

February 26, 2021

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

ORDER
IMPOSING SANCTIONS

BARTLETT, Chairman; and WILLIAMSON and DAVIS Commissioners

I. SUMMARY

In this Order, the Commission finds and concludes that Electricity Maine, LLC (Electricity Maine) engaged in conduct in violation of 35-A M.R.S. § 3203 and Chapter 305 of the Commission's Rules, both of which govern the retail competitive sale of electricity in Maine. Electricity Maine sales agents, during several door-to-door marketing campaigns, repeatedly made false and deceptive claims about being associated with the local transmission and distribution (T&D) utility and about the electricity rates and savings being offered by Electricity Maine. For these serious willful violations of the Commission's customer protection standards, the Commission orders: Electricity Maine to pay the maximum administrative penalty of \$500,000; that Electricity Maine's authority to engage in door-to-door marketing activities is permanently revoked; that Electricity Maine's authority to engage in any residential marketing activities in Maine via telephone, internet, or any other means is revoked for one year; and that Electricity Maine shall provide all existing customers enrolled through door-to-door marketing activity written notice of this proceeding and of an opportunity to transfer their supply service to standard offer service without an early termination fee.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Commission issued Electricity Maine a license to operate as a competitive electricity provider (CEP) in 2010. Upon receiving numerous customer complaints about its door-to-door marketing activities, in June 2018, the Commission initiated a formal investigation in this docket to examine those activities. In some instances, customers complained that Electricity Maine sales agents claimed to be associated with Central Maine Power (CMP), who during this same time period had become the subject of a separate investigation into customer concerns about its metering and billing practices.

A. Electricity Maine's License to Operate as a CEP

By order dated September 1, 2010, the Commission granted Electricity Maine a license to operate as a CEP to provide supplier services to all customer classes throughout Maine. Thus, Electricity Maine is a licensed CEP, which Commission Rules define as an entity that, as an intermediary, purchases electricity and takes title to the

electricity for sale to retail customers. MPUC Rules, Ch. 305, §§ 1(B)(7) & (17). By letter dated August 17, 2016, Electricity Maine provided notice that it was now owned by Spark Energy, Inc. (Spark), a company based in Houston, Texas and engaged in the sale of electricity throughout the United States. In late 2017, about one and a half years after Spark acquired Electricity Maine, the Commission began receiving complaints about Electricity Maine's door-to-door marketing activities.

B. Complaints Regarding Electricity Maine's Door-to-Door Marketing Activities

On January 22, 2018, Commission Staff sent a letter to Electricity Maine inquiring about the customer complaints received by the Commission. The complaints included serious allegations of marketing misconduct by Electricity Maine sales agents in the service territory of CMP, which is Maine's largest T&D utility.¹ CMP reported Electricity Maine sales agents going door-to-door, misrepresenting themselves as representatives of CMP, and pretending, for example, to be an auditor from CMP and being able to provide a refund check due to overbilling.

On February 9, 2018, Electricity Maine responded to Commission Staff. In its letter addressing the complaints Electricity Maine did not deny the allegations, but rather generally responded that it trained its sales agents to comply with applicable regulatory requirements and that it had deactivated one of the sales agents that had been involved in a reported incident. Electricity Maine further informed the Commission it had voluntarily suspended its door-to-door marketing campaign in Maine pending retraining of its sales teams. It stated it would notify CMP before it reactivated its door-to-door marketing campaign.

On March 5, 2018, Commission Staff notified Electricity Maine that the Staff did not intend to seek formal Commission action against Electricity Maine at that time. Commission Staff further stated, however, that the complaints were extremely serious and if such activity continued in the future Staff would ask the Commission to initiate a proceeding to consider specific sanctions, including license suspension, license revocation, and/or monetary fines. Despite the notice, customer complaints regarding Electricity Maine's door-to-door marketing activities continued.

On May 1, 2018, Commission Staff sent another letter to Electricity Maine after receiving notification from CMP of a complaint from the Lewiston area where Electricity Maine sales agents were going door-to-door, posing as CMP area managers, asking for copies of utility bills, and discussing complaints about overcharging.² In its May 10,

¹ The Commission did not receive any complaints about Electricity Maine from customers in the service territories of other T&Ds, and it does not appear that Electricity Maine has sold door-to-door in service territories in Maine other than CMP's service territory.

² Access to customer utility bills is useful for CEPs because the bills contain utility account numbers, which are necessary for enrolling customers with a CEP's supply

2018 response, Electricity Maine indicated it had resumed its door-to-door marketing campaign but had failed to notify CMP in advance as it had agreed to do. Electricity Maine further stated it had agents working in the Lewiston area at the time of the CMP complaint.³

On June 8, 2018, Commission Staff sent another letter to Electricity Maine following an additional notification from CMP regarding a complaint from a senior citizen complex in Fryeburg, Maine where an Electricity Maine sales agent told a customer that he was hired by CMP as an auditor due to high bill issues and asked the customer for her bill. In its June 18, 2018 response, Electricity Maine indicated it had deactivated the sales agent involved in this incident pending investigation and later permanently terminated the agent, making him ineligible to work for Electricity Maine in the future.⁴

C. Commission's Order to Show Cause

Given the substantial and serial nature of the customer complaints, on July 24, 2018, the Commission issued an Order to Show Cause, thereby initiating a formal investigation into Electricity Maine's door-to-door marketing activities. 35-A M.R.S. § 1303(2). The Order to Show Cause directed Electricity Maine to respond to the series of complaints and to explain why the Commission should not conclude that Electricity Maine's marketing activities violated state law, 35-A M.R.S. § 3202, and agency rule, MPUC Rules, Ch. 305, §§ 3 & 4. The Commission noted, "[a]s a general matter, Electricity Maine has not denied complaints that its sales agents acted in a misleading or deceptive manner in violation of Commission rules. Electricity Maine's response has consistently been that it would retrain or suspend offending sales agents." Order to Show Cause at 3 (July 24, 2018).

The Order to Show Cause summarized the door-to-door marketing activities of Electricity Maine as follows:

1. Electricity Maine door-to-door marketers posing as representatives of CMP and claiming that rates are about to increase or are fluctuating and offering to lower or freeze customers' rates.
2. Electricity Maine door-to-door marketers claiming to be auditors working to correct CMP high bill problems, seeking to lower or freeze customers' rates pending the resolution of the billing investigation.

service. MPUC Rules, Ch. 407, § 7 (requiring CEP to notify T&D utility of customer enrollment).

³ More detail on this incident in the Lewiston area is provided in section VI.A.8 below.

⁴ More detail on this incident at a senior citizen complex in Fryeburg is provided in section VI.A.18 below.

3. Electricity Maine door-to-door marketers claiming to be checking customer meters to ensure being billed properly in relation to CMP high bill problems.
4. Electricity Maine door-to-door marketers claiming that CMP's rates are about to increase and customers can protect themselves by locking into a reduced rate with Electricity Maine.

Electricity Maine, LLC, Application for License to Operate as a Competitive Electricity Provider, Docket No. 2010-00256, Order to Show Cause at 2 (July 24, 2018). On August 13 & 14, 2018, Electricity Maine filed confidential and public (redacted) versions of its response to these allegations.

In its August 2018 response, Electricity Maine stated its conduct did not warrant action against its license or other sanctions, and it requested that the Commission withdraw the Order to Show Cause and refer the matter back to Staff for settlement discussion. Electricity Maine stated it had taken measures to identify and either correct conduct or cease working with third-party vendors and the door-to-door sales agents who fail to comply with applicable regulatory requirements. Further, Electricity Maine provided a detailed description of its corporate compliance program, which it stated is designed to ensure its marketing activities comply with and go beyond Maine's CEP regulatory requirements.

In the event the Commission did not withdraw the Order to Show Cause, Electricity Maine requested a hearing to respond to the allegations and specific sanction or suspension proposals. In the interim, Electricity Maine stated it had again voluntarily suspended its door-to-door marketing campaign to evaluate whether additional steps were needed to operate successfully in Maine.⁵ In view of the substantial number of complaints brought to the attention of the Commission by CMP, as well as a series of complaints filed directly by customers with the Commission's Consumer Assistance and Safety Division (CASD) about Electricity Maine's marketing activities in CMP's service territory, the Commission did not withdraw the Order to Show Cause.

D. CMP Metering and Billing Practices Investigation

⁵ As stated above, by letter dated February 9, 2018, Electricity Maine first notified the Commission it had voluntarily suspended its door-to-door marketing campaign in Maine, and it stated it planned to notify CMP before it re-activated its campaign. By letter dated May 10, 2018, Electricity Maine notified the Commission it had resumed its door-to-door marketing in Maine but had failed to notify CMP in advance. In its August 13, 2018 response to the Order to Show Cause, Electricity Maine stated it had again voluntarily suspended its door-to-door operations in Maine, and Electricity Maine states that the voluntary suspension, other than efforts to win back former customers, currently remains in place. Jordan Test. at 4 (May 23, 2019); Oral Data Request (ODR) 01-10; OPA 01-01.

Although not referenced in the Order to Show Cause, the Commission notes Electricity Maine sales agents' claims about being from CMP and raising issues as to high bills and rates was of particular concern because such false and deceptive claims coincided with a Commission investigation into the metering and billing practices of CMP.

In March 2018, at the same time the Commission was receiving complaints about the door-to-door marketing activities of Electricity Maine, the Commission began an informal investigation into issues regarding CMP's metering, billing, and communication with its customers.⁶ *Public Utilities Commission, Investigation of Central Maine Power Company Metering, Billing and Customer Communication Issues*, Docket No. 2018-00052. The investigation into CMP was not related to Electricity Maine, but rather the Commission opened the investigation in response to, among other things, CASD having received a high number of customer complaints related to high CMP bills and possible billing errors, as well as customers reporting difficulties in contacting CMP to discuss billing issues.

At the outset of its initial investigation, the Commission hired an auditing company to review CMP's metering and billing system and the customer communication issues. *Id.*, Order Initiating Audit (March 22, 2018) & Order Modifying Scope of Audit (July 10, 2018). By the end of 2018, the Commission's auditor had concluded that "a high level of customer concern" had arisen around the accuracy of CMP's metering and billing, and the Commission therefore opened a formal investigation to further review the CMP billing and metering issues. *Public Utilities Commission, Investigation of Central Maine Power Company's Metering and Billing Issues*, Docket No. 2019-00015, Order and Notice of Investigation at 4 (Jan. 14, 2019).

Thus, in 2018 when there was heightened customer concern in CMP's service territory about high bills and metering and billing practices, CMP customers began complaining to CMP and CASD that Electricity Maine's door-to-door sales agents were claiming to be auditors from CMP in relation to high bills and claiming to be able to offer lower rates and save customers money.

E. Pre-hearing Process and Hearing

In February 2019, Commission Staff scheduled a case conference and provided an opportunity for intervention. At the case conference, Staff granted the petition to

⁶ The Commission has informal and formal investigative powers. 35-A M.R.S. § 1303(1) & (2). Under its informal, or summary, investigative power, it may gather information without notice and opportunity to be heard. *Id.* § 1303(1). While this authority does not provide the Commission with the ability to make formal findings or conclusions, it does provide the Commission with informal flexibility to collect information when the Commission believes violations may be occurring. *Id.* If, after informally gathering information it appears further Commission action may be warranted, the Commission provides notice and an opportunity to be heard as to the matters being investigated. *Id.* §1303(2).

intervene of the Office of the Public Advocate (OPA) and provided Electricity Maine and the OPA with an opportunity to discuss what process and discovery would be required in advance of hearing. By agreement of the parties, Commission Staff issued a procedural order setting a schedule, and on May 10, 2019 the Commission Staff filed a confidential and redacted copy of the complaint record (complaint record or C.R.), which contains the customer complaints submitted to CMP and CASD during the time period covered in this proceeding, which is from late 2017 through late 2018.⁷

To address the series of serious customer complaints in the complaint record, Electricity Maine filed the testimony of its Senior Director of Retail Portfolio Management, Ms. Kira Jordan. Commission Staff and the OPA each served data requests on Electricity Maine with respect to Ms. Jordan's testimony, and Commission Staff later convened a technical conference on the testimony and served additional discovery in the form of oral data requests (ODRs). The Commission held a hearing on July 17, 2019, and the OPA, the Commission, and its Staff questioned Ms. Jordan. At hearing, Commission Staff issued additional ODRs on Ms. Jordan's testimony. The parties' briefs and reply briefs as to the legality of Electricity Maine's door-to-door marketing activities followed, and their arguments are summarized in section VII, the parties' briefs section, below.

F. Post-hearing Process

On April 15, 2020, Commission Staff issued an Examiners' Report in the docket, recommending, among other things, revocation of Electricity Maine's license to operate as a CEP in Maine, and providing an opportunity for parties to file exceptions.

On May 1, 2020, Electricity Maine requested two additional weeks for Electricity Maine and the OPA to file exceptions to the Examiners' Report. The OPA supported Electricity Maine's request, and Commission Staff granted the request.

Two weeks later, Electricity Maine filed a letter, indicating it and the OPA had reached terms of settlement and that it expected to file a proposed stipulation no later than the week of June 1, 2020. Electricity Maine requested that the deadline for exceptions be postponed indefinitely pending the Commission's review of the anticipated stipulation. The OPA supported Electricity Maine's request and Commission Staff granted the request. On November 17, 2020, the parties filed a proposed stipulation.

⁷ Commission Staff filed the confidential copy of the complaint record under Protective Order No. 2, which Commission Staff issued this docket on May 9, 2019. In accordance with 35-A M.R.S. §§ 704(5), 3203(18) and MPUC Rules, Ch. 815, § 4, Commission Staff redacted confidential customer-specific information from the public version of the complaint record. The complaint record is Bates stamped, pages 1 to 1257, and is summarized further below in section VI.

By Order dated January 5, 2021, the Commission rejected the stipulation and directed parties to file exceptions to the Examiners' Report in advance of the Commission deliberating this matter. The Commission also provided the parties with an opportunity to file a revised stipulation. No party filed a revised stipulation.

On January 26, 2021, the parties filed exceptions to the Examiners' Report, which are discussed in the findings and conclusions section, section VIII below.

III. DEREGULATED ELECTRIC SUPPLY MARKET

The issues in this proceeding as to the legality of Electricity Maine's door-to-door marketing activities are best understood in the context of Maine's deregulated electric supply market and standard offer electric service.

In the year 2000, the Legislature deregulated electric supply service in Maine and provided customers with the opportunity to choose the provider of their electric supply. 35-A M.R.S. §§ 3201-3217. As a result, customers receive two distinct electricity services: the delivery of electricity from the T&D utility, and the supply of electricity from either the standard offer service provider or a CEP. If customers do not choose a CEP, by default electric customers in Maine receive their electric supply from the standard offer service provider. The standard offer service provider is selected by the Commission following a competitive bidding process, which results in the standard offer rate for the calendar year, running from January 1 to December 31 each year. *Id.* § 3212.

As stated above, customers may opt out of the default rate of the standard offer service provider and choose a CEP instead, like Electricity Maine, for their electricity supply service. The complaint record shows the rate offered by Electricity Maine to customers in CMP's service territory from late 2017 to late 2018 ranged from 8.49 cents per kWh to 12.70 cents per kWh. This is 24% to 62% higher than the standard offer rates offered during the same time period.⁸ Thus, during the time period when Electricity Maine was marketing door-to-door to CMP customers, it was offering a rate that was significantly more than what customers were paying under the standard offer rate.⁹

⁸ In calendar year 2017, the standard offer rate for residential retail customers in CMP's service territory was 6.69 cents per kWh, and in calendar year 2018 the standard offer rate was 7.92 cents per kWh. *Commission Initiated Standard Offer Bidding Procedure*, Docket No. 2016-00200, Order Designating Standard Offer Providers (Nov. 30, 2016); *Commission Initiated Standard Offer Bidding Procedure*, Docket No. 2017-00184, Order Designating Standard Offer Providers (Nov. 8, 2017).

⁹ As noted in the legal standards section, section V below, the Commission does not regulate the rates of CEPs, and thus simply offering a rate higher than the standard offer rate is not a violation. 35-A M.R.S. § 3203(9). The Electricity Maine rates documented in the complaint record, however, are relevant in the context of this proceeding, that is, in examining the false and deceptive claims made by Electricity

IV. ELECTRICITY MAINE BUSINESS ACTIVITIES

Details about Electricity Maine's regulatory compliance initiatives, its door-to-door marketing structure, and the product it offered to Maine customers are discussed and set forth in the pre-filed the testimony of Ms. Kira Jordan, as well as in discovery and the complaint record.

A. Kira Jordan Testimony

Ms. Jordan is the Senior Director of Retail Portfolio Management, responsible for managing the rates and products for residential customers for Electricity Maine. Jordan Test. at 1-2 (May 23, 2019); Tr. at 6 (July 17, 2019). Her duties include pricing and product supervision for the mass market business, and she is responsible for advising Electricity Maine on issues of importance to mass market residential sales, including marketing and compliance practices. Jordan Test. at 1-2. In addition to her pre-filed testimony, Ms. Jordan answered questions at a technical conference and at hearing. At that time, she had been with Spark for six years. Tr. at 5 (July 17, 2019).

Ms. Jordan did not provide testimony to refute the factual allegations made against Electricity Maine in the July 24, 2018 Order to Show Cause. Tr. at 11-13, 18, 25-26, 38 (July 17, 2019). Rather, her testimony focused on discussing Electricity Maine's compliance measures, including post-sale quality control calls, Jordan Test. at 4-9, Electricity Maine's responses to marketing concerns raised in Maine, *id.* at 9-14, and recent additional customer protective measures taken by Electricity Maine, *id.* at 14-18. Electricity Maine uses post-sale quality control calls, or welcome calls, to obtain customer feedback on customers' sales experiences and to then use that feedback to correct as necessary sales agents' conduct.¹⁰ Jordan Test. 8. In Ms. Jordan's view,

Maine's sales agents about for whom they worked and whether Electricity Maine was offering savings to customers. There are no instances in the complaint record where Electricity Maine offered customers a rate that was lower than the standard offer rate.

¹⁰ Electricity Maine states it made the first welcome calls in Maine on or about January 31, 2018. ODR 02-05. Electricity Maine produced a log of those calls, and the customer feedback ranges from many instances of "customer happy with service," to statements of "she is waiting for the next bill to have an opinion about the supplier." In other instances, the log reports such statements as a customer "does not remember us," and other instances of "client barely speaks English" but "he explains a little bit about [the program and] that he is ok with the program," or "customer didn't remember the experience with the sales agent," or she is an "old confused lady," and "she did not want the program in the first place and she does not know why we signed her up," or "customer wants to cancel because he does not understand anything about the program," or "she does not speak english [*sic*] or spanish [*sic*]," or finally customer "speaks another language." ODR 02-07.

the complaint record warranted no or only limited sanctions against Electricity Maine. *Id.* 18-21.

B. Door-to-Door Marketing Structure

Electricity Maine does not conduct its own door-to-door marketing but rather hires third-party vendors who hire sales agents to work on a commission basis. Jordan Test. at 4. From late 2017 through late 2018, Electricity Maine retained door-to-door vendors. EXM 01-07. Electricity Maine states its vendor contracts require sales agents to market in a compliant manner or face the possibility of claw backs of commission payments, penalty payments, suspension, or termination for failure to comply with applicable laws and corporate policies. Jordan Test. at 6. Electricity Maine explained that it has taken steps to monitor its sales agents, and that it has taken consequential action with respect to sales agents who failed to comply with applicable laws and corporate policies.

Ms. Jordan's pre-filed testimony explained Electricity Maine's process for conducting field compliance audits and confirming proper conduct by sales agents in the field. Jordan Test. at 9. She stated the process includes fulltime compliance staff, scheduled and surprise compliance audits, and immediate deactivation of sales agents failing to appear for field audits. Jordan Test. at 9. Upon questioning, however, Ms. Jordan testified that what is detailed in her testimony did not occur in Maine. Tr. at 13 (June 18, 2019). Rather, Electricity Maine employees charged with managing vendors conducted the compliance visits in Maine, and those occurred in October 2016, March 2017, and late February 2018. EXM 01-03; ODR 02-02. Electricity Maine states that its formal compliance department evolved over time, that certain components of it were in place as early as 2017, and that therefore, by February 2018, the compliance measures in place in Maine "closely resembled" the compliance program previously described in Ms. Jordan's testimony. Tr. at 13, 14 (June 18, 2019), EXM 01-03, ODR 01-02.

Electricity Maine states its compliance visits in March 2017 and February 2018 included sales-agent training comprised of, among other things, a review of corporate sales and marketing policies and the corporate code of conduct. ODR 02-02. The February 2018 visit included a discussion of recent customer complaints and good sales practices to avoid further complaints. ODR 02-02. Nonetheless, there were no written training materials or agendas used or distributed for the 2017 and 2018 training sessions. Tr. at 16 (June 18, 2019), EXM 01-03, EXM 01-15, ODR 02-02. Moreover, during the time period when Electricity Maine's sales agents were, for example, posing as CMP auditors, Electricity Maine marketing and sales employees, not a compliance department, were charged with conducting the one training and compliance visit to Maine in 2018. Tr. at 14-19 (June 18, 2019), Tr. at 47, 50-51 (July 17, 2019), EXM 01-03, ODR 02-02; see, e.g., C.R. 5 (marketing department addressing complaint of sales agents posing as CMP auditors).

In this proceeding, Electricity Maine also explained the types of action it takes against its sales agents who fail to comply with applicable laws and corporate policies. It may temporarily deactivate sales agents, and during the time of deactivation sales

agents are not eligible to work on Electricity Maine marketing campaigns. Tr. at 20-21 (July 17, 2019). To discourage sales agents from “saying whatever they want to get a sale,” Electricity Maine may claw back sales revenue as a disincentive, but Ms. Jordan admitted that, due to the arms-length relationship with their vendors, Electricity Maine does not know whether the vendor passes the loss of commission down to the sales agents. Tr. at 39, 69, 70, 92 (July 17, 2019). If Electricity Maine terminates a sales agent for cause, Electricity Maine states it maintains a list of permanently terminated sales agents to prevent sales agents from moving from one vendor to another. ODR 01-08. Thus, while sales agents may switch vendors and begin selling again, Tr. at 67 (July 17, 2019), agents on Electricity Maine’s terminated list are no longer eligible to work for Electricity Maine. Jordan Test. at 13 (May 23, 2019); Tr. at 21 (July 17, 2019), EXM 01-04; see *a/so* Electricity Maine Br. at n.3 (explaining Electricity Maine would refer information to its vendors for appropriate action when agents were no longer welcome to work for Electricity Maine and its affiliates, leaving vendors to choose whether to redirect the agents to work other than for Electricity Maine).

Regarding its third-party vendors, Electricity Maine originally indicated it has terminated vendors and that such vendors would not be eligible to be used again by Electricity Maine. EXM 01-01. It later stated, however, that in Maine it has only “shut down the operation” of its vendors but has not terminated them. ODR 01-10. Electricity Maine states that when it reviews vendor performance it looks for patterns of noncompliance as evidence that a vendor is disregarding quality assurance practices, in which case the vendor would be subject to deactivation. ODR 02-06. On the other hand, if the review simply shows agents are not being as clear as sales scripts require, then it will just suggest to a vendor that agents be retrained.¹¹ ODR 02-06.

Thus, Electricity Maine has terminated individual sales agents but not the third-party vendors for whom the sales agents work. EXM 01-01; EXM 01-13; ODR 01-01; ODR 02-01; ODR 02-04. The personnel actions taken against individual sales agents who made false and deceptive claims are discussed in more detail in the summary of the complaint record in section VI below.

C. Electricity Maine Product

The complaint record contains instances where, while there was no report of false and deceptive claims, the product offered by Electricity Maine nonetheless led concerned customers to contact CASD. Some customers expressed concern upon

¹¹ Electricity Maine states that it would commit to using different vendors from those used during 2017 and 2018 for its initial relaunch of its door-to-door marketing campaign in Maine. Electricity Maine Br. at 13. Given the serious nature of the Commission’s findings and conclusions set forth below with respect to Electricity Maine’s marketing activities, it is unclear why, under the employment standard stated by Electricity Maine above, it has not deactivated or terminated the vendors it employed for its marketing campaigns in Maine. The Commission is not persuaded that this proposed commitment would adequately protect Maine customers.

discovering their rates with Electricity Maine were higher than the default standard offer rate. In some instances, where Electricity Maine had complied with the applicable licensing requirements, CASD concluded customers were bound to pay the higher rate, which as explained section V below, the legal standards section, is not unlawful. In other instances, where Electricity Maine had failed to comply with licensing requirements regarding notices and record keeping, CASD required Electricity Maine to place customers back on standard offer service and refund customers either the difference between what the customers paid to Electricity Maine and what they would have paid under the standard offer rate, or in some instances, refund the entire amount a customer had paid to Electricity Maine for supply. Complaints such as these are summarized in Attachment A to this Order.¹²

V. LEGAL STANDARDS

Title 35-A provides the Commission with jurisdiction over CEPs and the retail, competitive sale of electricity in the State of Maine. 35-A M.R.S. § 3203. As noted above, the Commission does not regulate retail rates, *id.* § 3203(9), but rather the statute directs the Commission to license CEPs to provide for effective competition in the market for the sale of electricity. *Id.* §§ 3203(1) & (6). To promote effective competition, the statute provides customer protection standards, for example CEPs must comply with the provisions of the Maine Unfair Trade Practices Act, and by statute CEPs must obtain a customer's authorization before serving a customer.¹³ *Id.* § 3203(4-A). The Legislature expressed a clear intent that customers' ability to effectively make choices in the competitive market be enhanced, and thus the statute directs the Commission to adopt rules to protect and promote market competition, and to protect retail customers from fraud and unfair and deceptive business practices. *Id.* §§ 3203(3), (4), (4-A), (4-B), (4-C), (6). To that end, Chapter 305 of the Commission's rules provides for licensing requirements, customer protection standards for the promotional and trade practices of CEPs, and finally defines the authority of the Commission to take enforcement actions against CEPs.

A. Chapter 305 Licensing Requirements

Chapter 305 provides the licensing requirements, annual reporting, enforcement, and customer protection provisions governing CEPs. The Commission will not issue a CEP license if there is sufficient reason to conclude that issuance is not in the public

¹² Attachment A includes incidents where customers reported themselves as "elderly" and forgetful, or 87-years old, or having negotiated and accepted a lower rate that was still higher than the standard offer rate to avoid an early termination fee. See, e.g., C.R. 822, 929, 939, 1092.

¹³ Maine Unfair Trade Practices Act states that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful." 5 M.R.S. § 207.

interest. MPUC Rules, Ch. 305, § 2(D)(7). Chapter 305 contains further provisions intended to protect customers from unscrupulous business practices.

The complaint record contains references to such customer protection provisions. For example, prior to enrolling customers, CEPs must obtain verification that customers have affirmatively chosen the CEP as their supplier. MPUC Rules, Ch. 305, § 4(B)(5). Typically, CEPs provide evidence of affirmative choice by a recorded third-party verification call in which a customer's decision to choose the CEP as a supplier is recorded and independently verified. *Id.* § 4(B)(5)(b)(ii). Additionally, CEPs are required to provide customers with a terms of service document within seven calendar days of a customer choosing a CEP, and CEPs may not enroll a customer until it has provided customers with the terms of service document and a five-day right of rescission period has expired. *Id.* § 4(B)(3)(b) & § 4(B)(4)(a). CEPs are also required to maintain a copy of the contractual terms of service document, which contains, among other things, pricing and customer rights and responsibilities. *Id.* § 4(B)(3)(d). The terms of service document is sometimes referred to by CEPs as the welcome letter, and CEPs must produce the terms of service document upon request.¹⁴ *Id.* § 4(B)(3)(b).

B. Chapter 305 Customer Protection Standards

In addition to the above-cited licensing requirements designed to protect retail customers, Chapter 305 also directly prohibits CEPs from misleading customers about the product being sold. Under Chapter 305, a CEP "must not use fraudulent, coercive, or deceptive promotional practices." MPUC Rules, Ch. 305, § 4(B)(12)(a). Chapter 305 states CEPs:

shall not engage in any unfair or deceptive act or practice that creates a likelihood of confusion or misunderstanding in connection with the offer for sale or the sale of electricity. By way of example and not of limitation, this prohibition shall include . . . making statements susceptible to both a misleading and truthful interpretation, and making deceptive statements, even though the true facts are subsequently made known to the consumer.

¹⁴ Regarding these licensing requirements, Electricity Maine argues that its failure to comply with them is not related to its door-to-door marketing campaigns and thus they are not relevant to the Commission's investigation. Electricity Maine Reply Br. at 10. The Commission agrees to the extent that, in an exercise of prosecutorial discretion, it is unlikely the Commission would open an investigation into a CEP where CASD found and remedied licensing requirement violations and the public interest did not otherwise call for further investigation. Thus, the Commission agrees that such violations identified in the complaint record by CASD, see, e.g., C.R. 156, 195, 251, 359, 523, are not the crux of the Commission's findings and conclusions about Electricity Maine's marketing activities in Maine. The licensing requirement violations nonetheless provide relevant context in reviewing the complaint record as a whole and understanding Electricity Maine's business activities in Maine.

Id. § 4(B)(13).

Chapter 305 also addresses marketing activities related to rates and Maine's deregulated market. "Any comparison of customer savings relative to standard offer service must not provide customer savings comparisons based on standard offer rates that will not be in effect during the same period of time as the rate that the customer would pay to the [CEP] pursuant to the promotion." *Id.* § 4(B)(12)(b). And, given the deregulated status of electric supply in Maine, a CEP "may not, in any way, state, suggest or imply any affiliation or association with a [T&D] utility, and it must clearly and conspicuously indicate on its . . . promotional materials that it is not associated with any [T&D] utility." *Id.* § 4(B)(12)(c). With regard to these provisions, CEPs are expressly responsible for the regulatory violations of their representatives or agents, that is, their third-party vendors, acting on their behalf. MPUC Rules, Ch. 305, § 4(C).

C. Enforcement Authority

Title 35-A and Chapter 305 of the Commission's Rules provide the Commission with enforcement authority over CEPs. The Commission "may investigate any matter relating to the provision of service" by a CEP, may impose administrative penalties, and "may conduct proceedings for the revocation of a license when a requirement of [the statute] has not been complied with" by a CEP. 35-A M.R.S. §§ 3203(5), (7), (13-A). Following hearing, the Commission may impose sanctions for statutory and regulatory violations. 35-A M.R.S. § 1508-A, §§ 3203(5), (7), (10), (11); MPUC Rules, Ch. 305, § 3(A).

A CEP that willfully violates Commission rules may be subject to an administrative penalty of up to \$5,000 per violation, up to a maximum of \$500,000 for any related series of violations. 35-A M.R.S. § 1508-A(1)(A). Each day a violation continues constitutes a separate offense. *Id.* A CEP that commits a violation after having been explicitly notified by the Commission that it was not in compliance and that failure to comply could result in an administrative penalty may be subject to an administrative penalty of up to \$500,000. *Id.* § 1508-A(1)(B). In determining the administrative penalty amount, the Commission must consider the following factors:

- A. The severity of the violation, including the intent of the violator and the nature, circumstances, extent and gravity of the prohibited act;
- B. The reasonableness of the violator's belief that the violator's action or lack of action was in conformance with this Title, a commission rule or a commission order;
- C. The violator's history of previous violations;
- D. The amount necessary to deter future violations;
- E. The violator's good faith attempts to comply after notification of a violation; and

F. Such other matters as justice requires.

Id. § 1508-A(2).

Administrative penalties must be deposited into the Public Utilities Commission Reimbursement Fund, unless they are disposed of in a different way as provided in statute. *Id.* § 117(3). The Commission “may, to the extent practicable and in as equitable and fair a manner as possible,” apply the funds in one of several specific ways. *Id.* § 117(3)(B). In doing so, the Commission shall apply the funds to “benefit[] those customers affected or potentially affected by the violation, if they can reasonably be identified, or” if that is “impracticable or unreasonable,” to “benefit[] the class or group of customers affected or potentially affected by the violation.” *Id.* Thus, the Commission may apply administrative penalty funds to, among other things, supplement any program or fund that the Commission determines would benefit customers affected or potentially affected by the violation. *Id.*

Finally, the rules provide the Commission may revoke or suspend a license for, among other things, “a violation or material noncompliance with any applicable provision of law or rule administered or enforced by the Commission,” or the “use of fraudulent, coercive, or deceptive practices . . . with respect to the provision” of electric supply. *Id.* § 3(A)(4)(b) & (d). “At its option, the Commission may suspend only a [CEP’s] authority to enroll new customers.” MPUC Rules Ch. 305, § 3(A)(4).

VI. COMPLAINT RECORD

The facts set forth in the complaint record in this matter cover a period from late 2017 through late 2018 during which electric customers were contacting CMP and CASD with complaints regarding the door-to-door marketing activities of Electricity Maine. A review of the of the complaint record shows the complaints about Electricity Maine generally fall into two general and sometimes overlapping categories: (A) Electricity Maine sales agents made false and deceptive claims about being associated with CMP and (B) Electricity Maine sales agents made false and deceptive claims about Electricity Maine’s electricity rates, the potential for savings, and the standard offer rate. The facts gathered in this proceeding, from the complaint record as well as from several additional complaints reported directly to Electricity Maine, are summarized below. The Commission became aware of the additional complaints through discovery in this proceeding. ODR 01-09.

A. False and Deceptive Claims about Being Associated with CMP

1. Lewiston

On November 13, 2017, an Electricity Maine sales agent visited a customer at her home in Lewiston. C.R. 257-294. The sales agent told the customer Electricity Maine was taking over CMP. C.R. 257. The customer told the sales agent she did not want service from Electricity Maine, and thereafter she did not receive a copy of any terms of service. C.R. 257, 259. In November 2018, when the customer received a

renewal notice from Electricity Maine offering a rate of 10.69 cents per kWh, the customer contacted CASD. C.R. 257, 271.

She told CASD she had never agreed to service from Electricity Maine. C.R. 257. Electricity Maine's response noted that a recording of the customer's third-party verification call from November 2017 included the customer agreeing to have Electricity Maine as her supplier. C.R. 266. Electricity Maine could not, however, produce a record of having provided the customer with the required terms of service, and therefore agreed to provide the customer with a refund of \$34.34, the difference between the standard offer rate and the Electricity Maine rate, and to place the customer back on standard offer service. C.R. 266, 283. In response to discovery, Electricity Maine produced a table in which it stated it had found no improper action on the part of the sales agent, and it indicated it took no disciplinary action against the sales agent.¹⁵ ODR 02-01.

2. Franklin County

On November 15, 2017, CMP notified the Commission it had received multiple complaints from customers and local law enforcement from the area of Franklin County. The complaints were about Electricity Maine sales agents going door-to-door, refusing to provide identification, implying they were from CMP, and stating they needed to see customers' electric bills because they could save the customers money. C.R. 1. Electricity Maine was unable to identify any particular agent associated with this complaint, ODR 02-01, but it did not refute these facts, Tr. at 11-13 (July 17, 2019).

3. Bath

On November 26, 2017, CMP received a complaint from a customer living in Bath. This customer reported she "had a man show up at [her] door . . . representing himself as a CMP auditor" and representing that she was "going to get a refund check because CMP is overbilling/charging" her. C.R. 6. The man took her electricity bill and then "put [her] on the telephone with the representative who [was] going to issue the check." *Id.* Once on the telephone, the customer was asked to confirm that she wished to enroll in Electricity Maine services, at which time the customer stated she "realize[d] that [she] had been lied to" by the Electricity Maine agent representing himself as a

¹⁵ Electricity Maine maintains that, with respect to this complaint, fault cannot be definitively determined. Electricity Maine Reply Br. at 11. The complaint record contains a customer statement that an Electricity Maine sales agent told her that Electricity Maine was taking over CMP, and that conduct violates Commission rule. MPUC Rules, Ch. 305, § 4(B)(12)(c). As discussed in the findings and conclusions section below, the Commission finds the customer complaint to be more credible than Electricity Maine's response in discovery.

CMP auditor.¹⁶ *Id.* This customer stated the man also showed up at the door of her neighbors making the same claims. *Id.*

Electricity Maine's response was to deactivate the two agents involved in the incident, as well as four other agents engaged in the door-to-door marketing campaign. *Id.* 4; Tr. at 17 (July 17, 2019). Electricity Maine states it provided the agents with retraining immediately following the incident, and that thereafter the agents were reactivated or eligible to be reactivated. ODR 02-01; ODR 02-04. Ultimately only one agent, identified as sales agent #6787, was permanently terminated. ODR 02-01. The terminated sales agent was active, however, in June 2018 when he was involved in another incident at a senior citizen complex in Fryeburg, which is the incident referenced in the factual and procedural background section, section II above, and is summarized in VI.A.18 below.¹⁷ C.R. 51, Electricity Maine Letter (June 18, 2018); ODR 02-01; ODR 02-04.

4. Portland

On December 1, 2017, a customer in Portland contacted CASD to report a sales agent visited his home, saying he was with CMP and that he wanted to save the customer 15% on his bill. C.R. 93. The customer gave the sales agent his bill because he thought the agent was a representative of CMP. *Id.* The customer completed a third-party verification call for the transfer of service, but later informed CASD he did not want to change his service. C.R. 91. The customer called CMP when the sales agent left, and CMP told the customer the sales agent was not a representative of CMP. *Id.* The sales agent had not left any identification, but the customer did have a telephone number from the third-party verification call. C.R. 89. CASD contacted the third-party verification call center and confirmed a sales agent from Electricity Maine had visited the customer. *Id.* Electricity Maine informed CASD there had been a communication barrier with the customer. C.R. 89. Electricity Maine's response to this complaint was to remove the customer from Electricity Maine service and waive the early termination fee. C.R. 89. Electricity Maine was unable to identify which of its sales agents had been involved in this incident.¹⁸ ODR 02-01.

¹⁶ Because the customer was asked to confirm that she was choosing Electricity Maine as her supplier, it appears the telephone call was the regulatory third-party verification call, as explained in the legal standards section above.

¹⁷ Electricity Maine states both sales agents directly involved in this complaint failed to complete required training and thus were not reactivated to sell again in Maine. Electricity Maine Reply Br. at 11. The record, however, shows that the terminated sales agent #6787 was reactivated after receiving training, and that he was then involved in the incident at the senior citizen complex in Fryeburg. ODR 02-04.

¹⁸ Electricity Maine maintains that, with respect to this complaint, fault cannot be definitively determined. Electricity Maine Reply Br. at 11. While it states it could not identify the agent involved, the complaint record shows there is no dispute that an Electricity Maine sales agent visited the customer's home. The complaint record

5. Norway

On January 13, 2018, the Norway Police Department responded to a telephone call about suspicious activity.¹⁹ C.R. 18-19. The Norway Police Department provided CMP with a copy of an officer's report about the incident. The police report indicates a customer called the police to report a sales agent was at the door, claiming to be from CMP and asking to see the customer's electricity bill and meter. The customer provided the sales agent his CMP account number and spoke with a person on the telephone with a heavy accent.²⁰ C.R. 18. Upon arrival of the police officer and questioning, the sales agent told the police officer he worked for Electricity Maine's parent company, Spark Energy, who owns CMP, and that he was comparing electricity bills to meters to make sure customers were not overpaying. *Id.*

Electricity Maine's response to this complaint was to deactivate the agent involved in the incident. C.R. 13. Electricity Maine confirmed that the sales agent involved was reactivated, but later terminated and is not eligible for re-hire to work on behalf of Electricity Maine.²¹ ODR 01-01; ODR 02-01; ODR 02-04. The sales agent

contains a customer statement that an Electricity Maine sales agent told him that the sales agent was from CMP, and that the customer was induced to provide the sales agent with information because he thought the sales agent was from CMP. This conduct violates Commission rule. MPUC Rules, Ch. 305, § 4(B)(12)(c). Further, while this complaint does not document the rate offered to this customer, the sales agent's claim to have been able to save the customer 15% is also troubling, given that the record shows that the rates being offered by Electricity Maine in 2017 and 2018 were actually substantially higher than standard offer rates. This conduct is also a violation of Commission rule. MPUC Rules, Ch. 305, § 4(B)(12)(b). As discussed in the findings and conclusions section, section VIII below, the Commission finds the customer complaint to be credible.

¹⁹ Several other local law enforcement departments have responded to citizen concerns about Electricity Maine sales agents going door-to-door: Phillips (November 2017), Portland/Westbrook (December 2017), Biddeford (February 2018), Lewiston (March 2018), Old Orchard Beach (March 2018). Electricity Maine records show officers contacted Electricity Maine to confirm Electricity Maine had sales agents in their local areas when citizens raised concerns about possible scams and theft. ODR 02-03; ODR 02-04.

²⁰ It appears the telephone call was the regulatory third-party verification call, as explained in the legal standards section, section V above.

²¹ Electricity Maine also states that its response to this complaint included refunding the customer, waiving the early termination fee, and taking steps to make it easier to identify its sales agents. While the record shows Electricity Maine adjusted the sales agent's badge and uniform, it is not clear where the other actions are reflected in the record. Electricity Maine Reply Br. at 12.

involved in this incident is the same sales agent involved in incidents VI.A.8 and VI.B.4 below. C.R. 26; ODR 02-01.

6. Arundel

On February 15, 2018, two sales agents came to a customer's door in Arundel. C.R. 140. They told the customer they worked for CMP and asked to confirm his account number because they wanted to lower his electricity bill. C.R. 136, 155. The customer called CMP to confirm this information, and CMP informed the customer the men did not work for CMP. C.R. 133, 150, 155. The customer then asked the men for identification, and they abruptly left. C.R. 139.

After the customer's bills were high in March and April, he contacted Electricity Maine who told him he had become an Electricity Maine customer following a door-to-door sales visit. C.R. 136, 155. When he told Electricity Maine he did not want its service, Electricity Maine agreed to place him back on standard offer service. C.R. 138. When Electricity Maine failed to cancel his service by August 2018, however, he contacted CASD. C.R. 139, 155-156.

The customer told CASD he did not sign up with Electricity Maine and that he never confirmed service by way of a third-party verification call. C.R. 133, 155. The complaint record shows that the customer telephone number produced by Electricity Maine to confirm a third-party verification call to the customer was not the telephone number of the customer, but rather was a number associated with a cell phone application allowing for anonymous numbers to make and receive calls. C.R. 155. The customer also produced his telephone records to show that the third-party verification call record produced by Electricity Maine was not him because he was on the telephone with someone else at the time of the alleged third-party verification call. C.R. 144-145.

The complaint record shows Electricity Maine initially agreed to waive this customer's early termination fee and refund \$32.97, the difference between the standard offer rate and the Electricity Maine rate during the enrollment period. C.R. 151-152. Following CASD's investigation, however, CASD ordered Electricity Maine to refund the customer the entire amount that the customer had paid Electricity Maine for his electricity supply.²² C.R. 156. Electricity Maine confirmed that at least one of the sales agents involved in this incident "completed a fraudulent enrollment," ODR 02-04,

²² CASD further determined the enrollment for this customer was invalid because Electricity Maine failed to provide the customer with a copy of the terms of service, MPUC Rules, Ch. 305, § 4(B)(3), failed to obtain the required authorization to enroll the account, *id.* § 4(B)(5), and failed to timely cancel the account when requested, *id.* § 4(B)(15). Because the customer contacted Electricity Maine within 75 days of the unauthorized supply charges appearing on his account, CASD ordered Electricity Maine to refund the customer the entire amount he had paid for supply. *Id.* § 4(B)(18)(e)(vii); C.R. 156.

has been terminated, and is not eligible for re-hire to work on behalf of Electricity Maine,²³ ODR 01-01; ODR 02-01.

7. Old Orchard Beach

In March 2018, a man came to a customer's door in Old Orchard Beach. C.R. 130-131. The man told the customer he was from CMP, so she let him in. C.R. 129. He told her that because she was a "senior citizen" he could lock in a lower rate for her. C.R. 129. In June 2018, the customer contacted CASD, concerned she had been scammed by Electricity Maine. C.R. 129. The customer reported that her bills had been high, and she felt like she had been targeted because of her age and lied to by the sales agent. CASD advised the customer to contact Electricity Maine to attempt to resolve the matter and to contact CASD if she was not satisfied with the result.²⁴ C.R. 129. The customer did not recontact CASD. C.R. 129. Electricity Maine confirmed that the sales agent involved in this incident, which is the same sales agent that was involved in incident number VI.A.9 below, has been terminated and is not eligible for re-hire to work on behalf of Electricity Maine. ODR 01-01; ODR 02-01; ODR 02-04.

8. Lewiston area

In April 2018, CMP received an email from a customer in the Lewiston area.²⁵ C.R. 29. In the email, the customer asked if CMP had sent employees door-to-door asking for copies of electricity bills with regard to customer complaints about overcharging. The customer stated two men were walking around her neighborhood, knocking on doors, and claiming to be gathering complaints to get electricity rates frozen until an inquiry was resolved. *Id.* The customer reported the men drove a vehicle with Texas license plates. *Id.* While Electricity Maine first denied one of its

²³ Electricity Maine states that due to the "he said-she said" nature of the complaint, [Electricity Maine] lacks facts to contest" the description in this complaint of its enrollment practices. Electricity Maine Reply Br. at 12. Rather than an instance of competing evidence, however, there is no evidence in the record, whether from CASD, CMP, or Electricity Maine, that contradicts the facts set forth in this customer's complaint. As discussed in the findings and conclusions section, section VIII below, the Commission finds the customer complaint to be credible.

²⁴ Under the Commission's rules, a customer must first work with the utility to resolve a dispute before CASD will take a complaint. Chapter 815 generally requires a customer to first attempt to resolve a dispute with a CEP independently and, if that fails, a customer may file a complaint with CASD seeking, among other things, a refund or credit where a customer has overpaid. MPUC Rules, Ch. 815, § 13(H)(1) & 5; see also MPUC Rules, Ch. 305, § 4(B)(18)(d).

²⁵ This Lewiston area complaint is the same complaint first raised informally by Commission Staff in the May 1, 2018 letter referenced in the factual and procedural background section, section II above.

agents was involved, it later admitted it had agents working in Lewiston during the month of April 2018, and that it had deactivated and permanently terminated the sales agent involved such that he is not eligible for rehire by Electricity Maine. C.R. 28; Letter from Electricity Maine to Commission Staff (May 10, 2018); ODR 02-01. The sales agent involved in this incident is the same sales agent involved in incident VI.A.5 above and incident VI.B.4 below. C.R. 13; ODR 02-01; ODR 02-04.

9. Berwick

In March and April 2018, an 87-year-old customer in Berwick contacted CMP and CASD. C.R. 33, 55-70. The customer reported a sales agent came to her door wearing a CMP badge and stating he was from CMP. C.R. 33, 57-58. The sales agent had someone call her on the telephone to confirm that he was from CMP.²⁶ C.R. 33. The sales agent told her he could guarantee her a lower electricity bill of \$50 a month, and he asked her to sign a paper to acknowledge he had been there. C.R. 33, 57, 59. When the customer received an electricity bill for \$80.00, she called CMP. C.R. 33.

The customer told CMP she had never agreed to sign up for service from Electricity Maine. C.R. 33. CMP records showed Electricity Maine enrolled the customer on March 20, 2018 and unenrolled her on March 30, 2018. C.R. 33, 56. CMP reported the customer was upset and frightened by this incident, and the customer contact CASD and said she felt she had been vulnerable and gullible. C.R. 33, 56.

Electricity Maine's response was to place this customer back on standard offer service, waive the early termination fee, refund her \$3.24, which was the difference between the standard offer rate and the Electricity Maine rate during her limited enrollment period, offer her a \$10.00 gift card to Dunkin' Donuts, and to deactivate the agent involved in the incident.²⁷ C.R. 32, 56. Electricity Maine confirmed that the sales agent involved in this incident, which is the same sales agent that was involved in incident VI.A.7 above, has been terminated and is not eligible for re-hire to work on behalf of Electricity Maine.²⁸ ODR 01-01; ODR 02-01; ODR 02-04.

²⁶ It appears the telephone call was the regulatory third-party verification call, as explained in the legal standards section, section V, above.

²⁷ The Commission notes that the OPA referenced this Berwick complaint as two separate incidents, but the Commission has considered it as only one. OPA Br. at 22-23, 25; Electricity Maine Reply Br. at 10, 13.

²⁸ Electricity Maine states that due to the "he said-she said" nature of the complaint, [Electricity Maine] lacks facts to contest" the description in this complaint about its enrollment practices. Electricity Maine Reply Br. at 13. Electricity Maine, however, cites to no evidence in the record to refute this complaint that its sales agent lied and induced a customer to sign up for Electricity Maine service, and its witness stated as much at hearing. Tr. at 25 (July 17, 2019). Electricity Maine's sales agent's conduct violates Commission rule. MPUC Rules, Ch. 305, § 4(B)(12). As discussed in the

10. Sabattus

On March 29, 2018, a customer in Sabattus contacted CASD. C.R. 72. The customer told CASD a sales agent came to her door and implied that he was working on the CMP investigation. C.R. 74. He asked to see her CMP bills, stated he could reduce her usage, and connected her with a third-party verification call to authorize changing her service. *Id.* Thereafter, the customer contacted CMP to attempt to stop the transfer of service, but her supply service was transferred to Electricity Maine, effective April 19, 2018. C.R. 74, 77. In May 2018, CASD reviewed the customer's account, and confirmed she had been switched to Electricity Maine. C.R. 76. Electricity Maine's response was to drop the customer back to standard offer service and offer her a \$75.00 gift card to cover the approximately \$30.00 difference between the standard offer rate and the Electricity Maine rate during her enrollment period. C.R. 85. Electricity Maine was unable to identify which of its sales agents had been involved in this incident. ODR 02-01.

11. Warren

On May 9, 2018, an Electricity Maine sales agent contacted a customer at his home in Warren and represented himself as being from CMP and Electricity Maine. C.R. 160-255, 201. The sales agent told the customer CMP was over charging customers in his area, and therefore the agent would be able to provide the customer with a lower rate and the customer would be receiving money back. C.R. 162, 202, 223. The sales agent also stated he could offer a lower rate because Electricity Maine was able to buy American and cut out the middleman. C.R. 162, 202, 223. The salesperson told the customer what to say on the telephone during the third-party verification call and told the customer he would be receiving money back. C.R. 162, 202. Electricity Maine enrolled him at a rate of 11.90 cents per kWh.

The customer was enrolled with Electricity Maine from the beginning of June 2018 through the beginning of September 2018, and after receiving higher bills, the customer contacted CASD. C.R. 161, 166, 188. The customer told CASD he was a low-income individual and had switched to Electricity Maine because of Electricity Maine's claims about cheaper rates. C.R. 166. The customer expressed concerns about an inability to pay his electric bills and having his power disconnected because his grandmother, who he described as elderly, was staying with him and the temperatures were getting colder. C.R. 166, 177. He expressed concern about fraud and unethical sales tactics, and he noted "[t]here's not a person in the world that would knowingly pay more for electricity for no reason." C.R. 165, 166.

Following an investigation, CASD concluded Electricity Maine failed to timely provide the required terms of service. C.R. 195, 234. CASD ordered Electricity Maine to refund the customer \$117.64, the difference between the standard offer rate and the Electricity Maine rate during the enrollment period. C.R. 195, 251. Electricity Maine

findings and conclusions section, section VIII below, the Commission finds the customer complaint to be credible.

took the position at the time that there was nothing wrong with the enrollment, but it later confirmed that its sales agent involved in this incident was deactivated and has not been reactivated. C.R. 161, ODR 02-01; ODR 02-04.

12. Sanford (CMP complaint)

On May 17, 2018, CMP received a call from a customer in Sanford who reported an Electricity Maine sales agent was with him, asking him for his account number. C.R. 39. The Electricity Maine sales agent told the customer he needed the customer's account number because there was a problem with his meter, and because of this the customer did not understand that Electricity Maine was actually there on a sales call. *Id.*

Electricity Maine's response to this incident was to deactivate the sales agent involved. C.R. 41. Electricity Maine confirmed that the sales agent involved in this incident, which is the same sales agent that was involved in incident VI.A.13 and VI.B.11 below, has been terminated and is not eligible for re-hire to work on behalf of Electricity Maine.²⁹ EXM 01-01; ODR 01-01; ODR 02-01.

13. Sanford (CASD #4586)

In June 2018, two customers from Sanford called CASD to report that about two months prior a man had come their home. He told them his name, that he was an auditor, that they were being overcharged by CMP, and that he could help. C.R. 53-54, 116-127. The man said that CMP rates were going up to 15 cent per kWh and that he could lock them in at 12.7 cents per kWh. The customers stated that the man put them on the telephone with someone and told them to watch him and he would indicate what to say to the person on the telephone. C.R. 119.

When the customers contacted Electricity Maine, Electricity Maine told them that no one by the reported name worked for Electricity Maine. C.R. 117. The customer told Electricity Maine they thought they had been enrolled under false information and that they had contacted CASD and CMP. Electricity Maine's response was to drop the customers back to standard offer service. C.R. 117. Electricity Maine later confirmed that the sales agent involved in this incident, which is the same sales agent that was involved in incident VI.A.12 above and VI.B.11 below, was indeed its agent and that he has been terminated and is not eligible for re-hire to work on behalf of Electricity Maine. EXM 01-01; ODR 01-01; ODR 02-01.

14. Greene (CMP Complaint)

In April and May 2018, CMP received calls from a customer to discuss a high bill. C.R. 46; ODR 02-04. While reviewing the customer's account and bill, CMP told the

²⁹ Electricity Maine incorrectly reported in ODR 01-01 the name of the sales agent involved in incident numbers VI.A.12 and VI.A.13, and VI.B.11. The complaint record and discovery indicate the correct name of the sales agent, who was sales agent #8284. C.R. 39, 53, 117, 131, 353; ODR 02-01.

customer Electricity Maine was her supplier, but the customer stated she had dropped service with them in December. C.R. 45-46. The customer's bill showed Electricity Maine was the supplier as of April 20, 2018 at a rate of 11.90 cents per kWh. C.R. 45-46. CMP asked the customer if anyone had visited her home about her electricity service, and she said CMP had visited her home. *Id.*

The customer explained that a tall man visited her home and said he was from CMP and was out checking meters. He told her the rate CMP was charging was too high and needed to be fixed, that he was lowering her light bill, and he tried to get her to sign up for a different supplier. *Id.*; ODR 02-04. The customer told CMP that she felt very pressured and uncomfortable by the conduct of the sales agent, that he made her get on the telephone and call a number, and that she did not feel good about the situation. ODR 02-04. The sales agent asked to see her bill and had her sign a piece of paper before leaving. C.R. 45-46. The customer told the sales agent she wanted to stay with standard offer. ODR 02-04. The customer said the man never mentioned Electricity Maine, only CMP. C.R. 45-46.

Electricity Maine's response noted that a recording of the customer's third-party verification call included the customer agreeing to have Electricity Maine as her supplier, but Electricity Maine agreed to place the customer back on standard offer service and waived the early termination fee. C.R. 45. Electricity Maine deactivated the sales agent in this incident and later terminated him such that he is not eligible for rehire for Electricity Maine marketing campaigns.³⁰ ODR 02-01; ODR 02-04.

15. Damariscotta

On May 25, 2018, Electricity Maine enrolled a customer after a door-to-door sales agent visited her at her home in Damariscotta. The customer contacted Electricity Maine to cancel because the sales agent was misleading, and the customer thought the sales agent had been from CMP. Electricity Maine verified the enrollment through the third-party verification call, but nonetheless agreed to terminate her enrollment effective July 23, 2018 and waive the early termination fee. Electricity Maine confirmed that commission money was clawed back from the vendor involved in this incident. ODR 01-09.

16. Rumford

³⁰ Electricity Maine states that due to the "'he said-she said' nature of the complaint, [Electricity Maine] lacks facts to contest" the description in this complaint about its enrollment practices. Electricity Maine Reply Br. at 13. Electricity Maine, however, cites to no evidence in the record to refute this complaint that an Electricity Maine sales agent told a customer he was from CMP and pressured her to switch suppliers, which violates Commission rule. MPUC Rules, Ch. 305, § 4(B)(12). As discussed in the findings and conclusions section, section VIII below, the Commission finds the customer complaint to be credible.

In June 2018, CASD received a complaint from a customer in low-income housing in Rumford. C.R. 99. This customer reported:

Two people came to my house and said they were from CMP. They said the price per [kWh] is fluctuating and we can lock you in a cheaper rate. They did not tell me the cheaper rate. I never talked to anyone or agreed to anything. I got a bill and it was high from CMP. So I called them up and they told me it went up because I changed my supplier to [Electricity Maine] and they were charging me 4 cents more. I called them to get to the bottom of it and they said I did sign up and that it would be 100.00 to cancel service. They are pin pointing the elderly and that is absolutely not okay. I asked to speak to a supervisor and that supervisor has yet to call me back.

C.R. 97-98. The complaint record shows the customer was an Electricity Maine customer May 12, 2018 through July 13, 2018 at an enrolled rate of 11.90 cents per kWh. C.R. 113, 103.

Following CASD's investigation of the complaint, CASD concluded Electricity Maine had failed to comply with regulatory notice and rescission period requirements. C.R. 113, MPUC Rules, Ch. 305, § 4(B)(3)(b), § 4(B)(4)(a). Electricity Maine agreed to refund the customer \$32.00, the difference between the standard offer rate and the Electricity Maine rate, and to drop the customer back to standard offer service.³¹ C.R. 113. In response to discovery, Electricity Maine produced a table in which it stated it had found no improper action on the part of the sales agent, and it indicated it took no disciplinary action against the sales agent.³² ODR 02-01.

17. Pittsfield

On June 1, 2018 following a visit from a door-to-door sales agent, Electricity Maine enrolled a customer at two service addresses in Pittsfield. The sales agent told the customer he was with CMP, and therefore Electricity Maine agreed to drop the customer's accounts back to standard offer service. ODR 01-09. Electricity Maine

³¹ Electricity Maine also states it waived the early termination fee for this customer, but it is not clear where this is reflected in the record. Electricity Maine Reply Br. at 13-14.

³² Electricity Maine states that due to the "he said-she said" nature of the complaint, [Electricity Maine] lacks facts to contest" the description in this complaint about its enrollment practices. Electricity Maine Reply Br. at 13-14. The complaint record contains a customer statement that an Electricity Maine sales agent told her he was from CMP and could lock her in at a lower rate, and that conduct violates Commission rule. MPUC Rules, Ch. 305, § 4(B)(12). As discussed in the findings and conclusions section, section VIII below, the Commission finds the customer complaint to be more credible than Electricity Maine's response in discovery.

confirmed that commission money was clawed back from the vendor involved in this incident. ODR 01-09.

18. Fryeburg

On June 6, 2018, CMP provided Commission Staff with an email regarding a senior citizen complex in Fryeburg.³³ C.R. 51. A customer reported to CMP that a sales agent visited her home and asked for her utility bill. C.R. 51. He told her he had been hired by CMP as an auditor due to high bill issues, and after looking at her utility bill informed her that her bills were 12% higher because she received her electric supply from the standard offer service provider. C.R. 51. Electricity Maine identified the sales agent involved as one of its sales agents and confirmed that the sales agent was permanently terminated from working on behalf of Electricity Maine because he did not follow the rules.³⁴ Electricity Maine Letter (June 18, 2018); Jordan Test. at 12-13; OPA 01-05; ODR 02-04. The sales agent involved in this incident is the same sales agent that had been reactivated after having claimed to be a CMP auditor in Bath, as summarized at VI.A.3 above. C.R. 6; Electricity Maine Letter (June 18, 2018); ODR 02-01.

B. False and Deceptive Claims about Savings and Rates

1. West Paris

On November 29, 2017, Electricity Maine enrolled a customer following a door-to-door sales visit. The customer later contacted Electricity Maine to report that the sales agent had given her false information. As of January 4, 2018, the customer was placed back on standard offer service. Electricity Maine confirmed that it clawed back commission revenue from the vendor for this sale. ODR 01-09 at 1.

2. Newport (CASD # 5376)

On January 31, 2018, an Electricity Maine sales agent visited a customer in Newport. C.R. 491. In August, the customer contacted CASD and reported the sales agent had told him he would have a lower rate and his electricity bill would be less if he agreed to have Electricity Maine as his supplier. C.R. 490-491. CASD reviewed the matter and determined Electricity Maine had failed to provide the required terms of service, and therefore Electricity Maine agreed to return the customer to standard offer service and provide a credit of the difference between the standard offer rate and the

³³ This complaint from a senior citizen complex in Fryeburg is the same complaint initially raised informally by Commission Staff in its June 8, 2018 letter referenced in the factual and procedural background section, section II above.

³⁴ In discovery, ODR 02-01, Electricity Maine stated it was unable to match an agent to the senior citizen complex complaint, but this is inconsistent with its prior June 18, 2018 letter from its regulatory counsel, who identified the sales agent as #6787, and Ms. Jordan's pre-filed testimony cited in the text above, in which Ms. Jordan confirmed the agent had been terminated.

Electricity Maine rate. C.R. 487, 491, 498. Electricity Maine refunded \$173.70 to the customer. C.R. 689. Electricity Maine stated no improper action was found on the part of the sales agent and it took no disciplinary action against the sales agent. ODR 02-01.

3. Complaint submitted to CASD via Email

On March 22, 2018, a customer emailed CASD to report a sales agent from Electricity Maine had visited his home, and he asked CASD to investigate the issues he raised in an email. C.R. 301. The customer reported the sales agent proposed a rate of 11.9 cents per kWh and stated it was the lowest in the industry and that everyone else's rates were set to increase to 14 cents per kWh on April 1.³⁵ The sales agent explained the offered rate was a special offer to people in the customer's area because of high usage and that the offer was guaranteed to save the customer money. C.R. 301. The customer stated the sales agent claimed he would save money overall, even if he paid such things as a termination fee, and the customer reported he felt pressured into showing the sales agent a copy of his electric bill. C.R. 301.

The customer concluded the sales agent's claims were false or misleading, and expressed concern that other Maine customers may have been pressured into contracts with Electricity Maine through the unethical sales practices he had experienced. C.R. 302. CASD responded to the customer, informing him the Commission Staff had recently begun to examine Electricity Maine's marketing activities in Maine. C.R. 303. Electricity Maine was unable to identify a sales agent involved in this incident. ODR 02-01.

4. South Paris

On March 23, 2018, a sales agent visited a customer at his home in South Paris. C.R. 594-631, 737-789. The sales agent told the customer Electricity Maine could offer him a rate of 11 cents per kWh, which would be cheaper than the 16 cents per kWh currently offered by CMP. C.R. 601. Electricity Maine enrolled the customer at a rate of 11.90 cents per kWh. C.R. 604.

When the customer contacted CASD in August 2018, he told CASD that he was not able to understand the third-party verification call, but that the sales agent had directed him, nodding and indicating how he should respond to questions. C.R. 601. CASD concluded Electricity Maine failed to provide the customer with the required

³⁵ As noted above, the standard offer service term runs from January 1 to December 31, and thus no increase to the standard offer rate was slated for April 2018. *Commission Initiated Standard Offer Bidding Procedure*, Docket No. 2016-00200, Order Designating Standard Offer Providers (Nov. 30, 2016) (setting rate at 6.69 cents per kWh for January 1, 2017 - December 31, 2017); *Commission Initiated Standard Offer Bidding Procedure*, Docket No. 2017-00184, Order Designating Standard Offer Providers (Nov. 8, 2017) (setting rate at 7.92 cents per kWh for January 1, 2018 - December 31, 2018).

rescission period, as explained in the legal standards section, section V above, and Electricity Maine agreed to return the customer to standard offer service and refund the difference between the standard offer rate and the Electricity Maine rate. C.R. 595, 626. Electricity Maine indicated the agent involved in this incident has been deactivated and is not eligible for future employment with Electricity Maine. ODR 02-01; ODR 02-04. The sales agent involved in this incident is the same sales agent that was involved in VI.A.5 and VI.A.8 above.

5. Paris

Two customers with the same service address contacted Electricity Maine in April 2018. One customer “called in very confused,” because a door-to-door sales agent “never stated her rate would be higher than what they [*sic*] currently were,” and that the agent “misled” the customer. ODR 01-09. Similarly, the other customer called to cancel service because the Electricity Maine sales agent “lied,” saying it would be cheaper to have Electricity Maine as a supplier when it was not. ODR 01-09. In response, on April 27, 2018 Electricity Maine dropped the customers back to standard offer service and did not charge her an early termination fee. ODR 01-09. Electricity Maine confirmed that it clawed back commission revenue from the vendor for these sales. ODR 01-09.

6. Norway

On April 26, 2018, Electricity Maine enrolled a customer from Norway following a visit by a door-to-door sales agent. ODR 01-09. The customer contacted Electricity Maine because her rate with Electricity Maine was 10.49 cents per kWh and her previous rate had been 7.92 cents per kWh. Electricity Maine offered the customer a rate of 8.59 cents per kWh, but the customer chose to go back to standard offer service, effective May 23, 2018. ODR 01-09. Electricity Maine confirmed that it clawed back commission revenue from the vendor for this sale. ODR 01-09.

7. Portland

On April 20, 2018, an Electricity Maine sales agent visited the home of a customer in Portland. C.R. 522. The sales agent told the customer that if she signed up with Electricity Maine she would have free electric service for year, and that after that it would be 11 cents per kWh. C.R. 508, 522. Several days later the customer called Electricity Maine to cancel the service. C.R. 505. The customer told CASD Electricity Maine gave her a difficult time, kept her on the telephone for an hour, but finally agreed to cancel her service. C.R. 507, 509. When the customer received her next electric bill, however, she noticed she was still being charged a rate of 11.90 cents per kWh. C.R. 522, 510. The customer asked CASD to investigate Electricity Maine’s high-pressure tactics and to assist her in canceling her service and receiving a refund. C.R. 505.

Electricity Maine took the position that it had provided the customer with the required terms of service, or so-called welcome letter, and that together with the third-

party verification call the customer's enrollment was confirmed. Electricity Maine agreed, however, to waive the early termination fee. C.R. 507, 522.

CASD investigated the matter and determined Electricity Maine had failed to timely provide the customer with her terms of service and had prematurely enrolled the customer. C.R. 522. The enrollment, therefore, was invalid and CASD ordered Electricity Maine to refund the customer \$43.85, the difference between the standard offer rate and the Electricity Maine rate. C.R. 523. Electricity Maine deactivated the sales agent involved in this incident, who is the same sales agent involved in incident VI.B.14 below and terminated his employment such that he is no longer eligible to work for Electricity Maine. ODR 02-01; ODR 02-04.

8. Old Orchard Beach

On April 20, 2018, CASD received a complaint from a customer in Old Orchard Beach. C.R. 313-322. The customer reported an Electricity Maine sales agent had visited her home and told her that by signing up with Electricity Maine her rate would be reduced by 30%. C.R. 315-316. The rate offered to her by Electricity Maine, however, was 10.49 cents per kWh and the standard offer rate was 7.92 cents per kWh. C.R. 318, 320. The customer told CASD she wanted to return to standard offer service because she was on a fixed income. C.R. 318.

In response to this complaint, Electricity Maine agreed to drop the customer back to standard offer service and refund her \$9.76, the difference between the standard offer rate and the Electricity Maine rate.³⁶ C.R. 314, 320. The sales agent involved in this incident became inactive due to having no sales during a 30-day period, and thus it appears Electricity Maine took no disciplinary action against this sales agent.³⁷ C.R. 318; ODR 02-01.

9. Rumford

On April 25, 2018, Electricity Maine enrolled a customer in Rumford. On May 21, 2018, the customer's daughter called Electricity Maine to cancel service because her

³⁶ Electricity Maine also states it waived the early termination fee for this customer, but it is not clear where this is reflected in the record. Electricity Maine Reply Br. at 14.

³⁷ Electricity Maine states that due to the "he said-she said" nature of the complaint, [Electricity Maine] lacks facts to contest" the description in this complaint about its enrollment practices. Electricity Maine Reply Br. at 14. Electricity Maine, however, cites to no evidence in the complaint record to refute this complaint that an Electricity Maine sales agent told a customer that Electricity Maine would reduce her rate by 30%, and that conduct is a violation of Commission Rule. MPUC Rules, Ch. 305, § 4(B)(12). As discussed in the findings and conclusions section, section VIII below, the Commission finds the customer complaint to be credible.

mother did not know what she had signed up for. Electricity Maine agreed to drop the customer back to standard offer service and waive the early termination fee. ODR 01-09. Electricity Maine confirmed that commission money was clawed back from the vendor involved in this incident. ODR 01-09.

10. Old Orchard Beach

On May 1, 2018, after seeing an article in the paper about Electricity Maine and what she referred to as fraudulent marketing practices, a customer in Old Orchard Beach contacted CASD and told CASD she had experienced such marketing practices. C.R. 369-370. She told CASD she contacted Electricity Maine in April when she realized she was signed up for service from Electricity Maine but had not authorized it. C.R. 370. She told Electricity Maine she did not want its service, and Electricity Maine told her she would be charged an early termination fee. C.R. 370. When the customer stated she would call CASD, Electricity Maine agreed to transfer her back to standard offer service and waive the fee. C.R. 370. The customer stated she would contact CASD again if Electricity Maine did not follow through, and she did not contact CASD further. C.R. 370. Electricity Maine stated it did not have a sales agent involved in this complaint. ODR 02-01.

11. Monmouth

On May 2, 2018, two Electricity Maine sales agent visited a 91-year-old WWII veteran while he was sitting outside his home in Monmouth. C.R. 335, 358. The sales agents took his CMP bill without his knowledge and signed him up for the Electricity Maine rate of 12.7 cents per kWh while the standard offer rate was 7.92 cents per kWh. C.R. 335, 339, 358-359. On May 4 and 7, 2018, the customer's son contacted Electricity Maine to try to switch his father back to standard offer service. C.R. 358. Neither of the Electricity Maine employees he contacted acted on the request to rescind, and Electricity Maine enrolled the customer on May 14, 2018. ODR 01-09. On June 8, 2018, the son called CASD. C.R. 358.

The son told CASD that his father told him he never spoke to anyone about switching electricity supply, but the son later acknowledged that the third-party verification call showed that his father responded "yes" or "yuh" to choosing Electricity Maine. C.R. 328-329, 361. The son stated he was "still concerned that [the sales agents] took the CMP bill and his elderly father was taken advantage of by the selling tactics of the men who came uninvited." C.R. 329. The son stated that, when dealing with the elderly, sales agents should confirm sales with family members. C.R. 361. The son stated he did not "understand why Electricity Maine would believe that a CMP customer paying [the lower standard offer rate] would switch to a company like Electricity Maine offering [a higher rate]??? That just does NOT make any sense to us." C.R. 332 (emphasis in original). C.R. 332.

Following its investigation, CASD concluded Electricity Maine failed to properly honor the customer requests to rescind the contract and failed to timely provide a copy of the terms of service. C.R. 339, 358. CASD ordered a refund a \$19.26, the difference

between the standard offer rate and the Electricity Maine rate. C.R. 359. Electricity Maine offered instead a \$25.00 Visa gift card. C.R. 365. Electricity Maine initially informed CASD that one of the sales agents involved was no longer an active agent and Electricity Maine was therefore not able to contact him. C.R. 353. Electricity Maine later confirmed that a sales agent involved in this incident, which is the same sales agent that was involved in incident numbers VI.A.12 and VI.A.13, is not eligible for re-hire to work on behalf of Electricity Maine.³⁸ ODR 01-01. Electricity Maine also indicated that commission money was clawed back from the vendor involved in this incident. EXM 01-16, ODR 01-06.

12. Waterville

On May 7, 2018, Electricity Maine enrolled a customer in Waterville at a rate of 12.7 cents per kWh. When the customer contacted Electricity Maine, her call was logged as a door-to-door complaint, and her account was dropped back to standard offer service on June 15, 2018. Because the standard offer rate was 7.9 cents per kWh, the customer asked if anything could be done because “she was told the rate would be lower.” The difference between the Electricity Maine rate billing and the standard offer rate billing was about \$100, so Electricity Maine agreed to send her a \$100 gift card. ODR 01-09. Electricity Maine confirmed that commission money was clawed back from the vendor involved in this incident. ODR 01-09.

13. Skowhegan

On May 11, 2018, an Electricity Maine sales agent visited a customer and her neighbor at their homes in Skowhegan C.R. 377, 380, 402, 455. Electricity Maine enrolled the customers at a rate of 12.70 cents per kWh, C.R. 404, 458, and after the bills went up, the customer sent CASD a handwritten note, explaining she felt that they had been lied to by Electricity Maine as to whether Electricity Maine had a cheaper rate than standard offer service, C.R. 379, 380, 403, 455, 469. The customer told CASD the Electricity Maine sales agent had guaranteed lower rates. C.R. 430, 431. The customer told CASD she asked Electricity Maine to terminate the contracts for her and her neighbor and refund the charges, but Electricity Maine had told her nothing could be done and that they would be charged a \$100 early termination fee for canceling service.

³⁸ Electricity Maine states that due to the “‘he said-she said’ nature of the complaint, [Electricity Maine] lacks facts to contest” the description in this complaint of its enrollment practices. Electricity Maine Reply Br. at 13. Rather than an instance of competing evidence, however, there is no evidence in the record, whether from CASD, CMP, or Electricity Maine, that contradicts the facts set forth in this customer’s complaint. As discussed in the findings and conclusions section, section VIII below, the Commission finds the customer complaint to be credible.

C.R. 381, 402-403, 430, 431, 456, 471. The third-party verification call confirmed the enrollment. C.R. 403.

CASD reviewed the matter and determined Electricity Maine failed to timely send the customer a copy of the terms of service, and that therefore the enrollment was invalid. C.R. 402. After CASD's determination, Electricity Maine agreed to waive the early termination fee and refund the customer \$30.45 and the customer's neighbor \$18.83, the difference between the standard offer rate and the Electricity Maine rate. C.R. 376, 377, 478. The customer told CASD the matter had weighed heavily on their minds and "[t]o think that either one of [the customers] would sign any contract where [they] would pay more is unbelievable." C.R. 444. Electricity Maine indicated the agent involved in this incident had been deactivated at the time of its voluntary suspension of its marketing activities in Maine, and thus it is unclear whether this sales agent would be eligible to work in the future for Electricity Maine. ODR 02-01.

14. Lewiston

On May 22, 2018, a case manager from the Department of Health and Human Services contacted CASD. C.R. 324. She told CASD that one of her clients spoke very little English, and she had an interpreter with her during her telephone call to CASD. C.R. 324. The case manager reported that her client had signed up for Electricity Maine but that he did not understand what he was being asked to sign and that he could not remember if he signed anything. This customer had a language barrier and did not realize what he was doing when he signed up for service from Electricity Maine. ODR 01-09. The customer did not want to have Electricity Maine as his supplier as the rate offered to him was 11 cents per kWh, and he wanted to rescind his contract. C.R. 326.

CASD told the case manager to call Electricity Maine and tell Electricity Maine the customer does not understand English, did not understand what he was signing up for, and that he wanted to rescind his enrollment. C.R. 324. If Electricity Maine would not help the case manager, CASD advised her to call CASD back.³⁹ C.R. 324. CASD did not hear further from the case manager and closed the matter. C.R. 323.

Electricity Maine later confirmed that commission money was clawed back from the vendor involved in this incident, that this sales agent was deactivated in Maine, and that the sales agent is not eligible for rehire by Electricity Maine. EXM 01-16; ODR 01-06; ODR 02-01; ODR 02-04. The sales agent involved in this incident is the same sales agent involved in incident VI.B.7 above. ODR 02-04.

15. Lewiston

On May 31, 2018, an Electricity Maine sales agent visited a customer at his home in Lewiston. C.R. 532, 536. The customer told CASD he believed the sales

³⁹ As explained in footnote 24, Commission's rules require customers to first attempt to resolve disputes directly with the utility before filing a complaint with CASD. MPUC Rules, Ch. 815, § 13(H)(1) & 5; see also MPUC Rules, Ch. 305, § 4(B)(18)(d).

agent lied to him because he was told he would pay 12 cents per kWh less than the current standard offer rate. C.R. 533. When he received his first bill he was surprised to see he was paying 12.78 cents per kWh and therefore more than the standard offer rate. C.R. 533, 534. When he complained to Electricity Maine, Electricity Maine told him he would be charged an early termination fee if he canceled and that in the alternative he could accept a rate of 8.7 cents per kWh, which he accepted because he could not afford the early termination fee. C.R. 533, 535. The customer asked CASD to investigate whether the information provided to him by Electricity Maine was fraudulent. C.R. 533.

CASD determined Electricity Maine had failed to timely provide the customer with his terms of service and therefore the enrollment was invalid. C.R. 531. Electricity Maine agreed to waive the early termination fee and refund the customer \$31.74, the difference between the standard offer rate and the Electricity Maine rate. C.R. 530, 535, 588. Electricity Maine indicated that this agent had been deactivated at the time of its voluntary suspension of its marketing activities in Maine, and thus it is unclear whether Electricity Maine would consider this sales agent eligible to work in the future for Electricity Maine. ODR 02-01.

16. Brunswick

Electricity Maine enrolled a customer on June 1, 2018 following a door-to-door sales agent visiting the customer's home in Brunswick. When the customer contacted Electricity Maine to request going back on standard offer service, the customer told Electricity Maine the sales agent had told him he would be getting a better deal than if he was with CMP. Electricity Maine dropped the customer back to standard offer service and waived the early termination fee. ODR 01-09. Electricity Maine confirmed that commission money was clawed back from the vendor involved in this incident. ODR 01-09.

17. Warren

Electricity Maine enrolled a customer on June 8, 2018 following a door-to-door sales agent visiting the customer's home in Warren. When the customer contacted Electricity Maine to request going back on standard offer service, the customer told Electricity Maine the sales agent had been misleading, and he wanted to be returned to standard offer service. Electricity Maine dropped the customer back to standard offer service and waived the early termination fee. ODR 01-09. Electricity Maine confirmed that commission money was clawed back from the vendor involved in this incident. ODR 01-09.

18. Waterville

On June 3, 2018, an Electricity Maine sales agent visited a customer at his home in Waterville. C.R. 1087. The sales agent told the customer he could lock him in at a better rate, and the customer agreed to sign up with Electricity Maine. C.R. 1086. Electricity Maine, however, enrolled the customer at a rate of 12.70 cents per kWh and

his prior rate was 7.92 cents per kWh. ODR 01-09. When the customer saw Electricity Maine being reported in the news as a scam, he contacted Electricity Maine and Electricity Maine agreed to place him back on standard offer service without paying an early termination fee. C.R. 1086, ODR 01-09.

Electricity Maine later confirmed that the sales agent involved in this incident is not eligible for re-hire to work on behalf of Electricity Maine, ODR 01-01, and confirmed that commission money was clawed back from the vendor involved in this incident, EXM 01-16, ODR 01-06.

19. Biddeford

On August 6, 2018, a customer in Biddeford contacted CASD. C.R. 526. The customer told CASD she had signed up with Electricity Maine two or three months earlier because Electricity Maine told her the rate would be lower than CMP's rate. C.R. 527. When she received the bill, however, the rate was higher than the rate for which she had signed up. C.R. 528. She had contacted Electricity Maine to try to rescind the contract because she believed she had signed up under false pretenses. C.R. 526. The customer stated she would contact CASD further if Electricity Maine charged her an early termination fee. C.R. 526. CASD did not hear further from this customer. C.R. 526. Electricity Maine states no sales agent was involved in this incident. ODR 02-01.

20. Waterville

On August 21, 2018, a customer in Waterville contacted CASD. C.R. 372, 373-374. The customer stated she did not understand why her bill was so high. C.R. 363. CASD reviewed her bill and determined the customer had switched to Electricity Maine in June 2018. C.R. 363. The customer's husband told CASD he felt he was taken advantage of because Electricity Maine told him he would save on his bill. C.R. 374. CASD advised the customers to contact Electricity Maine to try to resolve the matter, and the customers later informed CASD they had been placed back on standard offer service and the matter had been resolved. C.R. 372. Although Electricity Maine states no sales agent was involved in this incident, ODR 02-01, the complaint record shows CASD reviewed this matter and confirmed this customer was enrolled with Electricity Maine, C.R. 374.

21. Skowhegan

On September 6, 2018, a customer from Skowhegan contacted CASD. C.R. 633. He stated that a sales agent from Electricity Maine had visited him at his house and tried to get him to switch to Electricity Maine from standard offer service. C.R. 633. The customer told CASD he felt like Electricity Maine was involved in a scam regarding a misrepresentation of the Electricity Maine rate versus the standard offer rate. C.R. 633. This customer stated he did not want to file a formal complaint but rather only wanted to go on record that he felt like Electricity Maine was offering a scam. C.R. 633. Electricity Maine indicated it was unable to match a sales agent to this incident. ODR 02-01.

VII. PARTIES' BRIEFS

A. OPA

The OPA argues Electricity Maine is responsible for the actions of its third-party vendor sales agents who engaged in months-long door-to-door marketing campaigns that included significant fraudulent and deceptive activity.⁴⁰ The OPA states Electricity Maine failed to take adequate remedial actions once the unlawful behavior was identified. OPA Br. 9; OPA Reply Br. at 1. The OPA states aggressive enforcement is warranted to deter bad behavior by Electricity Maine and other CEPs licensed in Maine. OPA Reply Br. at 1-2.

The OPA contends Electricity Maine has failed to provide any evidence to refute or deny that the facts set forth in the complaint record occurred as described, and furthermore has failed to provide evidence to refute or deny that the sales agents' behavior was willful. OPA Br. 9. The OPA argues "[n]owhere does Electricity Maine state that the incidents and statements detailed in the complaints were inaccurate, or that the agents were not acting under the direction and control of Electricity Maine or that they were not attempting sales on behalf of the company. Thus, these complaints are unchallenged." OPA Br. 17. The OPA takes the position that Electricity Maine has admitted the actions in the complaints occurred and admitted its agents were responsible. OPA Br. 18.

To address the serious and egregious complaints, the OPA seeks an order suspending Electricity Maine's license for one year and imposing an administrative penalty of no less than \$1 million. OPA Br. 3, 9. The OPA states the sales agents' behavior was callous and despicable, particularly in targeting older individuals, and that the complaints continued for months until Electricity Maine voluntarily suspended all marketing campaigns. OPA Br. 9, 10. The sales agents' conduct resulted in people becoming Electricity Maine customers against their will and suffering stress and aggravation from mistreatment by Electricity Maine sales agents. OPA Br. 9, 11. The OPA concludes greed, inattention, or both, led to the violations. OPA Br. 15. If the Commission does not suspend Electricity Maine's license, the OPA urges the

⁴⁰ The OPA argues Electricity Maine is responsible for the actions of its third-party vendors because, even though they are independent contractors, Electricity Maine maintained control of the sales agents. OPA Br. at 4-5. While Electricity Maine denies that the sales agents must be treated as employees, "it is not disclaiming responsibility for the actions of sales agents retained by" Electricity Maine's third-party vendors. Electricity Maine Reply Br. at 5 n.3. Thus, while we agree with the OPA's assertion that the record shows Electricity Maine maintained control over the training and retention of the sales agents, OPA Br. 10, the Commission does not reach the legal question of whether parties are generally responsible for the actions of independent contractors because Electricity Maine does not disclaim responsibility. Moreover, as noted in legal standards section, section V, CEPs are expressly responsible for the regulatory violations of agents acting on their behalf. MPUC Rules, Ch. 305, § 4(C).

Commission to prohibit Electricity Maine from engaging in door-to-door marketing for an indefinite period. OPA Reply Br. at 2.

As to the administrative penalty amount, the OPA argues the egregious conduct of Electricity Maine's sales agents constitutes willful violations of the applicable statute and rule, thereby subjecting Electricity Maine to penalties not to exceed \$5,000 for each violation. OPA Br. at 4, 9 (citing 35-A M.R.S. § 1508-A(1)(A) (providing penalties for willful violations). The OPA further argues, following the Commission Staff's March 5, 2018 letter, Electricity Maine had been "explicitly notified by the [C]ommission that it was not in compliance" with the applicable statute and rule, and that therefore Electricity Maine had knowledge of its violations and is subject to an administrative penalty not to exceed \$500,000 per violation. OPA Br. at 10-11 (citing 35-A M.R.S. § 1508-A(1)(B) (providing enhanced penalties following notice of noncompliance). Relying on these provisions, the OPA calculated an administrative penalty of \$5 million, but states an administrative penalty of no less than \$1 million is appropriate, and requests that the money be placed in a fund to be used to educate customers about retail choice. OPA Br. at 30-31 (citing 35-A M.R.S. § 117(3)(B)(5)), OPA Reply Br. at 2.⁴¹

B. Electricity Maine

Electricity Maine acknowledges an unacceptable level of potentially serious complaints regarding its door-to-door sales agents, and it states that it should have taken additional steps to address the complaints. Electricity Maine Br. at 1, 12, 14.

Electricity Maine takes the position, however, that some complaints were unrelated to its door-to-door marketing campaigns, reflected no evidence of wrongful conduct, or are not capable of definitive proof because they occurred in a one-on-one sales transaction.⁴² Electricity Maine Reply Br. at 10-11. Electricity Maine states that it leans toward resolving customer complaints even without proof that it has done something wrong. Electricity Maine Reply Br. at 11 (citing Tr. 26-27 (July 17, 2019)). Nonetheless, Electricity Maine generally accepts that customer complaints in the record are well-founded except in cases where an allegation of sales agent misbehavior was contradicted by information found during Electricity Maine's investigation. Electricity Maine Reply Br. at 11 (without citation to the record). In many instances, Electricity Maine maintains mitigating factors warrant no or only limited sanctions. *Id.* at 11-14.

⁴¹ In its exceptions, the OPA requested that the Commission reconsider a portion of the January 5, 2021 Order rejecting the stipulation concerning an OPA funding provision. The Commission has not acted to reconsider, and the request is denied by operation of law. MPUC Rules Ch. 110, § 11(D) (providing request for reconsideration denied if not granted within 20 days of filing).

⁴² The Commission addresses Electricity Maine's argument about licensing requirement violations, that is, complaints unrelated to its door-to-door marketing campaign, in footnote 14 above.

Electricity Maine contends that it responded to Commission Staff's inquiry letters in a timely way and that it expended substantial time and effort to ensure its door-to-door marketing campaigns operated in compliance with applicable law. Electricity Maine Br. at 2, 8, 9. It lists in detail the steps it has taken, including, for example, its robust hiring processes for third-party vendors and sales agents, investigating and promptly responding to customer complaints by canceling sales and issuing refunds for customer dissatisfaction, post-sale calls and quality audits, compliance audits in the field, voluntarily staying its door-to-door marketing campaigns in Maine, deactivating and terminating agents, clawing back revenue from vendors, and hiring additional compliance staff. *Id.* at 2-8, Electricity Maine Reply Br. at 1-4. Electricity Maine states that, while it failed to prevent complaints in the past, it is confident it has enhanced its compliance efforts such that the resumption of its door-to-door marketing campaign in Maine will lead to customer satisfaction. Electricity Maine Br. at 11-12.

As to specific sanctions, Electricity Maine argues, given its comprehensive compliance approach, the Commission should impose either no sanctions or limited sanctions, especially after considering it has self-imposed a significant penalty by voluntarily suspending its door-to-door marketing campaigns in Maine. *Id.* at 15. Electricity Maine argues the record does not support a conclusion of willful or knowing violations. Electricity Maine Reply Br. at 4-9. Regarding willfulness, Electricity Maine contends the OPA's arguments omit facts showing Electricity Maine did not ignore complaints or intend to proceed without regard to the complaints, and rather that the record shows it took responsive actions to address the complaints. Electricity Maine Reply Br. at 7. Finally, as to having received notice of noncompliance, Electricity Maine claims the Commission Staff's letter of March 5, 2018 was too speculative and undefined to provide the notice required for enhanced penalties under the statute. Electricity Maine Reply Br. at 8-9.⁴³

VIII. FINDINGS AND CONCLUSIONS

A. Burden of Proof

The OPA and Electricity Maine address the question of who carries the burden of proof following the issuance of an order to show cause. The OPA states the Commission's authority to issue orders to show cause arises out of the Commission's authority to hold utilities in contempt for failure to comply with Commission orders and rules. OPA Br. at 5-6 (citing 35-A M.R.S. § 1502). The OPA states that once a motion for show cause makes a prima facie case that a party is in contempt of a legal obligation, that party assumes the burden of production to disprove or raise affirmative defenses to the allegations of contempt. *Id.* (citing *Mitchell v. Flynn*, 478 A.2d 1133

⁴³ In its exceptions, Electricity Maine requested an opportunity to supplement the record on the issue of an appropriate penalty structure and the public interest. Because the Commission does not revoke Electricity Maine's license, as discussed in the findings and conclusions section, section VII, this request is denied.

(Me. 1984)). The OPA further states the entry of an order to show cause, based upon a finding of probable cause, shifts the burden to the alleged contemnor to demonstrate it was not in willful contempt of the order. *Id.* (citing *Trivette v. Trivette*, 162 N.C. App. 55, 60, 590 S.E.2d 298, 303 (2004) & 35-A M.R.S. § 1314 (burden of proof is on the party adverse to the Commission)). Electricity Maine argues the issuance of the July 24, 2018 Order to Show Cause impermissibly shifted the burden of production and persuasion upon it in this proceeding, particularly given the severity of the penalty recommended in the Examiners' Report, namely revocation of its license. Electricity Maine Exceptions at 11-12 (citing *Estrin v. Moss*, 430 S.W.2d 345, 354 (Tenn. 1968)).

In this proceeding, the Commission issued the July 24, 2018 Order to Show Cause because it sought a formal response from Electricity Maine to on-going complaints about its door-to-door marketing activities. As explained in the factual and procedural background section, section II above, the Commission opened a formal investigation and issued the Order to Show Cause given the substantial and serial nature of customer complaints, which continued even while Electricity Maine was responding to informal inquiries from Commission Staff. Following receipt of Electricity Maine's response to the Order to Show Cause, the Commission scheduled a case conference and provided parties an opportunity to be heard on the process required before the matter was put before the Commission for hearing. Case Conference Tr. (Feb. 26, 2019). In accordance with the agreed upon process, the Commission produced the complaint record, which it assembled from CASD and CMP complaints, and thereafter from additional complaint information gathered from Electricity Maine through discovery and hearing. Thus, the Commission's findings in this matter are made based upon an agreed upon process and all the evidence in the record, regardless of whether the information was produced by CASD, CMP, or Electricity Maine.

The Commission, therefore, disagrees that its investigation into Electricity Maine's impermissibly shifted any burden to Electricity Maine, and otherwise does not reach the question of who may have borne the burden of proof in this proceeding. *Central Maine Power Co. v. Public Utilities Com'n*, 414 A.2d 1217, 1236 n.10 (Me. 1980) (concluding the burden of proof question need not be reached where evidence in the record was sufficient). The Commission is subject to review under a standard of whether its findings of fact are supported by substantial evidence in the record.⁴⁴ *Friedman v. Public Utilities Com'n*, 2016 ME 19, ¶ 10, 132 A.3d 183, 186; *Pine Tree Tel. & Tel. Co. v. Public Utilities Com'n*, 631 A.2d 57, 61-62 (Me. 1993). In this proceeding, the record contains substantial evidence from CASD, CMP, and Electricity Maine upon which the Commission concludes Electricity Maine willfully violated 35-A M.R.S. § 3203 and Chapter 305 of the Commission's rules.

⁴⁴ The standard of substantial evidence in the record is the identical standard to the clear error standard, and thus substantial evidence is lacking only if there is no competent evidence in the record to support it. *Pine Tree Tel. & Tel. Co. v. Public Utilities Com'n*, 631 A.2d 57, 62 n.10 (Me. 1993) (citations omitted).

B. Underlying Factors and Violations

There are several underlying factors that place Electricity Maine's door-to-door marketing campaigns and violations in Maine in context. In examining Electricity Maine's activities, the OPA references two underlying problematic issues with the retail electric supply market in Maine: (1) customers mistakenly believe that the T&D utility, in this case CMP, supplies the power rather than only delivering it; and (2) customers will sometimes choose a CEP product, in this case from Electricity Maine, even though the CEP rate is more expensive than the standard offer rate. OPA Br. 13. The Commission agrees that this proceeding has highlighted these possibilities, and notes that the Commission's rules contain provisions intended to address these concerns about the retail market. MPUC Rules, Ch. 305, § 4(B)(12)(c) (CEPs prohibited from claiming association with T&D utility) & §§ 4(B)(1) & 4(B)(12)(b) (CEPs must disclose standard offer rate to allow comparison to CEP rate; CEPs prohibited from comparing CEP rates to standard offer rates not in effect). To the two issues cited by the OPA, the Commission adds a third, and that is to note the existence of highly publicized customer concerns about high bills in CMP's service territory and the Commission's investigation into same, including the hiring of an auditor to assist in the examination of CMP's billing and metering practices.

The record shows Electricity Maine sales agents repeatedly used false and deceptive claims and actions to take advantage of these underlying circumstances and concerns, namely that Maine customers (1) may be susceptible to the misperception that CMP delivers and supplies their electricity, (2) may not be aware of the standard offer rate as a means to compare it to the rate being offered by Electricity Maine at the time of a door-to-door solicitation, and (3) were concerned about whether they were being over billed by CMP. By using false, deceptive, coercive, and unfair, statements and actions, Electricity Maine's sales agents exploited the susceptibility of customers to confusion about supply and rates, and customers' concerns about CMP's billing and metering practices. Through their repeated statements and actions, Electricity Maine's sales agents disregarded and willfully violated the regulatory provisions designed to protect customers from unfair business practices.

As stated in the July 24, 2018 Order to Show Cause and as stated by Electricity Maine at hearing, Electricity Maine has not denied that its sales agents acted in false and deceptive ways in violation of Commission rules. Rather, Electricity Maine has consistently argued that it took appropriate action to address instances where its sales agents claimed to be associated with CMP or made false and deceptive statements about rates and savings being offered. The record shows that in response to unlawful conduct, Electricity Maine retrained agents, clawed back funds from vendors, and permanently deactivated certain agents.

Electricity Maine's compliance efforts, however, fell short. While sales agents were posing as CMP auditors and claiming they could save customers money, it was Electricity Maine's marketing department that was given responsibility for addressing such complaints and not a compliance department. Further, the record shows there were credible instances where agents violated regulatory requirements, but Electricity

Maine took no action against such agents. *See, e.g.*, C.R. 99, 257, 313, 377, 491, 532. Further, following the escalation in customer complaints, Electricity Maine held only one retraining session in 2018 and it involved no written training materials for the sales agents. This approach to retraining proved ineffective as there were a series of instances where deactivated sales agents subject to retraining and reactivation continued to engage in conduct in violation of the Commission's customer protection standards. *See, e.g.*, VI.A.18 and VI.A.3; VI.A.5 and VI.A.8 and VI.B.4; VI.A.7 and VI.A.9; and VI.A.12 and VI.A. 13 and VI.B.11; and VI.B.7 and VI.B.14.

Electricity Maine has also taken the position that the record shows voluntary customer enrollments were confirmed by third-party verification calls and the delivery of welcome letters setting forth the terms of service. The Commission concludes, however, that a third-party verification call is ineffective to demonstrate customer choice where sales agents, in advance of the call, made false and deceptive claims about having an association with CMP or about rates, or otherwise pressured or deceived customers and directed them as to how to respond to questions during the third-party verification call. Third-party verification and the delivery of the terms of service cannot cure underlying false, deceptive, and coercive statements and actions.

When it filed its reply brief, Electricity Maine took the position that most complaints in the record involve a "he said-she said" situation at the time of a one-on-one sales transaction, and thus Electricity Maine lacks facts to contest the customer complaints and the situation is not capable of definitive proof. Electricity Maine Reply Br. at 11-14. The Commission disagrees. First, in many instances the record does not present a scenario of conflicting evidence, but rather what the record shows is that there is no evidence whether from CASD, CMP, or Electricity Maine to contradict the facts set forth in customers' complaints. *See, e.g.*, C.R. 1, 18, 28, 33, 39, 45, 51, 74, 116, 129, 140, 324, 335, 522, 594, 1086. Second, in those limited instances where Electricity Maine has denied its sales agents engaged in unlawful conduct, such as those noted in several footnotes above, findings and conclusions are not rendered impossible, but rather such instances require the Commission to weigh the evidence in the record.⁴⁵

In response to discovery, Electricity Maine produced a table in which, with respect to some complaints, it stated it had found no improper action on the part of a sales agent or was unable to identify a sales agent involved. The Commission finds the detailed customer complaints documented by CASD and CMP to be more credible than the statements made by Electricity Maine in response to discovery that it found no improper activity. Further, the Commission notes the complaints are overwhelmingly consistent as to what the sales agents said to customers about an association with CMP and the lower rates they claimed were being offered by Electricity Maine. For all of these reasons, the Commission concludes there is substantial, credible evidence that

⁴⁵ The complaints about which Electricity Maine has taken issue in its Reply Brief are noted in footnotes 15, 18, 28, 30, 32, and 37 above. The Commission also notes, however, and as highlighted by the OPA at hearing, that Electricity Maine has not contested the facts set forth in the complaint record. Tr. at 11-13, 18, 25-26, 38 (July 17, 2019).

Electricity Maine sales agents engaged in a pattern of conduct in violation of the Commission's customer protection standards during Electricity Maine's door-to-door marketing campaigns in Maine. This is the case even if not every one of the numerous complaints actually involved a violation.

1. False and Deceptive Claims about Being Associated with CMP

As summarized above, the record contains numerous examples of Electricity Maine's sales agents' false, deceptive, coercive, and unfair statements and actions about having an association with CMP. The record shows this conduct misled customers into signing up for service with Electricity Maine.

For example, Electricity Maine sales agents told customers they were from or worked for CMP, that Electricity Maine was taking over CMP, and that CMP had hired the sales agents as auditors to provide refund checks due to overbilling. In one instance, an Electricity Maine sales agent wore a badge indicating he was from CMP. In other instances, sales agents claiming to be from CMP enrolled customers by making the customer feel pressured and uncomfortable, and in one instance falsified a third-party verification call to enroll the customer without the customer's authorization. On other occasions sales agents, while claiming to be from CMP, told a customer because she was a senior citizen, a sales agent could lock in a lower rate for her, and told an 87-year-old customer a sales agent could guarantee her a lower electricity bill at a fixed rate. A low-income customer described Electricity Maine sales agents as targeting the elderly, and the 87-year-old customer referenced above reported feeling upset, frightened, vulnerable, and gullible after the sales agents' door-to-door visit.

The record shows that Electricity Maine sales agents lied to customers by telling them that they were from or associated with CMP. By making customers feel pressured and uncomfortable, the sales agents coerced customers into enrolling with Electricity Maine. Further, the sales agents deceived customers into believing the sales agents were associated with overbilling issues and CMP, a company name familiar to the customers because it is the local T&D utility and because customers' concerns about the metering and billing practices of CMP were heightened. By claiming an association with CMP, the sales agents were able to engage customers, gain access to customer utility bills, and ultimately were able to enroll customers with Electricity Maine under circumstances that were unfair to customers, and at a minimum under circumstances that were likely confusing and misunderstood by customers who did not understand who was offering to sell them electric supply. For these reasons, the Commission concludes Electricity Maine sales agents employed false, deceptive, coercive, and unfair statements and actions about having an association with CMP in willful violation of the customer protection standards set forth in statute and rule. 35-A M.R.S. § 3203(4-A); MPUC Rules, Ch. 305, §§ 4(B)(12) & (13).

2. False and Deceptive Claims about Rates

As summarized above, the record contains numerous examples of Electricity Maine's sales agents' false, deceptive, coercive, and unfair statements about rates and

savings. The record shows sales agents claimed Electricity Maine could save customers money when it could not because Electricity Maine's rates were higher than the standard offer rate.

For example, Electricity Maine sales agents told a customer he would have a lower rate and electricity bill if he signed up with Electricity Maine, told customers it would be cheaper or a better deal or better rate to have Electricity Maine as their supplier, told a customer she could have free electricity for a year if she signed up with Electricity Maine, told a fixed-income customer her rate would be reduced by a certain percentage, told a customer he would pay less than the standard offer rate if he signed up with Electricity Maine, and otherwise guaranteed customers lower rates; all of which were false. In one instance, a sales agent told a customer that rates were set to increase, that he could offer the customer a special rate, and he pressured the customer to show the agent his electric bill; all of which were untrue. Similarly, Electricity Maine sales agents took the electric bill of a 91-year-old WWII veteran without his knowledge and signed him up for a rate higher than the standard offer rate. In another instance, sales agents told customers they could offer cheaper rates and directed customers as to how to respond appropriately to questions during the third-party verification calls. In another instance, a low-income customer reported Electricity Maine had made false claims about cheaper rates and expressed concern about his ability to pay after he switched to Electricity Maine. One customer who did not realize he had signed up with Electricity Maine required an interpreter to assist him in rescinding a contract where his enrolled rate with Electricity Maine was higher than the standard offer rate.

The record shows Electricity Maine sales agents lied to customers by telling them that Electricity Maine would provide rates that would be less than the standard offer rate, be lower than what was otherwise available, and/or in any event save the customer money. Electricity Maine did not offer customers rates that were less than the standard offer rates in 2017 and 2018. By making customers feel pressured to provide information, the sales agents coerced customers into enrolling with Electricity Maine. By making the false claims about rates and savings, and at a minimum by making statements susceptible of both a misleading and truthful interpretation which deceived customers into believing they would save money, Electricity Maine enrolled customers under circumstances that were unfair to customers, and at a minimum under circumstances that were likely confusing and misunderstood by customers who did not understand what rate Electricity Maine was offering. For these reasons, the Commission concludes Electricity Maine sales agents employed false, deceptive, coercive, and unfair statements about rates and savings in willful violation of the customer protection standards set forth in statute and rule. 35-A M.R.S. § 3203(4-A); MPUC Rules, Ch. 305, §§ 4(B)(12) & (13).

C. Sanctions; Administrative Penalty

Based upon the record before it, the Commission concludes Electricity Maine was not engaged in conduct that promoted effective competition in the retail electric supply market, and to the contrary was engaged in conduct that undermined it by not

lowering rates for customers, but by raising them. As cited in the legal standards section, section V above, the Commission has authority to sanction the unlawful conduct of Electricity Maine.

The Commission is charged with protecting and promoting effective competition. To achieve this, the Legislature provided the Commission with oversight authority to protect retail customers from fraud and unfair and deceptive business practices. To that end, Title 35-A and the Commission's rules authorize it, having considered certain factors, for willful violations, to impose an administrative penalty for each violation in an amount not to exceed \$5,000 for each day not to exceed \$500,000 for the related series of violations, and for a CEP that commits a violation after having received notice of noncompliance, to impose an administrative penalty of up to \$500,000. The Commission may revoke or suspend a license for statutory and regulatory violations, and specifically a CEP's use of fraudulent, coercive, or deceptive practices with respect to the provision of electric supply. 35-A M.R.S. § 1508-A; MPUC Rules, Ch. 305, §§ 3(A)(1), 3(A)(4)(b) & (d). In response to the Examiners' Report, the parties filed exceptions regarding how the Commission should appropriately apply this authority to the facts of this matter.

Electricity Maine and the OPA both argue in their exceptions that full license revocation is unnecessary and that a more targeted approach is in the public interest.⁴⁶ The parties argue the Legislature's recent 2020 legislative session, in which it rejected LD 1917, An Act To Eliminate Direct Retail Competition for the Supply of Electricity to Residential Consumers, affirmed a legislative interest in maintaining a competitive residential supply market. They state this interest weighs against the revocation of Electricity Maine's license, especially given the large customer base of Electricity Maine and the nature of the complaints against it. Further, Electricity Maine and the OPA argue the complaint record documents violations with respect to residential customers enrolled by door-to-marketing activities, and no violations outside of that marketing channel or with respect to commercial customers, and that therefore it would be inappropriate to impose a penalty affecting Electricity Maine's license as a whole, including its service to commercial customers.

As an alternative to revocation, the parties are largely in agreement as to an appropriate, more targeted penalty structure.⁴⁷ They state a permanent prohibition on

⁴⁶ Electricity Maine also asserts the July 24, 2018 Order to Show Cause failed to provide notice of potential license revocation, but rather only possible suspension, and that therefore revocation would deny it due process. While the Commission disagrees given the Commission's express regulatory authority to revoke CEP licenses and the severity of the violations documented in the record, for the reasons discussed in this section, the Commission is persuaded that the public interest can be served by a more targeted remedy than license revocation.

⁴⁷ Electricity Maine independently proposes negotiating and entering a comprehensive sales compliance plan with the Commission and submitting it as a compliance filing. Electricity Maine has the obligation to ensure compliance with all applicable statutory

Electricity Maine engaging in door-to-door sales, a one-year prohibition on outgoing sales activities, a requirement that Electricity Maine provide written notification of this proceeding to existing customers that resulted from a door-to-door solicitation and provide those customers with an opportunity to transfer their supply service to standard offer without an early termination fee; and an administrative penalty would, in combination, be in the public interest. Electricity Maine states it is willing to consent to a \$500,000 administrative penalty, but the OPA asserts the amount should be raised to \$1,000,000 because Electricity Maine's violations continued after notice of violations. 35-A M.R.S. § 1508-A(1)(A) & (B).

As set forth in detail above, and based on the record in this proceeding, the Commission finds that Electricity Maine used false, deceptive, coercive, and unfair statements and actions with respect to its provision of electric supply to residential customers in Maine in willful violation of the Commission's customer protection standards. While full license revocation is supportable by this record, the Commission is persuaded by the arguments made by the parties in their exceptions that the public interest can be served by an alternative penalty structure. Thus, with regard to an administrative penalty, the Commission considers the factors set forth in 35-A M.R.S. § 1508-A(2).

Electricity Maine's violations of the Commission's customer protection standards were willful. They occurred over an extended period of time from late 2017 through late 2018 and affected numerous customers, many of whom were vulnerable to Electricity Maine's statements and actions. While there is little history of non-compliance prior to the time period covered in this proceeding, other than Electricity Maine's voluntary suspension of its door-to-door marketing activities, Electricity Maine failed to stop violating customer protection standards after Commission Staff provided it with notice of its sales agents' conduct.⁴⁸ Additionally, there is nothing in the record indicating Electricity Maine could have reasonably believed its sales agents' statements and actions were in conformance with customer protection standards. Allowing a CEP to continue to operate unchecked in the retail market under the circumstances detailed in the record and in this Order is not in the public interest, and therefore the Commission is authorized to impose the maximum administrative penalty in this proceeding.

While the OPA asserts section 1508-A(1)(A) and section 1508-A(1)(B) may be applied concurrently under the facts of this proceeding, bringing the maximum administrative penalty to \$1 million, the Commission interprets section 1508-A on these facts differently. The Commission Staff warned Electricity Maine that it appeared its sales agents were violating customer protection standards and nonetheless willful violations continued. But there is no record of the Commission having explicitly notified

and regulatory requirements to maintain its CEP license to operate in Maine. Thus, there is no purpose or need for a Commission negotiated compliance plan.

⁴⁸ The Order to Show Cause identifies instances in 2012 and 2013 where Electricity Maine agreed, after notice, to refrain from unlawfully comparing its rates to past standard offer prices and to allow certain customers to transfer to standard offer service at no cost. Order to Show Cause at 2 (July 24, 2018).

Electricity Maine that it had indeed failed to comply with the customer protection standards of Title 35-A and Chapter 305 and that further failure to comply could result in an administrative penalty. Accordingly, the Commission finds and concludes that the maximum administrative penalty authorized by 35-A M.R.S. § 1508-A for this related series of violations is \$500,000.

The Commission otherwise agrees with the OPA that aggressive enforcement is warranted to deter unlawful behavior by Electricity Maine and other CEPs licensed in Maine, and thus concludes that the application of additional enforcement provisions is appropriate. On this record, the permanent revocation of Electricity Maine's authority to engage in door-to-door activities, revocation of Electricity Maine's authority to engage in residential marketing in Maine via telephone, internet, or any other means for one year from the date of this Order, and a requirement that Electricity Maine provide to all customers enrolled through door-to-door marketing activity written notice of their opportunity to transfer their supply service to standard offer service without an early termination fee are appropriate to deter and stop on the type of repeated, egregious CEP conduct documented in this record. Because of the extensive and effective efforts of CASD to resolve customer complaints as the complaints were filed, the record documents no current instance where a customer is due a refund.⁴⁹

Finally, pursuant to 35-A M.R.S. § 117, the Commission has discretion as to how administrative penalty funds are used. Given ongoing concerns about door-to-door marketing activities by CEPs and others, as well as customer confusion about who is providing electricity supply, the Commission directs Commission Staff to explore ways that these administrative penalty funds can be used to support customer education on the issues brought to light in the complaint record and the topics discussed in this Order.

IX. ORDER

Electricity Maine repeatedly violated the customer protection standards set forth in Chapter 305 of the Commission's rules even after having been first put on notice in January 2018 by the Commission's Staff of the serious nature of the customer complaints against it. The willful violations continued until Electricity Maine voluntarily suspended its door-to-door marketing campaigns. The complaint record, coupled with

⁴⁹ The record shows either that CASD, based upon licensing requirement violations, ordered refunds to customers, or that Electricity Maine otherwise informally agreed to waive early termination fees and provide refunds where customers had been over-charged for electricity, as compared to the standard offer rate. Because the record shows CASD was able to resolve customer complaints to the satisfaction of those customers, no restitution is due at this time. *Cf. People's Power & Gas, LLC, Application for License to Operate at a Competitive Electricity Provider*, Docket No. 2011-00133; *Maine Public Utilities Commission, Investigation into People's Power & Gas, LLC Charges to Customers*, Docket No. 2014-00208 (ordering use of CEP's financial security to refund unauthorized customer charges).

the other evidence in the record from discovery and the licensing docket of Electricity Maine, is extensive and unique in that the Commission has never had such an egregious record of customer protection violations by a CEP.

Based upon the findings and conclusions set forth in this Order, the Commission orders the following. With these provisions in place, including the Commission explicitly notifying Electricity Maine that it has failed to comply with the customer protection standards of Title 35-A and Chapter 305 and that any failure to comply could result in the imposition of an administrative penalty not to exceed \$500,000, 35-A M.R.S. § 1508-A(1)(B), the expectation going forward is that Electricity Maine will comply with all statutory and regulatory provisions governing CEPs:

1. Electricity Maine shall pay within 30 days from the date of this Order an administrative penalty of \$500,000, payable to Treasurer, State of Maine;
2. Electricity Maine's authority to engage in door-to-door marketing activities is permanently revoked;
3. Electricity Maine's authority to engage in any residential marketing activities in Maine via telephone, internet, or any other means is revoked for one year from the date of this Order;
4. Electricity Maine shall provide written customer notice within 30 days from the date of this Order as follows:
 - a. Notice via US Postal Service and electronic mail to all existing residential customers enrolled through door-to-door marketing activity;
 - b. Notice of this proceeding, including the docket number, the provisions of the Order section, section IX, of this Order and its ordering paragraphs;
 - c. Notice of the customer's current rate with Electricity Maine and the customer's opportunity to transfer their supply service to standard offer service at the current standard offer residential rate of \$0.064494/kWh without an early termination fee,⁵⁰

⁵⁰ The current standard offer rate in CMP's service territory is found here: *Maine Public Utilities Commission, Standard Offer Bidding Procedure for Central Maine Power (all classes), Versant Power-Bangor Hydro District (all classes), and Versant Power-Maine Public District (large commercial class)*, Docket No. 2020-00200, Order Designating Standard Offer Providers (Nov. 18, 2020).

- d. Notice that any customer questions about the transfer to standard offer service may be directed to the Commission's Consumer Assistance and Safety Division (CASD) by telephone at 800-452-4699 or through the email-contact form on the Commission's website:
<https://www.maine.gov/mpuc/consumer/contact/index.shtml> ;
5. Electricity Maine shall work cooperatively with CMP to arrange for meter readings and transfer of its existing residential customers enrolled through door-to-door marketing activity to standard offer service as soon as reasonably possible following a customer request;
6. Electricity Maine shall charge no early termination fees to its existing residential customers enrolled through door-to-door marketing activity when they are transferred to standard offer service; and
7. Electricity Maine shall provide notice in this docket, including a copy of the customer notice, when delivery of the required customer notice has been completed.

Dated at Hallowell, Maine, this 26th day of February, 2021.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
Harry Lanphear,
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Davis

COMMISSIONER ABSENT: Williamson

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.