

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

The Maine Office of the Public Advocate (“OPA”) and Electricity Maine, LLC (“EME”) (each a “Party” and, together, the “Parties”) hereby agree and stipulate as follows:

I. PURPOSE

The purpose of this Stipulation is to resolve all issues related to the Maine Public Utilities Commission’s (the “Commission”) Order to Show Cause issued in the above-captioned proceeding on July 24, 2018 (the “Show Cause Order”). The OPA and EME agree that the Commission should approve this Stipulation as a reasonable and comprehensive resolution of the Show Cause Order consistent with the Commission’s authority conferred by the Maine Public Utility Code.

The agreement embodied by this Stipulation has been reached as a result of evidence and other information filed in this proceeding and negotiations among EME, the OPA, and Commission Staff. The OPA and EME agree that the terms of this Stipulation comprehensively address the door-to-door marketing compliance issues presented by the Show Cause Order through, among other things, EME’s agreement to:

- (a) withdraw permanently from door-to-door solicitation in Maine;
- (b) withdraw from outbound telemarketing of Maine consumers for one year;
- (c) notify customers with contracts that originated from a door-to-door solicitation of this enforcement proceeding and afford them the opportunity

to transfer their supply service to standard offer service without a termination fee;

- (d) enter into a comprehensive sales compliance plan with the Commission and OPA that contains significant penalties for non-compliance;
- (e) pay a \$500,000 administrative penalty pursuant to 35-A M.R.S. § 1508-A (the maximum jurisdictional amount) to be disbursed in the Commission's discretion pursuant to 35-A M.R.S. § 117(3);
- (f) contribute \$150,000 into 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, retail access and similar issues related to electricity supply; and
- (g) expand the limitations imposed by 35-A M.R.S. § 3203(4-B)(C) to residential non-fixed price supply contracts.

The OPA and EME agree that this Stipulation will impose significant sanctions upon EME that are designed to address the door-to-door compliance issues that were the focus of this proceeding. The Stipulation ensures that similar conduct during door-to-door solicitations will not recur as EME agrees to withdraw permanently from engaging in residential door-to-door solicitation and accepts other penalties described in Section III below. Although the sanctions are substantial, they are also tailored to avoid revoking EME's competitive electricity provider ("CEP") license or otherwise putting EME out of business. Broad remedial measures that put EME out of the competitive supply business would not only affect thousands of customer relationships that were never involved in a door-to-door solicitation with EME, but also would eliminate a significant participant in the

competitive electricity supply market. Accordingly, the OPA and EME agree that this Stipulation strikes an appropriate balance between imposing appropriate sanctions upon EME that are tailored to address door-to-door solicitations, while ensuring that there are a sufficient number of participants in the retail supply market to foster robust competition.

Finally, the OPA and EME further agree that the terms of this Stipulation are in the public interest. The OPA and EME commit to working together in good faith to obtain Commission approval of this Stipulation without material modification.

II. PROCEDURAL HISTORY RELATED TO THE SHOW CAUSE ORDER

A. The Commission's Show Cause Order.

The Commission's Show Cause Order alleges that the Commission and Central Maine Power Company ("CMP") received numerous complaints and inquiries regarding EME's door-to-door sales activities during early 2018. (Show Cause Order at 2.) The complaints identified by the Commission included: (a) EME door-to-door marketers posing as representatives of CMP, claiming that rates were about to increase and offering to lower or freeze customers' rates; (b) EME door-to-door marketers claiming to be checking customer meters to ensure correct billing; (c) EME door-to-door marketers claiming to be auditors investigating CMP billing problems and offering to lower or freeze customers' rates pending the investigation; and (d) EME door-to-door marketers claiming that CMP's rates were about to increase and that customers could protect themselves by locking into a reduced rate with EME. (*Id.*) The Show Cause Order directed EME to provide a response to the allegations by August 12, 2018.

B. The Commission's Adjudicatory Proceedings on the Show Cause Order.

On August 13, 2018, EME responded to the Show Cause Order, acknowledged the

serious nature of the allegations and explained that EME was committed to operating its door-to-door sales program in a manner consistent with Maine law. (EME August 13, 2018 Response to Show Cause Order at 1.) EME also provided background on its door-to-door marketing program, including its sales agent training program and compliance program. (*Id.* at 3-5, 8-13.) Finally, EME requested a hearing if the Commission were to seek to impose any sanctions related to the Show Cause Order. (*Id.* at 15.)

On February 6, 2019, the Hearing Examiners issued a Procedural Order setting a deadline for petitions to intervene and setting a case conference to address pre-hearing procedures. The OPA filed a Petition to Intervene on February 7, 2019. By a Procedural Order dated May 10, 2019, the Hearing Examiners granted the OPA's intervention and set a procedural schedule that included the filing of the complaint record, prefiled testimony of EME, discovery, a technical conference, a hearing and post-hearing briefing. On May 23, 2019, EME submitted the prefiled direct testimony of Kira Jordan. From late May 2019 through mid-July 2019 the Commission and OPA conducted discovery on EME's testimony, and pre-hearing procedures were conducted consistent with the Hearing Examiners' Procedural Orders.

An evidentiary hearing on the Show Cause Order was held on July 17, 2019. EME's pre-filed direct testimony was officially presented, and EME's witness was cross examined by the OPA, Commissioners and Commission Staff.

Post hearing briefs were filed by EME and the OPA on August 30, 2019 and reply briefs were filed on September 10, 2019. On April 15, 2020, the Hearing Examiners issued an Examiners' Report (the "ER"). The Examiners' Report provided a detailed description of the complaints related to EME's door-to-door sales activities from November 2017 to June

2018 and proposed findings related to the complaints. (ER at 21-53.) The Examiners' Report recommended that the Commission find EME's door-to-door sales practices violated the consumer protection standards set forth in 35-A M.R.S. § 3203(4-A) and Chapter 305, § 4(B)(12) and (13) of the Commission's administrative regulations.¹ (*Id.*) As for sanctions, the Examiners' Report recommended that EME's CEP license be revoked because revocation would be "the most effective means to deter and place a hard stop" on the door-to-door sales practices discussed in the Examiners' Report. (*Id.* at 68-69.)

C. The Settlement Discussions and Negotiations Among EME, the OPA and Commission Staff.

Beginning on or about April 2, 2020, the OPA and EME began a series of discussions and negotiations designed to address the door-to-door sales issues identified in the Show Cause Order and resolve the alleged violations of Section 3203(4-A) and Chapter 305.

The negotiations between the OPA and EME included discussion of issues relevant to the determination of appropriate sanctions. For example, during the negotiations EME explained that, although residential door-to-door sales were the focus of the Show Cause Order and the related proceedings, residential customers enrolled through door-to-door sales are only one segment of EME's residential customers. Specifically, EME also serves customers who were enrolled through incoming consumer web site inquiries and outgoing telemarketing. In addition to its residential customers who were enrolled through various means, EME also has a significant commercial book of business that it has grown through brokers and competitive bid processes (not door-to-door solicitations). In fact, EME's customer account mix is approximately 93% residential and 7% commercial. Thus,

¹ 65-407 C.M.R. ch. 305, Licensing Requirements, Annual Reporting, Enforcement and Consumer Protection Provisions for Competitive Provision of Electricity ("Chapter 305").

revocation of EME's CEP license would prevent EME from providing competitive supply service to thousands of commercial and residential customers that were never involved in a door-to-door solicitation.

In addition, during the negotiations, EME explained that its parent, Spark Energy, had experienced significant changes in its senior executive team since mid-2019 and that responsibility for retail sales within the company had been restructured to place greater emphasis on sales operations and compliance. The changes in senior management, which are summarized in Attachment A to this Stipulation, include a new Chief Executive Officer (eff. March 2020), a new Chief Financial Officer (eff. June 2019), a new Chief Operating Officer (eff. March 2020) and a new Interim General Counsel (eff. January 2020). The Chief Operating Officer position is new as of March 2020 and includes responsibility for all retail sales channels for Spark Energy's subsidiaries. All sales responsibilities were placed with the Chief Operating Officer to improve operational and compliance processes (which were formerly the responsibility of an Executive Vice President position that was closed in late 2019).

Finally, during the negotiations, the OPA was clear and unequivocal that EME should incur a substantial penalty related to the door-to-door sales activities identified in the Examiners' Report. Although the OPA believed that the changes in senior management were a positive step and that EME customer relationships acquired through means other than door-to-door solicitation should not be disrupted, the OPA emphasized that the door-to-door sales conduct was serious and that a significant penalty targeted at door-to-door sales was warranted. Accordingly, the OPA and EME negotiated a joint stipulation that included terms focused on addressing EME's door-to-door conduct and avoiding a

recurrence of such conduct. .

On May 21, 2020 the OPA and EME presented a draft stipulation to Commission Staff for their review and comment. During the summer and early fall of 2020 there were a series of telephone conferences and e-mails among representatives of Commission Staff, the OPA and EME during which positions on the terms of an appropriate settlement of the Show Cause Order were discussed. During a September 17, 2020 conference call among representatives of EME, the OPA and Commission Staff, a settlement framework was discussed and the terms discussed during that conference call are included in this Stipulation. Additional terms that are included in this Stipulation are the result of telephonic and e-mail negotiations between the OPA and EME between September 25 and October 2, 2020.

This Stipulation is the culmination of a challenging, months-long negotiation among the OPA, EME and Commission Staff and represents significant efforts to develop a settlement framework that tailored to address comprehensively the door-to-door issues identified in this proceeding, while maintaining the integrity of Maine's competitive supply market.

III. RECOMMENDED APPROVALS AND FINDINGS

As the full and final resolution of the Show Cause Order, the Parties agree and recommend that the Commission issue an order that approves, accepts, and adopts this Stipulation as just and reasonable and in the public interest.

A. EME Will Withdraw Permanently From Door-to-Door Solicitation in Maine and Abstain From Outbound Telemarketing of Maine Consumers for One Year.

Upon the Commission's order approving this Stipulation becoming final and non-appealable, with regard to Maine consumers EME agrees to:

- (1) withdraw permanently from engaging in residential door-to-door solicitation; and
- (2) abstain from outbound telemarketing for a period of one year.

The OPA and EME agree that EME's permanent withdrawal from residential door-to-door sales is a significant penalty that is tailored to ensure that the door-to-door conduct that was the focus of the Show Cause Order and Examiners' Report will not recur. In addition, although neither the Show Cause Order nor the Examiners' Report addressed any complaints with regard to outbound telemarketing activities conducted by EME, EME agrees to a one-year stayout as a sanction for the purpose of resolving the Show Cause Order.

The marketing restrictions in this Section III(A) are limited solely to residential door-to-door solicitation and outbound telemarketing and do not affect or limit in any way other methods or modes of marketing, solicitation or sale that may be conducted in accordance with Maine law.

B. EME Will Notify Customers With Contracts That Resulted From a Door-to-Door Solicitation of the Opportunity to be Transferred to Standard Offer Without a Termination Fee.

Within 20 days of the Commission's order approving this Stipulation becoming final and non-appealable, EME will send notification (by U.S. Mail and electronic mail) to all customers with an EME contract that resulted from a door-to-door solicitation that:

- (1) the Commission commenced an enforcement proceeding against EME that resulted in enforcement action being taken against the Company;
- (2) summarizes the material terms of this Stipulation;
- (3) provides the customer with their then-current EME contract rate and the then-current standard offer rate available through the customer's transmission and

- distribution utility;
- (4) offers to transfer the customer's supply service from EME to the transmission and distribution utility's standard offer service without an early termination penalty; and
 - (5) provides the customer a toll-free number to contact EME for the purpose of transferring their EME supply service to the utility's standard offer service in accordance with the notification.

Upon being contacted by a customer eligible to transfer their EME supply service to standard offer pursuant to this Section III(B) and EME being directed by the customer to transfer their supply service to standard offer, EME will communicate by the end of the next business day with the customer's transmission and distribution utility to process the transfer of the customer's supply service to the utility's standard offer service without penalty in accordance with the utility's account transfer procedures.

The OPA and EME agree that requiring EME to provide this notification to EME's customers with contracts resulting from a door-to-door solicitation and allowing the customer to transfer their supply service to their utility's standard offer service without penalty is a significant sanction for EME. In addition, this term will ensure that all EME customers who have an EME contract that resulted from a door-to-door solicitation, regardless of whether the solicitation occurred during the period identified by the Commission's Show Cause Order or the Examiners' Report, will have the opportunity to transfer their service to standard offer without penalty. Like EME's agreement to withdraw permanently from door-to-door solicitations in Maine, this term is tailored to address concerns related to door-to-door solicitations that were the focal point of this proceeding.

C. EME Will Pay a \$500,000 Administrative Penalty Pursuant to 35-A M.R.S. § - 1508-A(1)(A) to be Distributed by the Commission in its Discretion Pursuant to 35-A M.R.S. § 117(3).

Within 20 days of the Commission's order approving this Stipulation becoming final

and non-appealable, EME will pay to the Commission pursuant to 35-A M.R.S. § 1508-A(1)(A) an administrative penalty in the amount of \$500,000. The OPA and EME acknowledge and agree that \$500,000 is the maximum penalty the Commission is authorized to impose pursuant to Section 1508-A(1)(A) on this record for a related series of violations of the consumer protection standards set forth in 35-A M.R.S. § 3203(4-A) and Chapter 305, § 4(B) of the Commission's Rules.

EME and the OPA acknowledge that the administrative penalty will be deposited into the Commission's Reimbursement Fund and distributed by the Commission pursuant to 35-A M.R.S. § 117(3). Nothing in this Stipulation prohibits either Party from advocating a position before the Commission as to how the administrative penalty should be distributed by the Commission in accordance with Section 117(3).

D. EME Will Contribute \$150,000 to Residential Consumer Education Fund to be Administered by the OPA.

Within 30 days of the Commission's order approving this Stipulation becoming final and non-appealable, EME will pay \$150,000 into a residential consumer education fund to be administered by the OPA. The purpose of the fund will be to educate residential customers about electric industry restructuring, retail access and similar issues related to electricity supply. The timing, structure and other details regarding the education program will be determined by the OPA, in its discretion after consulting with the Commission staff and without interference by EME.

EME and the OPA acknowledge and agree that consumer education is important to assist residential customers in their understanding of electric industry restructuring, the difference between delivery and supply charges, the consumer's ability to choose a retail supplier and other issues relevant to electricity supply. EME's contribution to the OPA's

consumer education fund is in addition to the \$500,000 administrative penalty EME will pay to the Commission pursuant to Section III(D) of this Stipulation.

E. EME Will Enter Into a Comprehensive Sales Compliance Plan with the Commission and the OPA that Contains Significant Penalties for Non-Compliance.

The Parties acknowledge and agree that EME's new management team has made assurances that sales compliance is a high priority and that EME has taken measures to ensure future compliance with the consumer protection standards contained in 35-A M.R.S. 3203(4-A) and Chapter 305, § 4 of the Commission's Rules. To ensure that EME's commitments are honored, EME agrees to enter into a comprehensive Sales Compliance Plan.

Attachment B to this Stipulation is a Sales Compliance Plan that EME has proposed. EME and the OPA agree to negotiate in good faith a definitive Sales Compliance Plan and present it to the Commission as a compliance filing within 21 days of the Commission's order approving this Stipulation.

F. EME Will Assign a Dedicated Compliance Manager to the Commission and the OPA and Provide Maine Customers with Toll-Free Access.

Upon the Commission's order approving this Stipulation becoming final and non-appealable, EME will assign to the Commission and the OPA a dedicated Compliance Manager. The EME Compliance Manager will be accessible to the Commission and the OPA to address any concerns or complaints with regard to sales activities and customer relationships.

In addition, EME will provide Maine customers with a toll-free number by which they can reach EME with any questions or concerns regarding their terms of service or account.

The OPA and EME agree that the dedicated Compliance Manager and toll free number for customers will ensure that lines of communication are open among EME, the Commission and the OPA and that customers will have the ability to reach the Company toll-free to discuss questions or concerns regarding their account.

G. ME Will Expand the Limitations Imposed by 35-A M.R.S. § 3203(4-B)(C) to Residential Non-Fixed Price Supply Contracts.

Pursuant to 35-A M.R.S § 3203(4-B)(C), a CEP “[m]ay not renew a contract for generation service at a fixed rate that is 20% or more above the contract rate in the expiring contract without the express consent of the residential consumer.” Section 3203(4-B)(C) is expressly limited to renewal of contracts for generation service at fixed rates and does not limit a CEP’s ability to transfer a customer from a fixed rate contract to Indexed and Non-Indexed Variable Rate² contracts upon the expiration of the fixed rate contract.

By this Section III(G) of the Stipulation, EME agrees to extend the limitation of Section 3203(4-B)(C) to Indexed and Non-Indexed Variable Rate residential supply contracts. Accordingly, upon the Commission’s order approving this Stipulation becoming final and non-appealable, EME will be prohibited from transferring a residential customer from a fixed rate contract to an Indexed or Non-Indexed Variable Rate contract at an initial rate (the “Initial Transfer Rate”) that is 20% or more above the contract rate in the expiring contract

² The terms “Indexed Variable Rate” and “Non-Indexed Variable Rate” are defined in Section 1(B)(24) and (25) of the Commission’s Chapter 305 Rules (Licensing Requirements, Annual Reporting, Enforcement and Consumer Protection Provisions for Competitive Provision of Electricity) as follows:

24. Indexed Variable Rate or Charge. “Indexed Variable Rate or Charge” means any rate or charge that varies over the duration of the term of service where the rate or charge is reasonably related to a public index or otherwise reasonably determined through a readily accessible formula.
25. Non-indexed Variable Rate or Charge. “Non-indexed Variable Rate or Charge” means any rate or charge that varies over the duration of the term of service other than an Indexed Variable Rate or Charge.

at the time of the transfer, without the express consent of the customer. Nothing in this Section III(G) affects the rates under Indexed or Non-Indexed Variable Rate contracts after the Initial Transfer Rate.

Although this Section III(G) is not directly linked to EME's door-to-door sales that were the focus of this proceeding, it is a term that the OPA has requested and EME is willing to accept as a term of this Stipulation.

IV. STIPULATIONS AS TO PROCEDURE

A. Staff Presentation of Stipulation.

The Parties to this Stipulation waive any rights they may have under 5 M.R.S. § 9062(4) and Chapter 110, Section 8(f)(4) of the Commission's Rules (Practice and Procedure) to the extent necessary to permit Staff to discuss this Stipulation and the resolution of this proceeding with the Commissioners prior to and during the Commission's deliberations on the Stipulation, without providing to the Parties an Examiner's Report on the Stipulation or the opportunity to file Exceptions to such an Examiner's Report.

B. Record.

The record on which the Parties enter into this Stipulation and on which the Commission may base its decision whether to accept and approve this Stipulation shall consist of: (1) this Stipulation and its Attachments; and (2) any and all materials contained in the Commission's administrative record in the above-captioned proceeding as of this date, including all pre-filed testimony, all data request responses, all responses to oral data requests, and all technical conference and hearing transcripts.

C. Non-Precedential Effect.

This Stipulation shall not be considered legal precedent, nor shall it preclude any

Party from making any contention or exercising any rights, including the right of appeal, in any future Commission investigation or proceeding or any other legal action.

D. Integration and Voidability.

This Stipulation represents the full agreement among the Parties to this Stipulation to fully and finally resolve all of the proceedings consolidated in the above-captioned proceeding, and rejection of any provision or term of this Stipulation by the Commission constitutes a rejection of the whole. If not accepted by the Commission in its entirety and according to each of its terms, this Stipulation shall be void and have no further force or effect.

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Signed on this 13th day of November, 2020.

Maine Office of the Public Advocate

A handwritten signature in black ink, appearing to read 'A. Landry', written over a horizontal line.

Name: Andrew Landry
Title: Deputy Public Advocate

Electricity Maine, LLC

Name:
Title:

Signed on this ___ day of November, 2020.

Maine Office of the Public Advocate

Name:

Title:

Electricity Maine, LLC



Name: Kevin M McMinn

Title: Chief Operating Officer