

January 6, 2022

PUBLIC UTILITIES COMMISSION
Amendment to Chapter 305, Licensing
Requirements, Annual Reporting,
Enforcement and Consumer Protection
Provisions for Competitive Provision
of Electricity

NOTICE OF RULEMAKING

BARTLETT, Chairman; DAVIS & SCULLY Commissioners

I. SUMMARY

Through this Notice of Rulemaking, the Commission initiates a rulemaking to amend certain provisions of Chapter 305, the rule that governs the licensing requirements, annual reporting, enforcement, and consumer protection provisions for the competitive provision of electricity. The proposed rule is intended to conform Chapter 305 to recent legislative changes regarding competitive electricity providers (CEPs), the door-to-door marketing of retail energy supply, and the registration of third-party sales agents. The proposed rule also includes changes intended to improve customer protection standards regarding the marketing practices of CEPs, and otherwise includes changes intended to provide consistency and clarity, and to reflect the current electronic filing practices of the Commission. The Commission provides an opportunity for interested persons to comment on the proposed changes.

II. BACKGROUND

Pursuant to the provisions of the Electric Industry Restructuring Act, the Legislature, beginning in 2000, deregulated the electric supply service in Maine and consumers were provided with the opportunity to choose the provider of their electricity service. 35-A M.R.S. § 3201. As a result, customers receive two distinct electricity services: delivery and supply. In the event a customer does not affirmatively choose a CEP, the customer is placed on standard offer service.

The separation of electric service into two separate and distinct services, where delivery is provided by regulated utilities and supply is provided by unregulated CEPs, has previously required statutory and regulatory attention with respect to protecting consumers from unscrupulous marketing practices of CEPs. See, e.g., P.L. 2017, ch. 74; *Maine Public Utilities Commission*, Amendments to Licensing Requirements, Annual Reporting Requirements, Enforcement and Consumer Protection Provisions for Competitive Provision of Electricity, Docket No. 2018-00056; Order Adopting Rule and Statement of Factual and Policy Basis (Sept. 13, 2018); *Maine Public Utilities Commission*, Amendments to Licensing Requirements, Annual Reporting, Enforcement and Consumer Protection Provisions for Competitive Provision of Electricity (Chapter

305), Docket No. 2014-00214, Order Adopting Rule and Statement of Factual and Policy Basis (Jan. 14, 2015).

The Maine Legislature has recently enacted additional statutory provisions governing the regulation of door-to-door marketing of retail energy supply. P.L. 2021, ch.108 (eff. Oct. 18, 2021) (Act). This Act, codified at 35-A M.R.S. §§ 102, 1508-A, and 3203, provides consumers that elect to receive electricity supply service from CEPs with new consumer protections by generally enacting new conditions of licensure for CEPs, requiring the registration of third-party sales agents, and requiring certain related disclosures. The Act also provides additional penalty provisions. The Commission initiates this rulemaking to amend Chapter 305 to conform to these new statutory requirements and to otherwise update its rule in the public interest.

III. PROPOSED RULE AMENDMENTS

The Commission proposes to amend Chapter 305 to provide the additional consumer protection provisions required by the Act. The Commission also proposes certain other substantive and non-substantive changes to the rule in response to the Commission's experience in regulating CEPs and implementing Chapter 305. The attached redline of Chapter 305 includes all proposed amendments, including those intended to provide better consistency and clarity, and the major proposed revisions are summarized below.

A. General Provisions and Definitions, § 1

Section one of Chapter 305 provides the scope of the rule and defines terms. To conform to the Act, the proposed rule defines third-party sales agents and door-to-door sales, and additionally defines North American Renewables Registry and Certificates, known as NAR Certificates, which are relevant to the reporting and trade of electricity attributes in Northern Maine. In this section the Commission also proposes to clarify the definition of a CEP as it relates to the extent to which certain provisions of Chapter 305 apply to CEPs.

B. Licensing, Application, and Registration Requirements, § 2

Proposed amendments to section 2(A) of Chapter 305 require the registration of third-party sales agents prior to such sales agents working in the State of Maine, and consolidates, from other provisions of Chapter 305, a requirement that all entities under the Commission's jurisdiction provide upon request relevant information to assist the Commission in its regulation of the competitive provision of electricity. See, e.g., redlined sections 2(E)(1)(j), 2(E)(3). Similarly, section 2(D)(6) is proposed to reflect applicants' duty to provide the Commission with all necessary documentation for licensure.

Section 2(B)(10)(a) proposes a new section, addressing the registration requirements for third-party sales agents. Consistent with the Act, CEPs, not third-party sales agents, are responsible for registering the third-party sales agents. This section prohibits third-party sales agents from undertaking the retail sale or marketing of

electricity without first obtaining a registration number. CEPs are responsible for registering each of their third-party sales agents, even if an agent is already registered by another CEP. If, however, an individual person is employed by a third-party sales agent that is registered with the Commission, the individual person, for example an employee of the third-party sales agent, need not individually register as a third-party sales agent.

A new section 2(B)(10)(b) is proposed to conform to the Act by providing the disclosure and acknowledgement requirements applicable to CEPs when they register third-party sales agents. The Commission anticipates issuing the required registration numbers using a form and its electronic case management system. The Commission proposes delegation to the Director of Electric and Natural Gas Utilities the task of adopting specific filing requirements for disclosure and acknowledgement of third-party sales agents. Generally, a CEP is required to register its agents when it applies to be a CEP, and, as required by section 2(C)(2), must update that information prior to having any additional third-party sales agents undertake door-to-door sales. In accordance with the Act, section 2(B)(10)(b) specifies in detail the information CEPs must provide to register an agent, generally requiring a sworn statement from each agent as to their understanding of the legal provisions governing the agent's work in the State of Maine, any transient seller license number, disclosure of any pending customer complaints in other jurisdictions, and an acknowledgement of submission to the jurisdiction of the Commission.

Section 2(D) is updated under the proposed rule to clarify that the required licensing application form must be verified by affidavit, but no electronic signature is required. The proposed rule provides the application form is available electronically on the Commission's website and that CEPs must file the form in an individually designated docket in the Commission's electronic case management system (CMS). Similarly, proposed amendments to section 2(B)(3)(c) clarify where licensees are to file financial security annual reports, namely in a designated CEP project file in CMS.

Proposed amendments to section 2(E), which regards annual reporting, clarifies at the outset of this section, rather than elsewhere in the rule, *see, e.g.*, redlined section 2(E)(3), the limited applicability of the section to aggregators and brokers, and clarifies CEPs are to electronically file the annual reports in the annual report module of the Commission's CMS. Modifications to section 2(E)(1)(b) are proposed to require the filing of the newly defined NAR Certificates as the means to report the resource mix for service in Northern Maine.

C. Sanctions and Enforcement, § 3

The Commission proposes amendments to section 3 of Chapter 305 in accordance with the Act's new sanctions and enforcement requirements, which expressly make third-party sales agents subject to sanctions for violations of the Commission's rules and Title 35-A. Sections 3(A)(1), 3(A)(2), 3(A)(7), and 3(B)(2) of Chapter 305 are proposed to be modified to include third-party sales agents as being subject to administrative penalties, cease and desist orders, waiver provisions, and

referral to Office of Attorney General for apparent criminal conduct. Further modifications to section 3(A)(1) are proposed to cross reference applicable provisions of Title 35-A and delete language redundant with the Commission's statutory authority.

Additionally, proposed changes to section 3(A)(1)(b) provide that a letter issued by the Commission's General Counsel in CMS may serve as having "explicitly notified" CEPs and third-party sales agents that they are not in compliance with law for the purpose of imposing a penalty under 35-A M.R.S. § 1508-A(1)(B) & (B-1). Finally, as set forth in the Act and codified at 35-A M.R.S. § 1508-A(1)(B-1), section 3(A)(5) of the rule proposes language regarding the Commission's authority to terminate registrations of third party sales agents following explicit notice of noncompliance.

D. Customer Protection, § 4

The Commission's proposed amendments to section 4 of Chapter 305 contain modifications to conform to the Act's provisions governing third-party sales agents and door-to-door sales. See, e.g. § 4(C) (expressly including third-party sales agents as representatives and agents of CEPs). Proposed section 4(B)(2) incorporates newly enacted statutory provisions regarding compliance with state and federal law and requirements related to door-to-door sales, including specified written disclosure terms. Section 4(B)(5) also proposes language to conform to a new statutory provision that customers be afforded five days from customer receipt of a first bill to rescind their selection of a CEP. While Chapter 305 previously generally prohibited promotional practices that suggested a CEP was affiliated with a transmission and distribution utility, to conform to the Act section 4(B)(13)(c), the proposed rule further provides CEPs and third-party sales agents are not authorized to suggest they serve as an alternative to a customer's transmission and distribution utility.

Finally, in section 4 the Commission proposes changes to clarify the intent of the rule and update regulatory requirements based on the Commission's experience enforcing the consumer protection standards of Chapter 305. Section 4(B)(18)(c) clarifies that the Commission must be provided notice of decisions or orders from other entities that review customer complaints related to the Maine Human Rights Act or the Federal Equal Credit Opportunity Act. At section 4(A)(6), based upon the Commission's experience enforcing Chapter 305, the Commission's proposed amendments include a requirement that CEPs record and retain all outbound telemarketing calls to residential and small commercial customers for a period of two years from the date of recording.

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S. §§ 8051-8064. A public hearing on the proposed rule will be held on **February 8, 2022 at 3:00 p.m.** via Microsoft Teams. Interested persons may dial in to the hearing at the number provided below to participate by audio or, to participate by video, interested persons may email the Presiding Officer, Amy Mills, at amy.mills@maine.gov to request a video link.

Call in: 207-209-4724

Conference ID: 330 754 97#

Initial written comments on the proposed rule may be filed until **February 8, 2022**. Final written comments on the proposed rule may be filed no later than **February 22, 2022**. All written comments should refer to the above-captioned docket, and be filed electronically with the Administrative Director using the Commission's CMS, a link for which is provided on the Commission's website, or by mail to the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018 if the filer does not have access to the internet.

In accordance with 5 M.R.S. §§ 8057-A(1) and 8063, the Commission expects there to be no fiscal impact of this proposed rule, and no cost to municipalities and counties for implementing or complying with the proposed rule. Further, the proposed rule is not expected to impose an economic burden on small businesses.

The Commission invites all interested parties to comment on the fiscal impact and all other implications of the proposed rule.

Accordingly, we

ORDER

1. That the Administrative Director shall notify the following of this rulemaking proceeding:
 - a. all electric transmission and distribution utilities in Maine;
 - b. all licensed competitive electricity providers in Maine;
 - b. all persons who have filed with the Commission within the past year a written request for notice of rulemakings; and
 - c. the Office of the Public Advocate

2. That the Administrative Director shall send copies of this Notice of Rulemaking and attached proposed rule to:
 - a. The Secretary of State for publication in accordance with 5 M.R.S. § 8053(5); and
 - b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115.

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.