

A History of Consumer Protection Provisions Related to Competitive Electricity Providers

Prior to the enactment of Public Law 1997, chapter 316 (Restructuring Law), transmission and distribution utilities in Maine provided supply, transmission and distribution services to customers. The Restructuring Law separated those services and left the service of supply to the retail market and created a process for supply to either be provided by a standard-offer service provider (default service) or a competitive electricity provider (CEP), to be chosen by the individual customer. Standard-offer service providers are chosen by the Maine Public Utilities Commission (Commission) through a competitive bidding process. Since the enactment of the Restructuring Law multiple amendments have been made to provide greater consumer protection for those customers contracting with a CEP for generation supply services.

Restructuring Law - Public Law 1997, chapter 316

As stated above, this law separated generation supply services from the core function of transmission and distribution utilities in Maine. In moving to a competitive retail market for supply the law prohibited a CEP from selling electricity in Maine unless the provider obtained a license from the Commission. It allowed the Commission to limit the duration and effectiveness of a license to a specified term and conduct proceedings for the renewal or revocation of licenses. Before approving a license application, it required the Commission receive the following from an applicant:

- Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason;
- Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;
- Disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the Commission in the 12 months prior to the date of license application;
- Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210; and
- Disclosure of the names and corporate addresses of all affiliates of the applicant.

It allowed the Commission to consider the need to require a CEP to file a bond with the Commission as evidence of financial ability to withstand market disturbances or other events that could cause an increase in the cost to provide service or to provide uninterrupted service to customers if a CEP stops service. Licensing revocation and issuance procedure were required to be adopted by the Commission by rule.

It also required the Commission to establish by rule information disclosure and filing requirements for CEPs. It specified that the rules must require providers to file their generally available rates, terms and conditions with the Commission. It allowed the Commission under protective orders to require a CEP to submit individual service contracts or other confidential information from a CEP. It also required that the rules establish standards for publishing and disseminating, through any means considered appropriate, information that enhances consumers' ability to effectively make choices in a competitive electricity market.

The Restructuring Law also included standard consumer protection provisions. It required the Commission to establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail consumers of electricity from fraud and other unfair and deceptive business practices. It required the Commission to resolve disputes between CEPs and retail customers concerning any consumer protection standard established by rule. It specified that as a condition of licensing, a CEP that provides or proposed to provide generation service to a customer, wherever located, with a demand of 100 kilowatts or less:

- May not terminate generation service without at least 30-day prior notice to the customer;
- Must offer service to the customer for a minimum period of 30 days;
- Must allow the customer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;
- May not telemarket services to the customer if the customer has filed with the commission a written request not to receive telemarketing from competitive electricity providers;
- Must provide to the customer within 30 days of contracting for retail service a disclosure of information provided to the commission pursuant to rules adopted under subsection 3 in a standard written format established by the commission; and
- Must comply with any other provisions adopted by the commission by rule or order.

It also prohibited a transmission and distribution utility from disconnecting service to a customer due to nonpayment of generation service charges or any other dispute with a CEP, except it allowed disconnection for nonpayment of standard-offer service.

It allowed the Commission to impose penalties for any violation of the law or the consumer protection rules.

In addition to the required rules, it allowed the Commission to impose by rule additional requirements necessary to carry out the purposes of the law but prohibited the Commission from adopting any rule that would attempt to regulate the rates of CEPs.

Public Law 1999, chapter 237

Public Law 1999, chapter 237 provided that a transmission and distribution utility may not release any customer specific information to a licensed CEP, unless the provider provides sufficient evidence that the provider obtained the customer's authorization to disclose the information.

Public Law 1999, chapter 398

This amendment to the Restructuring Law provided the Commission with the authority to investigate any matter relating to the provision of service by a CEP. It also added additional protection of consumer information, by specifying that information concerning customers of a CEP is subject to the same confidentiality protection afforded utility customer information under 35-A M.R.S. § 704(5) (Information acquired by the consumer assistance and safety division regarding the payment and credit history and financial condition of a customer who has requested the assistance of the division and information acquired by the consumer assistance and safety division regarding the medical condition of a customer or member of a customer's family is confidential and not a public record).

Public Law 1999, chapter 657

The original Restructuring Law was amended to remove the 100 kilowatts or less threshold for standard consumer protection provisions and instead specified that consumer protection provisions apply to all residential consumers or small commercial customers that contract with a CEP.

It also added additional consumer protection provisions. It specified that as a condition of licensing a CEP:

- Shall obtain a consumer's authorization before serving the consumer;
- May not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer;
- Must comply with the provisions of the Maine Unfair Trade Practices Act;
- May not collect or seek to collect unreasonable costs from a customer who is in default;
- Must comply with all applicable provisions of the federal Equal Credit Opportunity Act;
- May not initiate a telephone solicitation call to a consumer who has notified the competitive electricity provider of the consumer's wish not to receive telephone solicitation calls made by or on behalf of the competitive electricity provider;
- Must provide at least once annually to a customer with any information disclosures required by the commission by rule pursuant to subsection 3; and
- Must comply with any other applicable standards or requirements established by the commission by rule.

Public Law 2001, chapter 71

The Restructuring Law was amended to clarify that an independent third-party could obtain from a customer oral authorization to satisfy the requirement that a CEP obtain a consumer's authorization before serving the consumer.

Public Law 2003, chapter 505

Public Law 2003, chapter 505 updated the penalty language to be consistent with newly enacted administrative penalty provisions.

Public Law 2003, chapter 558

The Restructuring Law was further amended to update language relating to the use of telemarketing/telephone solicitations to specify that a CEP must comply with all federal and state laws, federal regulations and state rules regarding prohibition or limitation of telemarketing. It also moved language relating to annual disclosures by CEPs to consumers to a different subsection.

Public Law 2011, chapter 284

This amendment to the Restructuring Law clarified language and repealed the requirement for annual disclosures by CEPs to consumers (this was the language that was moved in the prior law amendment).

Public Law 2017, chapter 74

The Restructuring Law was further amended to add additional residential consumer protection provisions. It requires, as a condition of licensing, a CEP that provides or proposes to provide service to a residential consumer:

- Shall disclose, before entering into an agreement to provide service to a residential consumer, to the residential consumer where the residential consumer can obtain information with which to compare the service provided by the competitive electricity provider and the standard-offer service;
- May not renew a contract for generation service without providing a residential consumer with notice of renewal in advance by mail;
- May 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;
- May not renew a contract for generation service for a term that is longer than the term of the expiring contract or 12 months, whichever is shorter, without the express consent of the residential consumer; and
- May not impose an early termination fee for any contract for generation service that was renewed without express consent from the residential consumer.

It also specified that if a residential consumer does not provide express consent to renew a contract at a fixed rate that is more than 20% above the expiring contract rate or is for a term longer than the expiring contract or 12 months, whichever is shorter, the residential consumer must be transferred to standard-offer service.

It also included specific requirements for the monthly utility bill for consumers that elect to receive supply service from a CEP. It requires the bill to contain a website address or other resource that can be accessed by consumers that provides independent information (as determined by the Commission) that allows residential consumers to compare terms, conditions and rates of electricity supply and a statement that directs the residential consumer to the CEP for more information on the consumer's contract, including its terms and that provides the telephone number of the CEP.

It also required the Commission in consultation with the Public Advocate to evaluate the price difference between 2014 and 2016 paid by consumers taking service from a CEP instead of the standard-offer provider and submit a report to the Legislature. (This report was submitted on 2/15/18 and can be accessed here - <https://www.maine.gov/mpuc/legislative/reports>)

Public Law 2021, chapter 108

Public Law 2021, chapter 108 added further consumer protections by including new requirements and provisions relating to third-party sales agents who engage in sales on behalf of CEPs through door-to-door sales. It requires, as a condition of licensing, a CEP to disclose the names and corporate addresses of all 3rd-party sales agents proposed to be used by the applicant. It requires the disclosure to include: (1) A sworn statement by each proposed 3rd-party sales agent attesting to the 3rd-party sales agent's understanding of its compliance obligations with the State's door-to-door sales law, the Maine Unfair Trade Practices Act and the applicable commission rules; (2) Any

transient seller license number issued to each proposed 3rd-party sales agent by the Department of Professional and Financial Regulation; (3) All pending legal actions and customer complaints filed against each proposed 3rd-party sales agent at a regulatory body other than the commission in the 12 months prior to the date of the applicable license application; (4) Any other information the commission determines is necessary; and (5) An acknowledgement by each 3rd-party sales agent proposed to be used by the applicant of the 3rd-party sales agent's submission to the jurisdiction of the commission.

It also requires a third-party sales agent to be registered by the Commission as part of the CEP licensing process before that agent undertakes the retail sale or marketing of electricity in the State. The Commission is required to provide each third-party sales agent with a registration number.

It requires the Commission to establish by rule that a CEP submits updated disclosures of third-party sales agents prior to any agent undertaking any activities on behalf of the provider in order to maintain the accuracy of the information required by law and to require the registration of a third-party sales agent not already registered by the Commission.

It also amended existing consumer protection provisions to:

- Allow a consumer to rescind selection of the CEP orally or in writing within five days of the receipt of the first bill or invoice from the CEP, which the consumer is responsible for paying in full instead of within five days on initial selection;
- Prohibits a CEP's third-party sales agent, on behalf of a CEP, from entering into an agreement to provide service to a residential or small commercial consumer when that service is solicited using door-to-door sales without providing the consumer with a standard disclosure form that meets the specified requirements in law and rule for the standard disclosure; and
- Comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation on door-to-door sales.

It requires the Commission by rule to prohibit a CEP or a third-party sales agent from representing itself as an alternative to or affiliated in any way with a transmission and distribution utility.

It applies existing provisions related to administrative penalties, Commission investigations, dispute resolution; confidentiality of customer information and other provisions to third-party sales agents. It also allows additional administrative penalties to be assessed on a CEP for willful violation of Title 35-A by any third-party sales agent engaging in the retail sale or marketing of electricity on behalf of that CEP.

Public Law 2023, chapter 375

This amendment to the Restructuring Law prohibits a CEP from entering into or renewing a contract for generation service that includes an early termination fee. The prior law only prohibited the imposition of an early termination fee for any contract that was renewed without express consent from the residential consumer.

Public Law 2023, chapter 636

Public Law 2023, chapter 636 prohibits a CEP from renewing a contract for generation service without the express consent of the residential consumer if the renewal rate is a fixed rate that is: (1) 20 percent or more above the rate in the expiring contract; or (2) Greater than the fixed rate that would, at the time of the residential consumer's contract renewal, be offered by the CEP to customers enrolling with the provider for an initial contract of a similar term and product offering. The prior law only prohibited renewal without express consent if the contract rate was 20 percent or more about the rate in the expiring contract.

It also prohibits a CEP from renewing a contract for generation service at a variable rate without the express consent of the residential consumer if the expiring contract was at a fixed rate.

Lastly, it amended the existing law to prohibit a CEP from renewing a contract for generation service for a term that differs from the term of the expiring contract. The prior law only prohibited renewal of a contract for a term that was longer than the term of the expiring contract or 12 months, whichever is shorter without express consent.