

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

ELECTRICITY MAINE, LLC

**Re: Application for License to
Operate As a Competitive Electricity
Provider Pertaining to Electricity
Maine, LLC**

Docket No. 2010-00256

**COMMENTS ON THE
STIPULATION OF THE OFFICE
OF THE PUBLIC ADVOCATE**

November 17, 2020

The Office of the Public Advocate (the “OPA”) offers the following comments regarding the Stipulation of even date herewith between itself and Electricity Maine, LLC (“Electricity Maine” or the “company”).

The following are the principal terms of the Stipulation:

1. A permanent prohibition on Electricity Maine engaging in door-to-door sales;
2. Allowing customers with existing contracts with Electricity Maine resulting from door-to-door solicitations to terminate those contracts early without penalty;
3. Imposition of a \$500,000 administrative penalty;
4. Creation of a \$150,000 fund to be used by the Office of the Public Advocate in consultation with the Commission staff to engage in a consumer education program; and
5. Implementation of various provisions designed to ensure the company does not engage in other anticompetitive practices.

For the reasons described herein, the Stipulation represents a reasonable resolution of this investigation. In particular, the elements of the settlement permanently

prohibit the company from engaging in the principal activities that gave rise to the numerous complaints and violations investigated in this proceeding. Further, it imposes a substantial penalty and further obligations and restrictions that both punish the company and provide a clear signal to other market participants that the Commission will not tolerate anticompetitive marketing practices and will act to punish violators where they are found. The Stipulation also provides an important opportunity for the OPA to expand its efforts to educate consumers about retail access and competitive markets. Collectively this set of remedies enhances consumer confidence in the competitive market. Wherefore, the OPA urges the Commission to approve the Stipulation as presented.

I. Background

On January 22, 2018, the Commission issued a Request for Information to Electricity Maine regarding a number of customer complaints made about Electricity Maine's door-to-door sales practices. Following an initial response from the company, on March 5, 2018, the Commission's General Counsel issued a letter to Electricity Maine acknowledging receipt of the response and informing Electricity Maine that "the complaints that have been received are extremely serious and if such activity continues in the future, the MPUC Staff will ask the Commission to initiate a proceeding to consider specific sanctions, including license suspension, license revocation and/or monetary fines." After receiving additional complaints, on July 24, 2018, the Commission issued an Order to Show Cause that, based on the repeated complaints, failure to deny, and failure to address adequately the recurring violations, directed Electricity Maine "to show

cause why its marketing practices should not be found to have violated Maine statutes and Commission rules regarding its operations as a licensed CEP in Maine.”

Following a full investigation, including the prefilings of testimony, discovery and hearings, on August 30, 2019, the parties filed Briefs in this matter. In its Brief, the OPA urged the Commission to find that Electricity Maine had repeatedly and willfully violated many of Maine’s retail electricity consumer protection laws and rules and that the nature of many of the violations was egregious, showing a callous disregard for the law and for the customer. The OPA therefore recommended, among other things, that the Commission impose penalties totaling \$1 million on the company. Effectively, the OPA argued that the violations committed by Electricity Maine were not limited to a “related series of violations” and therefore not limited by the \$500,000 cap on administrative penalties for a related series of violations pursuant to 35-A M.R.S.A. §1508-A. For instance, the violations occurring prior to the March 5, 2018 letter from the Commission’s General Counsel constitute “willful violations” under 35-A M.R.S.A. §1508-A(1)(A) and those occurring after that letter constitute violations after being “explicitly notified by the commission that it was not in compliance with the requirements of this Title” under 35-A M.R.S.A. §1508-A(1)(B).

On April 15, 2020, the Commission Staff issued an Examiners’ Report that recommended the revocation of Electricity Maine’s license to operate as a competitive energy supplier and a plan to transition Electricity Maine’s customers to new providers. Following the issuance of the Examiners’ Report, Electricity Maine and the OPA

engaged in discussions regarding a potential settlement of this proceeding. Those discussions have resulted in this Stipulation.

II. Standard of Review

The Commission evaluates stipulations under the standards that it has established by rule in Chapter 110, Section 7(D) of its rules as follows:

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

III. Discussion

A. The Examiners' Report

The Stipulation represents a substantial change in approach from that embodied in the Examiners' Report. As discussed previously, the Examiners' Report recommended the termination of Electricity Maine's license to operate as a retail competitive energy supplier. The OPA does not support the removal of Electricity Maine from the retail market.

Largely in response to the behavior giving rise to the Electricity Maine investigation, the OPA initiated the submission of LD 1917, An Act To Eliminate Direct Retail Competition for the Supply of Electricity to Residential Consumers, during the most recent legislative session. Similar initiatives have been pursued in other jurisdictions, including in Massachusetts. The unambiguous bipartisan response to this

bill by members of the Joint Standing Committee on Energy, Utilities and Technology (“EUT”) was a strong interest in preserving competitive retail market for residential customers. To the extent that anticompetitive behavior and other violations have been identified, the consistent reaction from members of the committee was that they should be dealt with through enforcement actions by the Commission.

While enforcement actions may certainly include terminating the license to operate as a retail supplier, the OPA does not believe such a remedy is useful in this proceeding. Notably, Electricity Maine is one of the largest, and possibly the largest, competitive retail supplier serving the residential and small commercial market in Maine. Removing them from the market would immediately reduce by a substantial amount the percentage of residential load served by the competitive market, potentially implementing the objective of LD 1917 ending competition in this sector of the market, rather than preserving it in a manner consistent with the bipartisan intent of EUT.

The remedies provided in the Stipulation include measures that both severely punish Electricity Maine and that enhance retail competition in the State. Further, the threat of losing its license to operate as a retail supplier in Maine appears to have prompted responsive action that achieves significant reform within the company. These include significant changes in management (Stipulation, Att. A), as well as a commitment to implement a meaningful Compliance Plan (Stipulation, Att. B). Collectively, these measures provide a clear signal to other market participants that the Commission will not tolerate anticompetitive marketing practices thereby enhancing consumer confidence in the competitive market.

B. The Consumer Education Fund

A significant element of the Stipulation is the creation of a \$150,000 Consumer Education fund to be used by the Office of the Public Advocate in consultation with the Commission staff to engage in a consumer education program. This element represents a substantial compromise between the OPA and Electricity Maine that requires further discussion.

As noted above, the OPA's position in its briefs in this proceeding was that administrative penalties totaling \$1 million was warranted in this proceeding based upon the willful and repeated violations of Maine's retail electricity consumer protection laws and rules by the company and the egregious nature of many of these violations. Effectively, the OPA argued that violations committed by Electricity Maine were not limited to a "related series of violations" and therefore not limited by the \$500,000 cap on administrative penalties for a related series of violations pursuant to 35-A M.R.S.A. §1508-A. For instance, the violations occurring prior to the March 5, 2018 letter from the Commission's General Counsel constitute "willful violations" under 35-A M.R.S.A. §1508-A(1)(A) and those occurring after that letter constitute violations after being "explicitly notified by the commission that it was not in compliance with the requirements of this Title" under 35-A M.R.S.A. §1508-A(1)(B).

Further, the violations were not a single violation repeated with respect to multiple customers, such as the violation of Central Maine Power in *PUBLIC UTILITIES COMMISSION, Investigation of Improper Notices by Central Maine Power Company* (35-A M.R.S. § 1303), Docket No. 2020-00017. Rather, each violation was distinct. For

instance, while most violations involved door-to-door sales, there were a variety of different representations made to customers by members of the sales force engaging in predatory and abusive behavior.

The egregious nature of the violations was addressed extensively in the OPA's initial Brief in this proceeding, filed on August 30, 2019. Pages 18-29 of the Brief set forth numerous examples of the illegal and deceptive practices in which the company's contractors engaged, including improper and inaccurate promises of guaranteed savings, representing themselves as CMP employees, promises of reduced usage, falsification of customer agreement, and others. These types of violations occurred both before and after the Commission's March 5, 2018 warning letter. Additional violations are set forth in the Complaint Record dated May 10, 2019, found in the record as Attachment to July 19, 2019 Procedural Order (record & post-hearing process) CMS items 47 (redacted) and 48 (confidential). The OPA urges the Commission to review carefully both the discussion in the OPA's Brief and that included in the Complaint Record in its consideration of the of the Stipulation.

While the OPA maintains that the violations being investigated in this proceeding are not limited to a related series of violations, Electricity Maine disagrees. Rather than litigate this question, the parties have reached a settlement in which the company admits to a single related series of violations and agrees to pay the maximum administrative penalty for such series under statute, and further agrees to pay an amount above and beyond the administrative penalty to fund a consumer information fund.

Including payments that benefit customers as part of the consideration in a settlement agreement is a common practice in the settlement of proceedings before this Commission. For instance, as part of the Stipulation approved by the Commission in *CENTRAL MAINE POWER COMPANY, Request for Approval of CPCN for the New England Clean Energy Connect Construction of a 1,200 MW HVDC Transmission Line from the Quebec-Maine Border to Lewiston (NECEC)*, Docket No. 2017-00232, CMP and Hydro Quebec collectively agreed to make over \$200 million in community and customer benefit payments, including a \$50 million Low Income Customer Benefits Fund and a \$140 million general Rate Relief Fund. Similarly, in *EMERA MAINE, Request for Approval of Reorganization with ENMAX pertaining to Emera Maine, Maine Electric Power Company, and Chester SVC Partnership*, Docket No. 2019-00097, Emera Maine and ENMAX Corporation collectively agreed to make substantial community and customer benefit payments, including a \$5 million Low Income Rate Relief Fund and a \$8.1 million general Rate Relief Fund. There is no meaningful distinction between community and customer benefit payments made by a settling party in those and innumerable other Commission proceedings and that now included in the Stipulation in this matter. However, this clause is clearly distinguishable from the Stipulation rejected by Order dated June 8, 2020 in *PUBLIC UTILITIES COMMISSION, Investigation of Improper Notices by Central Maine Power Company (35-A M.R.S. § 1303)*, Docket No. 2020-00017, in which the Commission declined to accept a payment in lieu of an administrative penalty. Here, the payment is in addition to imposition of the maximum penalty permitted by statute for a related series of violations rather than an alternative.

Finally, the establishment of this Consumer Education Fund will enhance the OPA's ability to effectively perform its statutory duties and responsibilities. 35-A

M.R.S.A. §1713 explicitly provides:

[T]he Public Advocate may publish in printed copy or electronic format, or both, information for consumers in the State relating to regulated services provided by public utilities, unregulated services provided by public utilities and unregulated services provided by any entity relating to telecommunications, electricity delivery or supply and gas delivery or supply.

The OPA's efforts have traditionally been limited to developing publications and maintaining a website presenting this information. The funding provided by the Consumer Education Fund would allow the OPA to take be more proactive in reaching out to interested customers with relevant information about the retail competitive electricity market. Such a proactive approach is more likely to reach customers whose first contact with the competitive electricity market may be through a direct marketing contact from a CEP. For example, the OPA's office has recently been contacted by consumers inquiring about the various community solar initiatives that are currently being marketed in Maine and consumers are in need of education regarding this new and unique product. The OPA expects that other novel products may be offered in the market, and the Consumer Education Fund would allow the OPA to augment its current education efforts consistent with its Legislative authority granted by Section 1713. To the extent the Commission chooses to use all or a portion of the \$500,000 of the administrative penalty for a similar education purpose, the provision of the Stipulation calling for the OPA to coordinate with the Commission ensures that the efforts would not be duplicative, but rather would enhance each other. Consumers would benefit

significantly from such a coordinated effort between the Commission and the OPA and the OPA would appreciate the opportunity to work collaboratively with the Commission on this important public initiative.

C. The Limitation on Price Increases for Variable Priced Contracts

Pursuant to Section III.G of the Stipulation, Electricity Maine has agreed to expand the limitations imposed by 35-A M.R.S. § 3203(4-B)(C) to residential non-fixed price supply contracts. This section provides that a CEP “[m]ay not renew a contract for generation service at a fixed rate that is 20% or more above the contract rate in the expiring contract without the express consent of the residential consumer.” However, this section does not limit a CEP’s ability to transfer a customer from a fixed rate contract to variable rate contracts upon the expiration of the fixed rate contract.

The OPA has received individual customer inquiries suggesting that some customers with expiring fixed rate contracts that fail to renew with another fixed rate contract have been shifted to variable price contracts with prices that are greater than 20% higher. The shift to variable priced contracts in such circumstances is permitted. However, to the extent the price increase is substantial, it has the potential to harm customers that have already demonstrated a failure to carefully monitor changes in their accounts by their failure to opt for a new fixed price contract. This provision limits this possibility.

To be clear, this provision would not prohibit Electricity Maine from subsequently increasing the rate charged under the variable rate contract. We understand from the company, and accept, that implementing such a limitation would be extremely

difficult to administer. However, imposing the limitation at the outset of the transfer substantially reduces this risk as the OPA believes the same administrative challenges presented by maintaining the limitation over time would limit the company's ability to systematically increase the variable price later for reasons other than changes in wholesale market prices. In this manner, it would act as a "speed bump," which, although simple, can have a significant effect on reducing undesirable behavior.

IV. Conclusion

The Stipulation is the result of extensive discussions among the parties and includes terms that required the signatories to compromise to reach settlement. The resulting agreement represents a reasonable resolution of this investigation, one that balances the need to impose meaningful remedies for the conduct that is the subject of the investigation and the need to protect and enhance the competitiveness of the retail electricity market. Wherefore, the OPA urges the Commission to approve the Stipulation as presented.

Respectfully submitted,



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