behalf of Electricity Maine and requested an enlargement of time to May 22, 2020 to file exceptions to the Examiners' Report. Commission Staff granted the request.

On May 22, 2020, Electricity Maine informed the Commission that it had reached "a definitive agreement" with the OPA on the terms of a stipulation and it requested the deadline for exceptions be postponed indefinitely while the Commission considered the

---

<sup>1</sup> Chairman Bartlett concurs in part and dissents in part from this Order. His dissent is appended to this Order.

<sup>2</sup> Commissioner Williamson joins in this Order. His separate concurrence is appended to this Order.

anticipated stipulation. Electricity Maine stated it expected to file the stipulation “no later than the week of June 1, 2020.” The OPA supported this request. Commission Staff granted the request.

On November 17, 2020, six months after Electricity Maine’s notification that a definitive agreement had been reached, Electricity Maine filed a proposed stipulation. The OPA filed comments in support of the proposed stipulation. Generally, the terms of the proposed stipulation would allow Electricity Maine to continue to serve Maine customers and engage in marketing activities, except for door-to-door marketing, and would require it to pay an administrative penalty to the Commission and additional funds to the OPA.

### **III. LEGAL STANDARD**

In reviewing and approving stipulations, the Commission’s Rules of Practice and Procedure, Chapter 110, require the Commission to consider the following criteria:

- 1) Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) Whether the process that led to the stipulation was fair to all parties;
- 3) Whether the stipulated result is reasonable and is not contrary to legislative mandate; and
- 4) Whether the overall stipulated result is in the public interest.

MPUC Rules, ch. 110, § 8(D)(7). In deciding whether a stipulation is reasonable, fair and consistent with the public interest, the entire stipulation must be considered as a package. Whether the Commission disagrees with a particular provision of a stipulation or would have reached a different result were it to decide the case after litigation is not the question. Rather, the question is whether the stipulation when viewed as a whole is fair, reasonable, and consistent with the public interest.

For the reasons discussed in this Order, the Commission concludes that all the criteria for approval have not been satisfied in this instance.

### **IV. DISCUSSION**

Under the terms of the proposed stipulation, Electricity Maine would pay an administrative penalty and conditionally retain its license to operate as CEP in Maine. Electricity Maine would agree to, among other things, withdraw permanently from door-to-door marketing in Maine and allow its residential customers whose contracts originated from door-to-door solicitation to terminate their contracts without an early termination fee. Electricity Maine would pay a \$500,000 administrative penalty pursuant to 35-A M.R.S. § 1508-A to be disbursed at the Commission’s discretion pursuant to 35-A M.R.S. § 117(3). Electricity Maine supports the funds being used by the Commission for a residential customer education program. Electricity Maine would contribute an

additional \$150,000 to a fund to be administered by the OPA in consultation with the Commission Staff for the purpose of educating residential customers about electric industry restructuring and the competitive retail supply market. Finally, the proposed stipulation includes other terms intending to ensure that Electricity Maine complies with applicable regulatory requirements when engaging in all sales channels and that the Commission, OPA, and Electricity Maine's customers have access to Electricity Maine personnel to assist with any future questions or concerns.

The Commission concludes that the provision in the proposed stipulation that would provide funds to the OPA is not consistent with legislative mandate. Title 35-A authorizes the assessment of utilities to fund the OPA, and those funds are designed to provide "sufficient revenue for expenditures allocated by the Legislature for operating" the OPA. 35-A M.R.S. § 116(8). This section further requires the OPA to submit its budget recommendations as part of the unified current services budget legislation, and the statute specifies that the recommendations are subject to legislative approval. *Id.* § 116(8)(A). The OPA must make an annual report of its planned expenditures for the year and on its use of funds in the previous year. *Id.* The Legislature has directed that the OPA may receive other funds, "as appropriated by the Legislature." *Id.* These provisions provide a legislative review and approval process for funding the OPA, and therefore the Commission does not have authority to approve a stipulation that directs funding to the OPA, in this instance a proposed payment of \$150,000.

Additionally, the Commission cannot conclude that the overall stipulated result of the proposed stipulation would be in the public interest. As set forth in the OPA's filings in the docket and as explained in the pending Examiners' Report, following the hearing, the OPA sought a one-year license suspension and an administrative penalty of no less than \$1 million. Under the terms of the proposed stipulation, there would be no suspension of Electricity Maine's license to operate as a CEP, Electricity Maine would pay a significantly smaller administrative penalty, and Electricity Maine would pay an additional \$150,000 to the OPA to fund customer education. Such an arrangement may result in a lack of confidence in the real or perceived motivations of the OPA in settlement, and thus the public interest would not be served.

## **V. CONCLUSION AND ORDER**

For the forgoing reasons, the Commission concludes the proposed stipulation does not satisfy the Commission's regulatory standards for approving stipulations with respect to consistency with legislative mandate and being in the public interest. Nonetheless, as the proposed stipulation in other regards has merit, the Commission would consider a revised stipulation, to be filed contemporaneously with exceptions to the pending Examiners' Report.

Accordingly, the Commission rejects the proposed stipulation and directs parties to file exceptions to the pending Examiners' Report no later than January 19, 2021. Parties may file a revised stipulation no later than January 19, 2021.

Dated at Hallowell, Maine this 5th day of January 2021.

BY ORDER OF THE COMMISSION

*/s/ Harry Lanphear*

---

Harry Lanphear  
Administrative Director

COMMISSIONERS VOTING FOR:     Bartlett (in part)  
   Williamson  
   Davis

COMMISSIONER CONCURRING:     Williamson

COMMISSIONER VOTING AGAINST:     Bartlett (in part)

## CONCURRING OPINION OF COMMISSIONER WILLIAMSON

I concur and join in the Commission's Order, and I write separately to address an additional ground upon which, without having had the opportunity to review exceptions to the Examiners' Report, I reject the proposed stipulation as not being in the public interest.

The complaint record, coupled with other evidence in the record from discovery and the licensing docket of Electricity Maine, is extensive with regard to the door-to-door marketing activities of Electricity Maine. The Commission has not before reviewed such widespread customer complaints of poor performance and bad acts on the part of a CEP licensed in the State of Maine. Thus, I am concerned with the remedy in the proposed stipulation, which falls short of the recommendation of the Examiners' Report to revoke the CEP license of Electricity Maine.

For these reasons, I concur and join in the Commission's Order rejecting the proposed stipulation given the proposed payment to the OPA and, thus, as not having satisfied the Commission's regulatory standards for approving stipulations. I further concur and join in requiring the parties to file exceptions to the pending Examiners' Report and providing parties an opportunity to file a revised stipulation. I write separately to raise additional concern regarding whether, on the unprecedented record before the Commission, the proposed stipulated remedy is adequate as to be in the public interest.

## DISSENTING OPINION OF CHAIR BARTLETT

I concur and join in the Commission's Order with respect to directing parties to file exceptions to the pending Examiners' Report and, given the Commission's rejection of the proposed stipulation, providing the parties with an opportunity to file a revised stipulation. I dissent, however, from the portion of the Commission's Order that rejects the proposed stipulation because, in advance of the parties filing exceptions to the pending Examiners' Report, I would not reach the merits of whether the proposed stipulation satisfies the Commission's regulatory standards for approving stipulations.

To approve a stipulation, the Commission must find that it complies with state law and is in the public interest. In light of the allegations of Electricity Maine's serious and repeated violations of Maine law and Commission rules, I question whether Electricity Maine's continued operation in Maine as a CEP is consistent with the public interest. Chapter 305 of our rules explicitly provides for license revocation for "a violation or material noncompliance with any applicable provision of law or rule administered or enforced by the Commission," or a CEP's "use of fraudulent, coercive, or deceptive practices . . . with respect to the provision" of electric supply. MPUC Rules, Ch. 305, § 3(A)(4)(b) & (d). Here, the instances of fraud and deception outlined in the Examiners' Report are deeply troubling.

As a Commission initiated enforcement action, the parties' proposed stipulation, which is directly at odds with the recommendations of the Examiners' Report, requires Commission scrutiny to ensure the public interest is served. Because this is a threshold issue, I believe it needs to be fully addressed by the parties and considered by the Commission before further evaluation of a proposed stipulation.

In the normal course, parties have an opportunity to file exceptions to an examiner's report before the Commission considers the examiner's report. That has not yet occurred here because of settlement discussions. Thus, before reaching the merits of the proposed stipulation, I would direct Commission Staff to set a schedule for filing exceptions to give the parties an opportunity to present any disagreement with the recommended findings and conclusions in the Examiners' Report. Following exceptions, the Commission would have the benefit of the parties' positions as to whether the public interest is served by the Examiners' Report, and the Commission could then consider the matter on the merits. Additionally, should the parties resubmit a proposed stipulation, the Commission could consider whether it satisfies the Commission's regulatory standards for approving stipulations.

For these reasons, while I would not yet reach the merits of the proposed stipulation and therefore dissent, I concur and join the portion of the Commission's order requiring the parties to file exceptions and providing them an opportunity to re-file a proposed stipulation.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.