

**Maine Public Utilities Commission
Report In Response to July 25, 2023 Letter**



**Submitted to the
Joint Standing Committee on Energy,
Utilities and Technology**

January 2, 2024

I. Introduction

On July 25, 2023, the chairs of the Joint Standing Committee on Energy, Utilities and Technology (Committee) sent a letter to Public Utilities Commission (Commission) requesting that the Commission engage with stakeholders to discuss the options that may be available to address the administrative questions that were raised during the Committee’s discussion on capping the price for electricity supply service from a competitive electricity provider (CEP) at the standard-offer price for customers participating in a low-income assistance program. This discussion was the result of recommendations contained within the [Retail Electricity Supply Study Report](#) provided to the Committee by the Office of the Public Advocate (OPA) pursuant to Public Law 2021, chapter 164. The majority of the Committee ultimately voted to report out a Committee bill that would prohibit a CEP from entering into or renewing a contract for generation service that includes an early termination fee. This change was ultimately enacted in [Public Law 2023, chapter 375](#).¹

In response to the letter, the Commission initiated a Notice of Inquiry² on October 16, 2023, and posed several questions to potential commenters. Comments in this docket were required to be filed by November 15, 2023. Four entities submitted comments, including AARP Maine (AARP), the OPA, Central Maine Power (CMP) and Versant Power (VP). The five questions posed in the inquiry are as follows:

1. What method could be used to obtain consent from a customer for sharing their low-income assistance program status?
2. What entity would be responsible for ensuring that a customer who is participating in a low-income assistance program is not entering into an agreement to purchase energy from a CEP?
3. Should the comparison between the CEP’s rate and the standard-offer rate be conducted at the time that a customer is seeking to enter a contract with the CEP, or on an ongoing basis?
4. Would prohibiting the automatic renewal of a contract between a CEP and a customer achieve the same or similar protections as capping the cost of supply at the standard offer rate, while still allowing customers to take advantage of potentially “lower than standard offer prices” offered in the competitive market?
5. Are there any other options or mechanism available to achieve the protection of customers who participate in a low-income assistance program other than capping the cost of supply at the standard offer rate?

¹ LD 2012

² [Docket No. 2023-00275](#)

Interested parties were also invited to offer comments on any additional issues related to standard offer rates not set forth in the notice of inquiry.

The Commission has reviewed the comments received. The Commission acknowledges that the retail supply market for residential customers has not always resulted in customers of a CEP paying less than the standard-offer supply rate and that it is important to provide safeguards for all customers, especially those low-income customers participating in an assistance program. However, capping the price a CEP can charge a customer at the standard-offer price presents many difficulties in its administration. Additionally, as was suggested in comments, prohibiting low-income customers participating in an assistance program from contracting with a CEP also is problematic. Therefore, the Commission suggests that in order to provide some level of protection, the most straightforward solution would be to (1) prohibit the renewal of any contract for supply without the express written authorization of the customer and (2) require the CEP to provide the customer both at the initiation and renewal of a contract with a comparison of the price of service the CEP is offering with the current standard-offer price and, if known, any future standard offer price that would take effect during the term of the contract.

II. Inquiry

As stated above, on October 16, 2023, the Commission initiated a Notice of Inquiry to seek input from interested parties on questions relating to the letter sent by the Committee chairs.

Comments were received from AARP Maine, the OPA, CMP and VP. Below is summary of those comments.

AARP Maine (AARP)

In its comments to the Commission's inquiry AARP states that many other restructured states have acted to prevent customers enrolled in a ratepayer funded low-income assistance program from receiving service from a CEP. The logic for such a prohibition on participation in the market is because "ratepayer assistance funds have often gone to pay for service above those available on the standard offer due to unscrupulous marketing practices which prey on the elderly and low-income." AARP states that not allowing CEPs to enroll customers participating in a utility's low-income assistance program would place the obligation to comply on the CEP to not enroll these customers and the utility to reject any such enrollment as the utility knows which customers are enrolled in the program. AARP states consent from the customer would not be needed because the CEP can simply ask the perspective customer if they participate in the low-income assistance program and the utility already has access the customer's status in the program.

AARP notes that New York does allow certified suppliers to provide service to customers enrolled in a low-income assistance program as long as the cost for such service is less than the default service. AARP does not recommend this option for Maine because, unlike New York, the Commission does not maintain an official energy shopping web portal that is constantly updated and that requires suppliers to submit data electronically for every offer being made to residential customers. Additionally, AARP notes that capping the cost of service at the standard offer rate is resource intensive and not capable of being easily supervised or enforced.

AARP would welcome reforms that would require affirmative customer consent for any contract renewals and prohibit month to month variable rate contracts.

As a final comment, AARP recommends that residential retail choice be ended as it has been shown to not benefit customers.

Office of the Public Advocate

The OPA states that if customer consent to share information is an issue that needs to be addressed, the process being developed by the Maine Department of Health and Human Services (DHHS) to obtain consent from individuals in a means tested program to share information with a transmission and distribution utility in order to enroll those customers in the utility's low-income assistance program could be expanded to allow the utility to provide information to CEPs as needed. Additionally the Commission could through the adoption of rules require the CEP to maintain the confidentiality of this information.

The OPA states that the transmission and distribution utilities would be in the best position to prevent customers participating in a low-income assistance program from becoming enrolled with a CEP. The OPA also states that the Commission, as an added layer of protection, could require CEPs to do their own screening by asking potential customers whether they are participating in the utility's low-income assistance program.

If a cap on the cost of service was put in place, the OPA suggests that a comparison between the CEP's rate and the standard-offer rate would need to be conducted both at the time a customer is seeking to enter into a contract with a CEP and also on an ongoing basis. This could be accomplished through requiring utilities to disclose prominently on monthly bills the standard offer price. The OPA also suggests that all residential customers should be encouraged to revert to standard-offer service if the standard-offer price drops below the rate charged under their CEP contract, and that once a customer elects to cease taking service from a CEP and to either receive standard-offer service or service from a different provider the customer should be moved without any delay by the CEP. This should include a requirement that CEPs give customers the option to have their meters read on an off-cycle basis, so they do not need to wait until their next scheduled meter read date to switch their electric supply choice.

The OPA acknowledges that a prohibition on automatic renewals of a CEP contract would be helpful in some situations, but states that this would not achieve the same or similar protections as capping the cost of supply at the standard-offer rate. The OPA provided an example of a customer that may be in a multiyear CEP contract where the standard-offer price changes to a lower price during that contract term. In this instance the customer may be paying a higher price for service until the end of that contract, so the prohibition on automatic renewals would not prevent that customer from paying a higher amount for a period of time. However, the OPA would still support the prohibition on the automatic renewal of contracts by CEPs for all customers and the OPA recommends that, before any renewal takes effect, the customer should be: 1) informed by the CEP of the upcoming expiration of their contract; 2) provided with complete information regarding the proposed contract renewal price, as well as the standard-offer price in effect at the time; and 3) provided with the opportunity to provide affirmative

consent to the contract renewal, the opportunity to be placed on standard offer service, or to contract with a different CEP of the customer's choice.

As an alternative, the OPA suggested another option to protect residential customers would be to phase out retail electric competition as retail choice has not delivered substantial value to residential customers.

Central Maine Power

While CMP does not have a direct role in the relationship between a CEP and its customers, CMP believes that all customers, including low-income customers and customers enrolled in low-income assistance programs, should have the choice to decide whether they contract with a CEP or utilize standard-offer service. CMP also states that all customers should have a right to privacy regarding their financial situation. CMP noted while there have been some specific challenges with CEPs charging significantly more than the standard-offer price, it is not yet clear if this is a problem specific to low-income customers. Despite these issues, CMP states that it is also aware of other instances where the rate being charged by a CEP is close to or even below the standard-offer price, which supports a preference for retaining retail choice for customers, potentially with some added protections.

Regarding consent from a customer for sharing their low-income assistance program status, CMP states that CEPs should be responsible for obtaining and retaining documented consent from their customers to know their low-income assistance program status. As part of a CEP's enrollment process, it could ask the customer if they participate in a low-income assistance program, and it would be up to the individual customer to decide if they want to provide that information to the CEP. CMP notes there could be challenges with this method because it is not clear how the CEP could validate this information. If the CEP is prohibited from providing service to low-income customers participating in an assistance program at a price that is more than the price for standard-offer service, a potential customer who is not enrolled in an assistance program could claim it is a participant to get a better price. Alternatively, the customer could choose not to provide their status as a participant in an assistance program, and a CEP could inadvertently provide service at a cost that is more than the standard-offer price in violation of the law. Additionally, a customer's status could change over the course of the term of the contract for service and they could either become a participant in a low-income assistance program or no longer be qualified to participant in a low-income assistance program during that time and the CEP would not have access to this status. Therefore, a CEP would need to have some mechanism to validate a customer's status.

CMP notes that the utility does have access to this information, but they are barred from sharing this personal information with CEPs without the express consent from a customer. CMP noted that with customer consent, the utility could conceivably provide each CEP with a periodic list of low-income assistance customers who are also enrolled with that CEP. CMP also suggests that CEPs could seek to obtain information on customers participating in low-income assistance programs directly from the Maine State Housing Authority and be required to market their services accordingly.

CMP states that the CEP should be responsible for comparing the CEP rate and the current standard-offer price and should also be responsible for verifying their initial rate and rate changes throughout the term of their relationship with their customers to ensure compliance with any cap on the rate they charge. If a cap was in place, this comparison would need to occur on an ongoing basis. Since customers can enroll in a low-income assistance program on a rolling basis throughout the year, the CEP would also need to ensure the status of their customers on an ongoing basis.

CMP notes an approach used in New York, whereby the CEP is required to conduct a periodic comparison of what has been charged at the CEP rate versus what would have been charged at the standard-offer rate for customers participating in a low-income assistance program. In any instance where the customer was charged more than the standard-offer rate, the CEP would be required refund the difference to the customer.

CMP notes that it finds it challenging to reconcile the deregulated electricity structure which is designed to allow and encourage customer choice for supply, with a mechanism to protect a certain class of customers by removing or limiting access to choices. Capping the supply price would require as much as daily price comparison to remain compliant unless some reconciliation mechanism was adopted, like in New York. CMP states that regardless of the mechanisms employed the responsibility should lie with the CEP.

CMP notes that, regardless of the law, customer education about supply choices and how to compare prices should be paramount. CEPs should be required to communicate with their customers their CEP rate and the comparable standard-offer rate regardless of the customer's income. They should also make clear that the customer can switch to standard-offer service without any early termination fee or other penalty. This information does not necessarily protect customers participating in a low-income assistance program from paying more than the standard-offer price but will provide all customers with more information to make informed decisions about their supply choice. CMP also specified that utilities could be allowed/required to provide the standard-offer price on the monthly bill of all residential customers that take service from a CEP, similar to how CMP currently provides this information to its customers that take standard-offer service.

Versant Power

In relation to obtaining consent to share a customer's status as participant in a low-income assistance program, VP suggests that language could be added to Chapter 305 of the Commission's rule requiring the CEP Agreement to include the customer's consent to share the customer's low-income status. With this customer consent, VP would be able to provide the status of the customer with the daily customer information already provided to a CEP.

As for the responsibility of ensuring that a customer participating in a low-income assistance program not enter into an agreement with a CEP, VP states it could explore developing a new low-income indicator code in its Electronic Data Interchange (EDI) file. If the code exists on the pending enrollment, it can be set to automatically reject the enrollment. As an alternative, VP suggests a daily report could be created to run with the billing system to identify pending new

enrollments that have a low-income indicator. These pending enrollments can be manually cancelled, and a drop can be manually processed notifying the CEP. VP states that currently drops do not have an indicator on why a drop has occurred. VP can either add an EDI code to generate a “not eligible” indicator or could continue their current practice where there is no reason indicated for why the drop has occurred. VP states that both enrollment rejections and drop reason codes could remain generic, requiring the CEP to reach out to the customer directly for the reason, like they currently do today.

VP states that the CEP should be required to inform the customer of a comparison between the standard-offer price for service and the CEP’s price for service. VP states language in Chapter 305 under section 4(B)(1) can be amended to require the CEP to provide in writing a comparison between the price for service with the CEP and the standard-offer price in effect at the time. This comparison should be required upon each contract renewal as well.

VP notes that prohibiting automatic renewals would not protect customers from initially paying more than the standard-offer price and offered some data that shows between August 2021 and 2023 of the approximately 3,600 new enrollments with a CEP, 46% of those enrollments were at a higher rate than the standard-offer price. Of these, 10% were low-income customers. Capping the cost of supply at the standard offer rate for all residential customers would prevent all customers from paying a higher price.

VP states if a cap on price for all customers is not feasible, then another option could be to require CEPs to have a separate low-income rate that is capped at the standard-offer price. However, VP notes this option would prevent customers from entering into an agreement for a rate lower than the standard-offer rate. This option would also require programming of EDI and ongoing monitoring.

III. Commission Analysis

It is undisputed that residential customers that elect to receive supply service from a CEP may initially pay a higher rate than the standard-offer rate, or upon contract renewal may pay a higher rate for service. In some instances, this can be due to a person deciding to pay a premium for a portfolio that contains renewable resources. In other cases, it could be due to the customer not understanding the retail market and how those prices available in the marketplace compare to the standard-offer rate. However, enacting a cap on the price a CEP can charge to a low-income customer participating in an assistance program is problematic.

While commenters suggested other mechanisms to achieve compliance with the cap, ultimately the ongoing tracking to ensure compliance would likely fall to the transmission and distribution utility. The utilities are in the best position to know which customers are participating in an assistance program on a monthly basis and what price those customers are paying for their electric supply if enrolled with a CEP. The Commission is concerned that not only could this be administratively burdensome, but it also places the utilities in an enforcement role, something the Commission does not think is an appropriate role for the utilities to assume. It would also likely require additional resources that could result in additional costs for all ratepayers.

Additionally, creating a price cap could result in a de facto ban on low-income customers participating in the retail market. CEPs may decide to no longer enter into contracts with low-income customers participating in an assistance program because of the uncertainty associated with that relationship. For example, if a customer looks to enter into a contract with a CEP in July for a term of one-year at a price that is at the time the same or lower than the standard-offer price, then the standard-offer price decreases six months later, that CEP would be required to lower the contracted price in order to comply. This may not be economically feasible for the supplier, especially if it has secured its supply to serve that customer at a price that is higher than the newly established standard-offer rate. As we see in our annual procurement for standard-offer supply, these rates can be quite variable from year-to-year depending on many factors. This approach, while well intended, could be harmful to customers who value price stability if they can no longer secure longer-term contracts with a CEP.

AARP suggested an outright prohibition on CEPs serving low-income customers participating in an assistance program. While the Commission understands this prohibition is meant to protect not only low-income ratepayers, but also other ratepayers that often subsidize these programs, we are concerned with the message this sends. Prohibiting a subset of the residential customer base from shopping the retail market deprives certain low-income customer from an opportunity to select a CEP plan that might offer a lower rate, a long-term fixed price, or a renewable supply option. In doing so, it implies that low-income customers are not capable of making decisions for themselves.

The competitive market represents a possible opportunity to save money, but there is no guarantee. Regulating in a manner that circumvents the competitive market and tells a certain subset of customers they have no choice seems at odds with the concept of a free market. Additionally, with the enactment of Public Law 2023, chapter 375 a customer can terminate a contract without paying a fee, and either revert to the standard-offer price or choose a new CEP. If a customer is not trapped in a contract, then perhaps with more education to customers, the same or better result can be accomplished under the current regulatory structure than a cap on pricing would achieve.

To compliment the current regulatory structure and provide an additional safeguard, the Commission suggests, as we did in our testimony on LR 2581³, requiring a CEP to obtain express, written authorization from its customers before renewing any contract for service. As the Commission has seen in the past, problems often arise upon the renewal of a contract for generation service. Current law⁴ only requires express consent of a contract renewal when the new contract would be for 20 percent or more than the contract rate that is expiring. It is easy for a customer to overlook a notice that the contract is going to expire and if no action is taken it automatically renews. Requiring express authorization, as well as requiring the CEP to provide a price comparison between the price they are offering with the standard-offer price, would go a long

³ This LR eventually became LD 2012, which was enacted in Public Law 2023, chapter 375

⁴ [35-A MRSA § 3203\(4-B\)](#)

way to address many problems. If the customer does not provide express consent the residential customer would be transferred to standard-offer service.

The Commission acknowledges this suggestion does not prevent all instances where a customer may be paying more than the standard-offer price. But with the prohibition on contract termination fees and automatic renewals of contracts, a customer that is paying more than standard-offer service can easily remedy that situation in a manner that does not pose the same obstacles that price caps or prohibitions on participation pose.

The OPA and AARP in their comments suggest phasing out the retail market for all residential customers. The Commission thinks this goes beyond the scope what we were asked to address and offer no input on this suggestion at this time.

IV. Conclusion

The Commission appreciates the thoughtful input provided by stakeholders in its inquiry. We are happy to continue to engage with both the Committee and stakeholders to find workable solutions to insulate residential ratepayers, especially those participating in a low-income assistance program, from paying more than the standard-offer price or to provide additional safeguards and education to all ratepayers.