

Chapter 305: LICENSING REQUIREMENTS, ANNUAL REPORTING, ENFORCEMENT AND CONSUMER PROTECTION PROVISIONS FOR COMPETITIVE PROVISION OF ELECTRICITY

SUMMARY: This Chapter establishes licensing requirements for competitive electricity providers, which includes marketers, brokers, and aggregators, and establishes registration requirements for third-party sales agents. The Chapter includes procedural rules governing application for licensing, registration, revocation, termination, and enforcement, and annual reporting provisions. The Chapter also establishes consumer protection rules applicable to competitive electricity providers and third-party sales agents.

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§ 1 GENERAL PROVISIONS AND DEFINITIONS

- A. **Scope of Rule.** This Chapter applies to competitive electricity providers, who must be licensed to sell electricity at retail in Maine, and third-party sales agents, who must be registered in Maine. Competitive electricity providers include marketers, brokers and aggregators. This Chapter establishes licensing criteria and procedures, annual reporting requirements, enforcement provisions, and consumer protections standards.
- B. **Definitions.** For the purposes of this Chapter, the following terms have the following meanings:
1. **Affiliated Interest.** "Affiliated interest" means:
 - a. Any person who owns directly, indirectly or through a chain of successive ownership, 10% or more of the voting securities of an applicant or licensee;
 - b. Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in subparagraph (a);
 - c. Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an applicant or licensee;
 - d. Any person, or group of persons acting in concert, which exercises substantial influence over the policies and actions of an applicant or licensee, provided that the person or group of persons beneficially owns more than 3% of the applicant or licensee's voting securities.
 2. **Aggregate.** "Aggregate" means to organize individual electricity consumers into a group or entity for the purpose of purchasing electricity on a group basis.
 3. **Aggregator.** "Aggregator" means an entity that gathers individual customers together for the purpose of purchasing electricity.
 4. **Applicant.** "Applicant" means any entity that has filed an application for a license as a competitive electricity provider.
 5. **Broker.** "Broker" means an entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity.
 6. **Commission.** "Commission" means the Maine Public Utilities Commission.
 7. **Competitive Electricity Provider.** "Competitive electricity provider" means a marketer, broker or aggregator, unless brokers and marketers are expressly excluded from a provision of this Chapter.
 8. **Complaint.** "Complaint" means a grievance of a customer about the application of any provision of this Chapter by a competitive electricity provider or third-party sales agent.

9. **Customer.** "Customer" means any person who has requested, will receive or is receiving generation service or aggregator or broker service from a competitive electricity provider. This term includes an applicant for generation services when the context addresses the process of application for generation service in this Chapter.
10. **Door-to-door sales.** "Door-to-door sales" means the practice by which a representative of a competitive electricity provider, including a third-party sales agent, solicits or sells electric services to residential or small commercial consumers by means of personal visits to consumers at locations other than the representative's place of business. "Door-to-door sales" does not include sales conducted entirely by mail, telephone or other electronic means; sales conducted during a scheduled appointment at a consumer's residence or place of business; or sales conducted following an initial contact that was solicited by the consumer.
- ~~4011.~~ **Enroll.** "Enroll" means the assignment of a customer to a competitive electricity provider pursuant to Chapter 322 of the Commission's rules.
- ~~4112.~~ **Entity.** "Entity" means a person or organization, including but not limited to any political, governmental, quasi-governmental, corporate, business, professional, trade, agricultural, cooperative, for-profit or nonprofit organization.
- ~~4213.~~ **Generation Service.** "Generation service" means the provision of electric power to a retail customer through a transmission and distribution utility but does not encompass any activity related to the transmission or distribution of that power.
- ~~4314.~~ **GIS Certificates.** "GIS certificates" mean certificates created pursuant to NEPOOL Generation Information System that represent attributes of electric power and that may be traded separately from the energy commodity.
- ~~4415.~~ **ISO-NE.** "ISO-NE" means the Independent System Operator of the New England bulk power system.
- ~~4516.~~ **Large Non-Residential Customer.** "Large Non-Residential Customer" means a non-residential customer that is not a small non-residential customer or a medium non-residential customer.
- ~~4617.~~ **Maritimes Control Area.** "Maritimes control area" means the area in which the New Brunswick Power Corporation operates the Maritimes bulk power system.
- ~~4718.~~ **Marketer.** "Marketer" means an entity that as an intermediary purchases electricity and takes title to electricity for sale to retail customers.
- ~~4819.~~ **Medium Non-Residential Customer.** "Medium Non-Residential Customer" means a non-residential customer that is taking service from a transmission and distribution utility under terms and conditions that includes a demand charge and in which the customer's maximum demand does not exceed 500 kilowatts or the kilowatt breakpoint that is closest to but does not exceed 500 kW.
20. **NAR.** "NAR" means the Northern American Renewables Registry.

21. **NAR Certificates.** NAR certificates mean certificates created pursuant to the Northern American Renewables Registry that represent attributes of electric power and that may be traded separately from the energy commodity.
- ~~19~~21. **NMISA.** “NMISA” means the Northern Maine Independent System Administrator of the electricity market in northern Maine.
- ~~20~~22. **Northern Maine.** "Northern Maine" means the area of Maine that is located in the Maritimes control area.
- ~~21~~23. **Residential Customer.** “Residential customer” means a customer taking service as a residential customer under the terms and conditions of the applicable transmission and distribution utility.
- ~~22~~24. **Small Non-Residential Customer.** “Small non-residential customer” means a non-residential customer taking service from an investor-owned transmission and distribution utility under terms and conditions that do not include a demand charge or a non-residential customer that is taking service from a consumer-owned transmission and distribution utility with a demand of 20 kilowatts or less.
25. **Third-party sales agent.** "Third-party sales agent" means a person or entity that has a business relationship with a competitive electricity provider in which the person or entity conducts or arranges to conduct residential or small commercial consumer sales of electricity to the public at retail on behalf of the competitive electricity provider through door-to-door sales. "Third-party sales agent" does not include an employee of a competitive electricity provider, and does not include an employee, contractor, or other person working on behalf of a third-party sales agent if the employing entity is registered by the Commission as a third-party sales agent in accordance with Title 35-A and this Chapter.
- ~~23~~26. **Transmission and Distribution Utility.** "Transmission and distribution utility" means a person, its lessees, trustees, receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State.
- ~~24~~27. **Indexed Variable Rate or Charge.** “Indexed Variable Rate or Charge” means any rate or charge that varies over the duration of the term of service where the rate or charge is reasonably related to a public index or otherwise reasonably determined through a readily accessible formula.
- ~~25~~28. **Non-indexed Variable Rate or Charge.** “Non-indexed Variable Rate or Charge” means any rate or charge that varies over the duration of the term of service other than an Indexed Variable Rate or Charge.

§ 2 LICENSING AND REGISTRATION REQUIREMENTS

A. Entities Subject to Licensing and Registration Requirements

1. Competitive Electricity Providers and Third-Party Sales Agents

a. Licensure and Registration

All competitive electricity providers, ~~including aggregators, brokers and marketers~~ must be licensed by the Commission, and third-party sales agents must be registered by the Commission. No entity ~~shall may~~ contract or offer to contract to provide generation service, enroll customers, provide generation service, or arrange for a contract for the provision of generation service without having obtained a license from, or with respect to third-party agents without being registered with, the Commission.

b. Provision of Documentation

Upon request by the Commission, applicants, registrants, competitive electricity providers, and third-party sales agents must provide any information the Commission determines is necessary or useful in carrying out its duties and obligations under Title 35-A and this Chapter, including but not limited to the Commission's review of license applications and annual reports, and registering third-party sales agents.

2. Transmission and Distribution Utilities

This section is not applicable to transmission and distribution utilities that arrange for standard offer service to their customers pursuant to Chapter 301 of the Commission's rules.

B. Application Requirements for Competitive Electricity Providers

1. Evidence of Financial Capability

a. Financial Disclosures

An applicant ~~shall~~must include its most recent financial disclosures. If the applicant does not make financial disclosures, it ~~shall~~must include the most recent financial disclosures of its corporate parent. If the applicant is a newly formed entity that is not part of another organization, the Commission may accept other documentation to demonstrate financial capability.

b. Customer Deposits

An applicant ~~shall~~must include additional documentation necessary to demonstrate financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason. This provision is not applicable if the applicant will not hold customer deposits.

2. Evidence of Technical Capability

a. Industry Experience

An applicant ~~shall~~must include a description of the industry experience of the applicant, the corporate parent of the applicant or individuals that will be responsible for the provision of service in Maine. For purposes of this provision, industry experience includes involvement with retail or wholesale electricity or natural gas markets in the United States or Canada.

b. Generation Service

An applicant that will provide generation service in the ISO-NE control area ~~shall~~must document that it is either a participant in the ISO-NE electricity market or will conduct transactions through a contractual arrangement with an entity that is a participant in the ISO-NE electricity market. An applicant that will provide generation service in Northern Maine ~~shall~~must document that it is either a participant in the market administered by NMISA or will conduct transactions through a contractual arrangement with an entity that is a participant in the market administered by the NMISA.

c. Interconnection

If applicable, applications ~~shall~~must include a demonstration of the ability of the applicant to enter into binding interconnection arrangements with transmission and distribution utilities.

3. Financial Security

a. Applicability

The financial security requirements of this paragraph apply only to applicants that seek a license to provide generation service to residential and small non-residential customers. The requirements of this paragraph do not apply to standard offer service.

b. Requirements

An applicant must submit financial security that complies with this paragraph prior to the issuance of a license. The applicant must maintain financial security that complies with this paragraph as long as it is licensed to provide generation service to residential and small non-residential customers and must submit replacement security at least seven days prior to the expiration or cancellation of a previously submitted financial security instrument. Upon termination of a license to provide generation service to residential and small non-residential customers, the financial security instrument ~~shall~~must remain in force until the Commission determines that all obligations of the competitive electricity provider have been satisfied.

c. **Security Amount**

The initial security amount ~~shall~~must be \$100,000. The Commission may grant modifications of this amount commensurate with the nature and scope of the business the licensee anticipates conducting in Maine upon submission of information in support of the modification. A request for modification of the initial security amount may be made in conjunction with the filing of the license application. The required security amount will change each year and ~~shall~~must equal 10 percent of the licensee's annual revenues from sales of generation services to residential and small non-residential customers in Maine over the prior calendar year, or \$1,000,000, whichever is lesser. Annual revenues for purposes of this provision do not include revenues from standard offer service. A licensee ~~shall~~must submit a report each year on March 1st, in the Commission's electronic case management system's revenues for financial security project file. The report must that contains ~~its~~the licensee's revenues from sales to residential and small non-residential customers during the prior year and provide updated security consistent with the requirements of this provision.

d. **Use of Security Amounts**

Upon a finding that a licensee has violated a statute or regulation regarding the provision of service to residential or small non-residential customers, the Commission may direct that amounts from the financial security be distributed as follows:

- (i) to customers for a refund of security deposits or advanced payments paid to the competitive electricity provider;
- (ii) to customers for restitution of amounts paid in error or due to charges assessed in violation of the applicable terms of service, statute, or rule; or
- (iii) to the Commission for payment of administrative penalties or any other sanction ordered by the Commission pursuant to section 3 of this Chapter or other statutes or rules applicable to competitive electricity providers.

e. **Type of Security**

An applicant may satisfy the financial security requirements of this paragraph through an irrevocable letter of credit or cash perfected as security. Financial security documents must be in a form and contain language that is acceptable to the Commission.

- (i) **Letter of Credit.** An irrevocable letter of credit must unconditionally obligate the issuing financial institution to honor drafts drawn on such letters for the purpose of paying the obligations of the competitive electricity provider pursuant to

Maine law and regulations and must specify that the issuing financial institution will notify the Commission 30 days in advance of the expiration or cancellation of the letter of credit. The letter of credit must include the following language: that the letter of credit binds the issuing financial institution to pay one or more drafts drawn by the Commission as long as the draft does not exceed the total amount of the letter of credit; and that any draft presented by the Commission will be honored by the issuer upon presentation. The letter of credit must be issued by a financial institution with a minimum corporate credit rating of “BBB+” by Standard & Poor’s or Fitch or “Baa1” by Moody’s Investors Service, or an equivalent short term credit rating by one of these agencies. If, at any time, the corporate debt rating of an issuing financial institution drops below the above specified levels, the competitive electricity provider ~~shall~~must notify the Commission’s Director of Electric and Gas Industries in writing and provide replacement security that satisfies the requirements of this Chapter.

- (ii) **Cash.** To satisfy the security requirement of this paragraph, cash must be perfected as a security interest. Cash and applicable interest ~~shall~~must be returned to the competitive electricity provider after all obligations are satisfied.

f. **Other Liability**

Liability of competitive electricity providers for violation of law, Commission orders or Commission rules is not limited by the security requirements of this section.

4. **Disclosure of Enforcement Proceedings and Customer Complaint**

a. **Applicability**

This paragraph applies to actions against the applicant and associated entities of the applicant. For purposes of this provision, an associated entity is any entity for which the applicant is a control person; any control person of the applicant; any entity under common control with the applicant; or any entity for which a control person of the applicant served as a control person at the time of the conduct that was the basis for the action. A control person is any person who serves as an officer or director of, or who exercises similar authority over, an entity or who possesses, directly or indirectly, voting power over 10% or more of the voting securities of the entity.

b. **Enforcement Proceedings**

An applicant must disclose all civil court or regulatory enforcement proceedings or criminal prosecutions commenced against it or an associated entity within the last six years prior to the date of the license application or currently pending that relate to or arise out of the sale of

electricity, the sale of natural gas, the provision of utility services, business fraud, or unfair or deceptive sales practices.

c. **Customer Complaints**

An applicant must disclose ~~ure~~ the number of customer complaints, by state and customer class, related to the retail sale of electricity or natural gas filed against it at regulatory bodies other than the Commission within the last 12 months prior to the date of the license application.

5. **Evidence of Ability to Satisfy Portfolio Requirement**

An applicant must submit evidence of its ability to satisfy the eligible resource portfolio requirement under 35-A M.R.S. ~~A.~~ §_3210, consistent with the provisions of the Commission's portfolio requirement rules, Chapter 311. This provision is not applicable to aggregator and broker license applications.

6. **Disclosure of Affiliates**

An applicant must disclose the names and addresses of all affiliated interests engaged in the retail sale of electricity in the United States or Canada. An applicant may submit a copy of its most recent corporate annual report in compliance with this provision if the annual report contains the required information. At the request of the Commission, the applicant ~~shall~~ must submit further information on the corporate structure of the applicant's parent corporation.

7. **Tax Registration**

An applicant must submit evidence that the applicant is registered with the State Tax Assessor as a seller of tangible personal property pursuant to Title 36, section 1754-B, together with a statement that the applicant agrees to be responsible for the collection and remission of taxes in accordance with Title 36, Part 3 on all taxable sales of electricity made by the applicant to consumers located in Maine.

8. **Agent for Service**

An applicant must submit evidence that demonstrates that it has an agent for service of process located in Maine

9. **Application Information.** An applicant must provide the following information:

- a. Legal name and name(s) under which the applicant will do business in Maine;
- b. Business street and mailing address;
- c. Name and mailing address of an agent for service of process in Maine;

- d. Location and mailing address of any office available to the general public or Maine customers of the applicant;
- e. Contact person, address, e-mail and telephone number for regulatory matters;
- f. Contact person, address, e-mail and telephone number for consumer issues and complaints;
- g. A generic list of the products and services that will be marketed or sold in Maine, the customer class(es) that will be served (residential and small non-residential, medium non-residential, or large non-residential), and the transmission and distribution utility service territories in which the applicant will do business;
- h. A list of all jurisdictions in which the applicant or any affiliated interest of the applicant is engaged or has been engaged within the prior 6 years in the sale of generation services or broker or aggregator services;
- i. A list of all jurisdictions in which the applicant or any affiliated interest of the applicant has applied for a license or has otherwise sought the authority to engage in the sale of generation service or broker or aggregator services, and the disposition of the application;
- j. Whether the applicant or affiliated interest of the applicant has filed for bankruptcy within the past six years;
- k. A copy of the documents which demonstrate the type of organization of the applicant (sole proprietor, corporation, partnership, association, or other business form) and a copy of its by-laws;
- l. The state(s) in which the applicant is incorporated or otherwise registered or licensed to do business and a copy of its registration or license number, where applicable;
- m. A copy of any FERC approval as a Power Marketer or date and docket number of the application to FERC, if applicable;
- n. The name, address and title of each officer and director, partner, or other similar officer; and
- o. Whether the applicant will use its own employees to market its product(s) or whether it will use ~~third party marketers~~ other representatives or third-party sales agents.

10. **Registration of Third-Party Sales Agents**

a. Registration

A third-party sales agent undertaking the retail sale or marketing of electricity on behalf of a competitive electricity provider may not engage in any sales or marketing activity unless the third-party sales agent is registered with, and has obtained a registration number from, the Commission. If an individual person is an employee, representative, or otherwise working on behalf of an entity registered with the Commission as a third-party sales agent, then that person need not individually register with the Commission. Competitive electricity providers must register all proposed third-party sales agents regardless of whether a third-party sales agent is registered by another competitive electricity provider.

b. Disclosure and Acknowledgement

An applicant to be a competitive electricity provider in Maine must register its third-party sales agents. An applicant must obtain an electronic registration form from the Commission's website and file it in the docket designated for it as a competitive electricity provider using the Commission's electronic case management system. The Commission will adopt specific filing requirements for disclosure and acknowledgement of third-party sales agents and delegates this task to the Director of Electric and Natural Gas Utilities. The form must contain the following information:

- i. The names and corporate addresses of all third-party sales agents proposed to be used by the applicant.
- ii. A sworn statement by each proposed third-party sales agent attesting to the third-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;
- iii. Any transient seller license number issued to each proposed third-party sales agent by the Department of Professional and Financial Regulation pursuant to Title 32, chapter 128, subchapter 2;
- iv. All pending legal actions and customer complaints filed against each proposed third-party sales agent at a regulatory body other than the Commission in the 12 months prior to the date of the applicable license application; and
- v. An acknowledgement by each third-party sales agent proposed to be used by the applicant of the third-party sales agent's submission to the jurisdiction of the Commission.

10. Other Information

~~Applicants may be required to provide other information that the Commission determines is useful or necessary in the review of a license application.~~

C. Licensing Conditions

By obtaining a license, competitive electricity providers agree:

1. To comply with all Maine laws and regulations applicable to competitive electricity providers;
2. To provide updated information to the Commission if there are substantial changes in circumstances from those documented in the license application process no later than within 60 days of those changes, including providing updated disclosure and acknowledgement forms regarding third-party sales agents prior to any third-party sales agent undertaking any door-to-door sales on behalf of the competitive electric provider;
3. To use reasonable efforts not to conduct business with any entity acting as a competitive electricity provider in Maine without a license from the Commission. For purposes of this provision, a review of the Commission's webpage to determine if an entity is licensed constitutes a reasonable effort~~;~~;
4. That it and its agents and third-party sales agents ~~S~~submit to the jurisdiction of the courts of the State of Maine and the Maine Public Utilities Commission; and
5. That all contracts for generation, broker or aggregator service to residential or small non-residential customers will be interpreted according to Maine law and maintained in Maine courts or before Maine administrative agencies.

D. **Licensing Procedures**

1. **Scope**

These procedures apply to the application for a competitive electricity provider license before the Commission.

2. **Form**

An application for a license must be made on the electronic form provided by the Commission on its website and signed-verified by an officer of the ~~A~~applicant by affidavit. ~~The application form is available on the Commission's website.~~

3. **Filing**

Each applicant must file its verified application in a docket designated for the competitive electricity provider using the Commission's electronic filing case management system. An electronic signature is not required.

4. **Material Change in Application Information**

The applicant ~~shall~~must inform the Commission of any material change in the information provided in the application during the pendency of the application process.

5. **Fees**

Each applicant ~~shall~~must pay a fee of \$100 to the Commission. Fees collected by the Commission under this provision must be deposited in the Public Utilities Commission Reimbursement Fund. The applicant must mail this fee to the Commission pursuant to the application's instructions.

6. **Commission Review**

An applicant must include all documentation necessary to demonstrate compliance with Title 35-A and this Chapter. The Commission will review applications and ~~may request additional information from applicants. The Commission~~ will issue a license, deny the application, or initiate a formal investigation of the application within 60 calendar days of submission of a complete application. If additional time is required for the initial review, the Administrative Director, the Director of Electric and Natural Gas Industries, the Director of Consumer Assistance and Safety Division, or the Presiding Officer assigned to a proceeding related to this Chapter may extend the review period for an additional 60 calendar days. In the event the Commission initiates a formal investigation, it ~~shall~~must provide notice to the applicant ~~to interested persons~~.

7. **Issuance Criteria**

The Commission will issue a license unless it finds that the applicant has not complied with all applicable licensing requirements of this Chapter, that the applicant does not have the financial and technical capability to conduct its business, or that sufficient reason exists to conclude that issuance of a license is not in the public interest.

8. **Conditions**

The Commission may place reasonable conditions on the issuance of a license, including, but not limited to, the provision of financial security in a form and amount determined by the Commission.

9. **Term of License**

Licenses are valid until revoked by the Commission or abandoned by the applicant.

10. **Transfer of License**

A license ~~shall~~may not be transferred without prior Commission approval. A request for transfer of a license ~~shall~~must be in writing accompanied by a completed license application from the transferee. The Commission may order the licensee to notify its customers of the license transfer.

11. **Abandonment of License**

A licensee ~~shall~~may not abandon service without providing at least 30 days written notice to the Commission, the licensee's residential and small non-residential customers and the affected transmission and distribution utilities.

12. Accuracy of Information

Any applicant who knowingly submits misleading, incomplete or inaccurate information may be penalized in accordance with perjury statutes and pursuant to 35-A M.R.S.A. § 3203 and the provisions of this Chapter.

E. Annual Reporting

1. Information

Each competitive electricity provider must file an annual report on or before July 1 of each year, for the previous calendar year. Aggregators and brokers must comply only with subparagraphs (c), (d) and (i) of the annual reporting requirement of this subsection. The annual report electronic form ~~shall~~must be obtained from the Commission's website and ~~submitted~~filed in the annual report module of the Commission's electronic case management systemally. The annual report ~~shall~~must contain the following information:

a. Average Prices, Revenues and Sales

Average prices, revenues, sales and number of customers, in total and for each pricing product, broken out by (i) residential and small non-residential customers; (ii) medium non-residential customers; and (iii) large non-residential customers and by transmission and distribution service territory. The number of customers is to be calculated as of December 31 of the reporting period. Individually negotiated prices may be provided in the aggregate;

b. Resource Mix

The resources used to serve customers in Maine by resource category and percentage of Maine load served by each resource category. For service to customers in the ISO-NE control area, resources ~~shall~~must be reported based on Generation Information System certificates contained in a Maine GIS sub-account and the ISO-NE's residual system mix. For service in Northern Maine, resources ~~shall~~must be reported based on NAR Certificates market settlement data or other relevant market data that match generating resources to load obligation. For purposes of this provision, the resources used for service in the ISO-NE control area and Northern Maine must be combined into a single resource mix;

c. Enforcement Actions

Identification of any enforcement action initiated or concluded against the licensee or an affiliated interest by any federal, state or local government agency in the United States or Canada with respect to actions involving the sale of electricity, the sale of natural gas, the provision of utility services, business fraud, or unfair or deceptive sales practices;

d. **Ownership or Control**

Changes in the licensee's ownership or control;

e. **Information Disclosure**

The information required to be provided annually pursuant to the Commission's information disclosure rule, Chapter 306;

f. **Portfolio Requirement**

The information required to be provided annually pursuant to the Commission's eligible resource portfolio requirement rule, Chapter 311;

g. **Terms of Service Documents**

All terms of service documents produced pursuant to Section 4(B)(1) of this Chapter that were in effect during the reporting period with a notation of time period for which each document was in effect;

h. **Marketing of Electricity Attributes**

Information demonstrating compliance with Section 4(A)(7), if applicable;

i. **Disclosure of Enforcement Proceedings and Customer Complaints**

The information required to be provided upon application pursuant to Section 2(B)(4) of this Chapter; and

~~j. **Other information**~~

~~Other information that the Commission determines is necessary or useful in carrying out its duties and obligations under Title 35-A, Chapter 32.~~

2. **Confidentiality**

The Commission may subject any information required by Title 35-A or this Chapter to appropriate protective orders.

~~3. **Aggregators and Brokers**~~

~~Aggregators and brokers are required to comply with subparagraphs (c), (d) and (i) of the annual reporting requirement of this subsection. The Commission may at any time require aggregators and brokers to provide any information the Commission determines is necessary or useful in carrying out its duties and obligations under Title 35-A, Chapter 32.~~

§ 3 SANCTIONS AND ENFORCEMENT

A. Sanctions

Competitive electricity providers and third-party sales agents are subject to sanctions for violations of applicable provisions of Chapter 32 of Title 35-A, and Commission rules or orders. Sanctions may be imposed following a hearing before the Commission in conformance with 5 M.R.S. Chapter 375, subchapter IV (Maine Administrative Procedures Act) and Chapter 110 of the Commission's rules. The following sanctions may be imposed:

1. Penalties

a. In an adjudicatory proceeding, the Commission may impose a administrative penalties on competitive electricity providers and third-party sales agents as authorized by 35-A M.R.S. § 1508-A and § 3203(7). not to exceed \$5,000 for each violation for each day that the violation persists. In determining the amount of the penalty, the Commission shall consider the magnitude of the penalty relative to the size of the competitive electricity provider's business, the nature of the violation, and the good faith attempts by the competitive electricity provider to achieve compliance after notification of a violation. Penalties collected by the Commission under this provision must be deposited in the Public Utilities Commission Reimbursement Fund or refunded to customers as directed by the Commission.

a.b. A letter from the Commission's General Counsel providing the notice articulated in 35-A M.R.S. § 1508-A(1)(B) and (B-1)(2) and issued in the docket designated for the competitive electricity provider using the Commission's electronic case management system constitutes an example of that competitive electricity provider or its third-party sales agent having been explicitly notified by the Commission for the purpose of imposing a penalty or terminating a third-party sales agent registration.

2. Cease and Desist Orders

a. **Hearing.** The Commission may issue a cease and desist order following an adjudicatory hearing, if the Commission finds that any competitive electricity provider or third-party sales agent has engaged or is engaging in any act or practice in violation of any law or rule administered or enforced by the Commission or any lawful order issued by the Commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004; or

b. **Emergency.** The Commission may issue a cease and desist order in an emergency, without hearing or notice, if the Commission receives a written, verified complaint or affidavit showing that either a third-party sales agent is conducting or arranging to conduct sales without being registered or showing that a competitive electricity provider is selling electricity to retail consumers or providing aggregator or broker services

without being duly licensed, or **that either** is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the Commission or until stayed by a court of competent jurisdiction. ~~In Following~~ a subsequent hearing, the Commission ~~will issue a shall in a final order,~~ **affirming, modifying, or setting** aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the Commission.

3. **Restitution**

The Commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this subsection.

4. **Revocation; Suspension**

The Commission may revoke or suspend the license of a competitive electricity provider as stated below. At its option, the Commission may suspend only a competitive electricity provider's authority to enroll new customers.

- a. For any cause for which issuance of the license could have been denied had it then existed or been known to the Commission;
- b. For a violation or material noncompliance with any applicable provision of any law or rule administered or enforced by the Commission or any lawful order issued by the Commission;
- c. For obtaining or attempting to obtain a license through misrepresentation, failure to disclose a material fact required to be disclosed in the application, or fraud; or
- d. For the use of fraudulent, coercive, or deceptive practices, or misuse of customer funds with respect to the provision of generation service or aggregator or broker service.

5. **Termination of Registration**

In an adjudicatory proceeding, the Commission may terminate the registration of a third-party sales agent if the third-party sales agent was explicitly notified by the Commission that it was not in compliance with Title 35-A, this Chapter, or a Commission order and that failure to comply could result in the termination of the third-party sales agent's registration.

56. **Other**

The Commission may impose any other sanction authorized by law that it determines appropriate taking into account the facts and circumstances that resulted in the violation.

67. Waiver

The Commission may waive the imposition of sanctions upon a showing that the violation was immaterial, unintentional, or that the competitive electricity provider or third-party sales agent acted in good faith to comply with all applicable statutory and regulatory requirements.

B. Enforcement

1. Court action

The Commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the Commission pursuant to this Chapter.

2. Notice to Attorney General

If the Commission has reason to believe that any competitive electricity provider or third-party sales agent has violated any provision of law for which criminal prosecution is provided or any antitrust law of this State or the United States, the Commission ~~shall~~will notify the Attorney General.

§ 4 CUSTOMER PROTECTION

A. General Protections

All competitive electricity providers and third-party sales agents must comply with the provisions of this subsection.

1. Customer Authorization

Competitive electricity providers must obtain a customer's authorization before providing service.

2. Customer Information

Competitive electricity providers 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.

3. Trade Practices

Competitive electricity providers must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10 and related consumer protection statutes. Any finding by an entity of competent jurisdiction that a competitive electricity provider violated either the Maine or Federal Unfair Trade Practices Act is deemed to be a violation of this subsection.

4. **Collection Costs**

Competitive electricity providers may not collect or seek to collect unreasonable costs from a customer who is in default. For purposes of this provision, unreasonable costs are those in excess of actual out-of-pocket expenses incurred by the competitive electricity provider, including reasonable attorney fees and actual court costs.

5. **Equal Credit**

Competitive electricity providers must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f.

6. **Telemarketing**

Competitive electricity providers must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing. Competitive electricity providers must record and retain all outbound telemarketing calls to residential and small commercial customers for a period of two years from the date of recording.

7. **Marketing of Electricity Attributes**

Competitive electricity providers that market or promote electricity products on the basis that all or a percentage of the electricity provided have specified attributes, including but not limited to green, renewable, specified resource types and locations, must provide supporting documentation in the annual report filed pursuant to section 2 (E) of this Chapter. For purposes of this provision, the documentation must be as follows:

- a. **ISO-NE Control Area.** For service to customers in the ISO-NE control area, the competitive electricity provider must have GIS certificates in a Maine GIS-sub-account that reasonably corresponds to the usage of the customers provided the green electricity or renewable electricity product.
- b. **Maritimes Control Area.** For service to customers in Northern Maine, the competitive electricity provider must have market settlement data and other documentation that demonstrates the renewable resources used to serve load reasonably corresponds to the usage of the customers provided the green electricity or renewable electricity product. This information must document that the renewable attributes of the resources have not been used or transferred for any other purposes.

This provision does not prohibit competitive electricity providers from marketing, ~~and promoting,~~ or providing green or environmental products, such as renewable credits associated with resources that are not used to serve load in New England, as part of the provision of electricity services. The promotion of such products may not state or suggest that that the electricity actually used to serve the customer has the stated attributes. The competitive electricity provider

must provide supporting documentation in the annual report filed pursuant to section 2-(E) of this Chapter

8. **Notice of Opt-Out Fee**

- a. Competitive electricity providers must, prior to enrolling a customer, provide notice to that customer of the existence of opt-out fees pursuant to Chapter 301 of the Commission rules that might apply if a customer commits to service from the competitive electricity provider. The notice must explain the opt-out fee and the actions that may result in the assessment of the fee. The competitive electricity provider must retain evidence that the required notice was provided to the customer, including the date upon which the notice was provided.
- b. This notice requirement is not applicable if the enrolling customer is not subject to an opt-out fee pursuant to Chapter 301, Section 2(C)(1).
- c. This notice must be provided in writing as set forth below:

Your termination of standard offer service may require the payment of a fee, as required by Chapter 301 of the Commission's rules. This is a regulatory fee, and it is not imposed by competitive electricity providers. You are encouraged to review the applicability of Chapter 301 in advance of accepting service from a competitive electricity provider.

9. **Commission Standards and Requirements**

Competitive electricity providers must comply with any other applicable standards or requirements established by the Commission by order or rule.

B. **Small Customer Protections**

In addition to complying with subsection A, all competitive electricity providers and the third-party sales agents who conduct or arrange to conduct sales on their behalf, and that provide service to residential or small non-residential customers must also comply with the provisions of this subsection. Competitive electricity providers must determine in writing ~~The a~~ customer's status ~~shall be determined~~ at the time of enrollment. The consumer protections provided to customers in this subsection cannot be waived by a customer or superseded by provisions in the Terms of Service document. Unless otherwise specified, the provisions of this subsection ~~apply only to those entities licensed to provide generation service to residential and small non-residential customers~~ do not apply to aggregators or brokers. The provisions of this subsection do not apply to standard offer providers.

1. **Disclosure Regarding Standard Offer**

Before entering into an agreement to provide service, each competitive electricity provider ~~shall~~ must disclose in writing to the customer where the customer can obtain information with which to compare the service provided by the

competitive electricity provider and the standard-offer service. The written comparison disclosure ~~shall~~must include information regarding how a customer can obtain information about standard-offer service rates, including a link to the Commission's standard offer rates website page.

2. Disclosure and Limitations Regarding Door-to-Door Sales

A competitive electricity provider must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation on door-to-door sales. Competitive electricity providers may not enter, or allow its agents or 3rd-party sales agents, to enter into any Terms of Service to provide service when that service is solicited using door-to-door sales without providing the customer with a written disclosure that meets the following requirements:

- a. A type size that is no less than 14 points;
- b. Contact information, including the telephone numbers for the competitive electricity provider, the Commission, and the Office of the Public Advocate;
- c. A telephone number and publicly accessible website where the consumer may obtain information on the current standard-offer service rate and expiration date and the publicly accessible website for electricity supply information available through the Office of the Public Advocate;
- d. Information regarding the consumer's right to rescind service;
- e. The registration number of the 3rd-party sales agent issued by the Commission and any transient seller's license number issued by the Department of Professional and Financial Regulation pursuant to Title 32, chapter 128, subchapter 2; and
- a.f. Any other information the Commission determines is necessary.

2.3. Bill Information

The supply bill for a customer that elects to receive generation service from a competitive electricity provider must contain the following:

- a. The website address and telephone number of the Office of the Public Advocate where customers can access information that provides independent information that allows customers to compare terms, conditions, and rates of electricity supply.
- b. A statement that directs the customer to the competitive electricity provider for more information on the customer's Terms of Service, including its specific terms, and that provides the telephone number of the competitive electricity provider.

For customers for whom a competitive electricity provider has elected consolidated utility billing pursuant to Chapter 322 of the Commission's

rules, the foregoing information ~~shall~~must be included on the consolidated bill by the transmission and distribution utility. For customers for whom a competitive electricity provider has elected provider billing under Chapter 322 of the Commission's rules, the foregoing information ~~shall~~must be included by the competitive electricity provider on its bills to such customers.

3.4. **Terms of Service Document**

- a. **Obligations and responsibilities.** Each competitive electricity provider must prepare a document entitled "Terms of Service" as described in this subsection. The Terms of Service document ~~shall~~must be in plain language and printed in legible type and ~~shall~~must contain all contractual obligations and responsibilities between the competitive electricity provider and the customer.
- b. **Initiation of service.** Each competitive electricity provider must provide to each customer the Terms of Service document within ~~7~~seven calendar days of agreeing to provide service with a customer. A competitive electricity provider ~~shall~~may not enroll a customer until the Terms of Service document has been provided to the customer and the customer's statutory right of rescission has expired as set forth in this subsection. Competitive electricity providers must maintain sufficient records, either in writing or electronically, to demonstrate compliance with the issuance of the Terms of Service document, including the customer's right of rescission, prior to enrolling the customer. Competitive electricity providers must also maintain a copy of the applicable Terms of Service document and provide a copy to the customer or the Commission upon request.
- c. **Webpage.** Each competitive electricity provider must prominently display all effective Terms of Service documents on its webpage with an indication of the effective dates of each document. The Terms of Service document must be available and easily accessed on the webpage without any requirement that any personal customer-specific information be provided.
- d. **Terms of Service Document Content**

The Terms of Service document ~~shall~~must contain the following information:

- (i) The pricing structure specifying whether the rates are fixed or variable;
- (ii) The term or length of service obligation of the competitive electricity provider and the customer, including the date upon which service will begin and whether the service obligation will automatically renew;

- (iii) Due dates of bills and consequences of late payment, including the amount of any late payment fee, interest, or finance charge assessed for late payment;
- (iv) Deposit requirements and interest on deposits;
- (v) Any fee associated with the early termination of service;
- (vi) Any Limits on warranty and damages;
- (vii) A disclosure of the customer's right of rescission of the contract without penalty, how this right may be exercised, and how to contact the provider orally, electronically or in writing to exercise this right;
- (viii) A market risk disclosure, if applicable, consistent with Section 4(E) of this Chapter;
- (ix) A toll-free number for customer complaints and the hours the customer can contact the provider for questions or complaints;
- (x) A generic description of the standard offer generation service;
- (xi) A statement on how a customer may contact the Commission to obtain information on consumer protection rights; and
- (xii) A standardized notice form, setting forth the requirements of the terms of service document. The Commission or the Director of Electric and Natural Gas Industries ~~shall~~ will by order specify the standardized form.

45. **Right of Rescission**

- a. **General.** Competitive electricity providers must provide a right of rescission to every customer. Competitive ~~e~~Electricity ~~p~~Providers must provide customers a minimum of five calendar days from receipt of the first bill or invoice from the competitive electricity provider ~~the provision of the Terms of Service document~~ to exercise the right of rescission. ~~In the event a customer agrees to take service through a Competitive Electricity Provider's webpage, the provision of the Terms of Service document will be deemed to be provided on the date the customer agreed to take service. Competitive Electricity Providers must provide customers a minimum of 8 calendar days if the Terms of Service document is mailed to the customer.~~
- b. **Oral Agreement.** Competitive electricity providers must orally notify customers of their right of rescission at the time the customer orally agrees to purchase generation services from the provider.

- c. **Exercise of Right of Rescission.** A prospective customer may rescind the selection of a competitive provider orally, in writing or by electronic means.
- d. **Waiting Period.** The competitive electricity provider ~~shall~~may not enroll a customer until the rescission period has expired.
- e. **Rescission Complaints.** It is the obligation of the competitive electricity provider to maintain sufficient evidence of the notification of the right of rescission and whether the customer rescinded in writing, electronically or orally.

56. **Verification of Affirmative Customer Choice**

- a. **General.** Each competitive electricity provider must obtain verification that each customer choosing that provider has affirmatively chosen such entity. No provider may enroll a customer without first obtaining evidence of the affirmative choice from the customer. The provider must retain this evidence for at least 12 months from the date that the customer's service is ended with the provider.
- b. **Affirmative Choice.** For the purposes of this subsection, the customer's affirmative choice may be evidenced by a customer-signed letter of authorization, third-party verification, or through electronic authorization.
 - (i) **Letter of authorization.** For the purposes of this subsection, the term "letter of authorization" means an easily separable document whose sole purpose is to authorize a competitive electricity provider to initiate generation service for a customer or represent the customer for the purposes of selecting a provider on behalf of the customer. The letter of authorization must be signed and dated by the customer and must not be combined with a check, prize or other document which intends to confer any benefit on the customer as a result of the customer's selection of the provider. The document may be transmitted electronically by the customer to the provider if the provider maintains a security system sufficient to identify the customer and prevent fraudulent use of the letter of authorization by any person.
 - (ii) **Third-party verification.** For the purposes of this section, the term "third-party verification" means an appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative who has obtained the customer's oral authorization to change to a new provider. The authorization must include appropriate verification data, such as the customer's date of birth or other voluntarily submitted information; provided, however, any such information or data in the possession of the third party verifier or the marketing company ~~shall~~may not be used, in any instance, for

commercial or other marketing purposes, and ~~shall-may~~ not be sold, delivered, or shared with any other party for such purposes.

- (iii) **Electronic authorization.** For purposes of this section, the term “electronic authorization” refers to a verification of agreement for service through electronic means. Competitive electricity providers ~~shall-must~~ acknowledge receipt and confirmation of the customer’s agreement to accept service within one business day. The confirmation may be provided to the customer by e-mail. An electronic copy of the confirmation e-mail ~~shall-must~~ be retained by the competitive electricity provider.

~~67.~~ **Minimum Service Period**

Each competitive electricity provider must offer generation service to each of its customers for a minimum period of 30 days.

~~78.~~ **Minimum Notice of Changes in Terms of Service**

Each competitive electricity provider must provide written notice to its customers between 30 and 60 calendar days in advance of any change in the customer’s Terms of Service. Customers must affirmatively consent to continued service under the modified terms of service pursuant to the provision of section 4(B)(3) of this Chapter.

~~89.~~ **Renewals**

If a customer does not provide the express consent required by this section, the customer must be transferred to the standard-offer service.

- a. Each competitive electricity provider must provide written notice to its customers two times between 30 and 60 calendar days in advance of a renewal of service. The two written notifications ~~shall-must~~ be made electronically or by US Postal Service, but one of the notifications ~~shall-must~~ be by US Postal Service. The words “contract renewal notice” must be included in bold at either the top of a paper notice or in the subject line for notices sent electronically. Copies of the two written notifications, either in hard copy or electronically, ~~shall-must~~ be retained by the competitive electricity provider for at least 12 months from the date the second notice is sent. The renewal notices must include a standardized notice form, setting forth the requirements of the terms of service document upon renewal. The Commission or the Director of Electric and Natural Gas Industries ~~shall-will~~ by order specify the standardized form.
- b. Terms of Service providing service at a fixed rate may automatically renew without the express consent of a customer at a fixed rate provided the term is not longer than the term of the expiring Terms of Service or 12 months, whichever is shorter. A competitive electricity provider may not, however, renew the Terms of Service at a fixed rate that is 20% or

more above the rate of the expiring Terms of Service without the express consent of the customer obtained in accordance with subsection 4(B)(5).

- c. Terms of Service providing service at a fixed rate that will renew at an Indexed Variable Rate may automatically renew without the express consent of the customer obtained in accordance with subsection 4(B)(5), provided that the term of the renewed Terms of Service does not exceed the term of the currently existing Terms of Service or 12 months, whichever is shorter.
- d. Terms of Service providing service at a fixed rate that will renew at a Non-indexed Variable Rate may automatically renew only on a month-to-month basis.
- e. Terms of Service providing service at a variable rate that will renew at an Indexed Variable Rate may automatically renew without the express consent of the customer obtained in accordance with subsection 4(B)(5), provided that the duration of the renewed Terms of Service does not exceed the duration term of the currently existing Terms of Service or 12 months, whichever is shorter.
- f. Terms of Service providing service at a variable rate that will renew at a Non-indexed Variable Rate may automatically renew only on a month-to-month basis.
- g. Terms of Service providing service at a variable rate that will renew at a fixed rate may renew automatically without the express consent of the customer obtained in accordance with subsection 4(B)(5), provided the duration of renewed Terms of Service does not exceed the duration term of the currently existing Terms of Service or 12 months, whichever is shorter.

910. **Assignments**

- a. Each competitive electricity provider must provide written notice to its customers between 30 and 60 calendar days in advance of any assignment of the service obligation to another competitive electricity provider if there is a change in the Terms of Service. If there is no change in the Terms of Service, then written notice must be provided to customers within 30 days after the assignment.
- b. The written notification ~~shall~~must be made electronically or by US Postal Service. Unless a customer affirmatively consents to a change in the Terms of Service pursuant to the provision of section 4(B)(3) of this Chapter, the competitive electricity provider that is assigned the customer account must provide service in compliance with each customer's currently existing Terms of Service. A copy of the written notification, either in hard copy or electronically, ~~shall~~must be retained by the competitive electricity provider for at least 12 months from the

date the notice is sent. In the event that there is no change to the Terms of Service, customer consent is not required.

4011. Variable Rates and Charges

Each competitive electricity provider that offers and provides service with Indexed Variable Rate or Charge or Non-indexed Variable Rate or Charge:

- a. Must clearly specify in the Terms of Service document and on its webpage the formula and/or market indices by which the Variable Rate or Charge will be calculated or disclose that there is none for a Non-indexed Variable Rate or Charge;
- b. Must clearly specify in the Terms of Service document and on the webpage whether there is any limit on how high the rates or charges may rise;
- c. Must provide on the webpage the Indexed Variable Rate or Charge that the formula and/or index would have produced over the immediately prior 12-month period;
- d. Must provide on the webpage the Non-indexed Variable Rate or Charge that would have been applicable over the immediately prior 12-month period; and
- e. For rates that are established prior to the billing period, the rates must be posted on the competitive electricity provider's website at least one week in advance of any change in the applicable rate or charge.

4112. Termination Fees

Termination fees must be a fixed dollar amount, and ~~shall~~may not be established by formula. Termination fees ~~shall~~may not apply to customers whose Terms of Service provided for a month-to-month Indexed Variable Rate or Charge or Non-indexed Variable Rate or Charge. Competitive electricity providers ~~shall~~may not impose a termination fee for any Terms of Service that was renewed without the express consent from the customer obtained in accordance with subsection 4(B)(5).

4213. Promotional Practices

This subsection applies to all competitive electricity providers, including aggregators and brokers.

- a. A competitive electricity provider must not use fraudulent, coercive, or deceptive promotional practices.
- b. 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 competitive electricity provider pursuant to the promotion.

- c. A competitive electricity provider or third-party sales agent, may not, in any way, state, suggest or imply any affiliation or association with a transmission and distribution utility, or that it is an alternative to a transmission and distribution utility, and it must clearly and conspicuously indicate on its website and promotional materials that it is not affiliated or associated with any transmission and distribution utility, and that it is not an alternative to any transmission and distribution utility. Upon contacting a customer by telephone, a competitive electricity provider or third-party sales agent must state the name of its company and the purpose of the call.

1314. **Trade Practices**

This subsection applies to all competitive electricity providers, including aggregators and brokers. Competitive electricity providers ~~shall~~ may 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~~ includes the failure to make clear and conspicuous disclosures of the information required to be contained in the Terms of Service document, 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. This provision does not affect unfair trade practices otherwise actionable at common law or under other statutes of Maine.

1415. **In-Person Solicitation of Customers**~~Door-to-Door Sales~~

This subsection applies to all competitive electricity providers, including aggregators and brokers. This subsection does not apply under circumstances where a customer or potential customer has agreed to meet in-person prior to the competitive electricity provider arriving at the customer's premises. All competitive electricity providers; ~~including aggregators and brokers, or employees or agents of the same~~, soliciting a potential customer in person at the customer's premises ~~shall~~ must:

- a. Create a written log, including the full name or first name and associated identification number of the employee or agent, identifying the street address of each visited premises, retain the written log for at least 12 months after the date of the solicitation, and maintain the written log in a format amendable to electronic conveyance to the Commission upon request;
- b. Produce identification, to be visible at all times thereafter, which prominently displays in reasonable size type the full name of the ~~CEP~~ competitive electricity provider and the full name of the employee or agent, or the first name of the employee, or agent together with an identification number, as well as the ~~CEP's~~ competitive electricity provider's telephone number for inquiries, verification, and complaints, and ~~shall~~ must leave behind written materials identifying the same information upon request of a potential customer;

- c. Clearly state that the employee or agent is not working for and is independent of the potential customer's transmission and distribution utility;
- d. State that if the potential customer purchases electricity from the ~~CEP~~competitive electricity provider, the potential customer's transmission and distribution utility will continue to deliver the potential customer's electricity and will respond to any outages or emergencies. This requirement may be fulfilled by an oral statement to the potential customer, or by written materials left with the potential customer;
- e. Terminate the in-person contact with the potential customer when it is apparent that the potential customer's language skills are insufficient to allow the potential customer to understand and respond to the information conveyed, or where the potential customer or another third party informs the ~~CEP~~competitive electricity provider, or its agent, of this circumstance;
- f. Require its employee or agent to ensure the third-party verification call, during which customer enrollment is confirmed, is not influenced by the employee or agent by, including but not necessarily limited to, remaining silent during the verification call.

~~4516.~~ **Cancellation of Service**

- a. **Cancellation by a competitive electricity provider.** Each competitive electricity provider must provide written notice to a customer at least 30 calendar days prior to cancellation of that customer's generation services due to a default of obligations in the Terms of Service document by the customer.

Competitive electricity providers must provide the notice required by this subsection in a separate mailing or e-mail from the customer's bill. The notice must include the following information:
 - (i) The telephone number and hours of the competitive electricity provider's consumer contact staff;
 - (ii) The reason for cancellation;
 - (iii) Steps the customer can take to avoid cancellation, if any; and
 - (iv) Notice of the existence of other providers, including standard offer service.
- b. **Cancellation by customer.** A customer can cancel service with a competitive electricity provider at any time. A cancellation of service does not release the customer of any obligations related to early termination

fees that may apply pursuant to the Terms of Service. When a competitive electricity provider receives a request to cancel service from a customer, it must within two business days send an EDI transaction, pursuant to Chapter 323 of the Commission's rules, notifying the applicable transmission and distribution utility of the cancellation of service to the customer. Competitive electricity providers ~~shall~~must take all necessary actions to effectuate a cancellation request from a customer.

- c. **Standard Offer Service.** A customer whose service from a competitive electricity provider is canceled and who does not select another competitive electricity provider ~~shall~~will receive service from the standard offer.

~~4617.~~ **Generation Service Bills**

- a. **Content.** Each bill for competitive generation service, including standard offer service, must provide the following information on the customer's billing statement:
- (i) Electricity consumption, including whether the consumption was based on actual recorded usage or estimated usage;
 - (ii) The total charge for generation service for the current billing period;
 - (iii) The actual cents per kWh charged to the customer for the customer's usage of electricity for the current billing period, calculated by dividing the total charge for generation service by the customer's usage for the current billing period;
 - (iv) An itemized list of each service or product billed by the provider to the customer for the current billing period;
 - (v) The amount of any payment or other credit applied to the customer's outstanding balance for generation service during the billing period;
 - (vi) The total amount in arrears owed by the customer, consistent with the requirements of consolidated utility billing pursuant to Chapter 322 of the Commission rules;
 - (vii) The due date by which payment must be made to avoid late payment fees or other collection action by the provider; and
 - (viii) The total amount owed by the customer, including the amount in arrears for generation service and the amount owed for the current billing period, consistent with the requirements of consolidated utility billing pursuant to Chapter 322 of the Commission rules.
- b. **Combined bill.** If the customer's bill for generation service is combined on the same bill with regulated charges for transmission and distribution

services, the charges associated with competitive services must be separately identified and disclosed as required in this subsection. The billing entity ~~shall~~must either provide generation service charges on a separate page from regulated charges or separate the generation service charges graphically from the rest of the bill.

~~1718.~~ **Application for Service; Denial of Credit**

- a. **Written procedures; prohibition on discrimination.** Each competitive electricity provider must adopt written procedures to guide its ~~employees and agents with respect to the~~ evaluation of applications for service from prospective customers and ~~shall~~may not discriminate in the provision of electricity as to availability and terms of service based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, ~~and or the~~ exercise of rights under state or federal consumer protection laws.
- b. **Written denial of service.** A provider who denies service to a consumer based on consumer-specific information obtained by the provider during the application process must inform the consumer in writing of the reason for the denial. This disclosure may be combined with any disclosures required by applicable federal or state law. This disclosure is not required when the provider notifies the customer orally that the customer is not located in a geographic area served by the provider, does not have the type of usage characteristics that is served by the provider, or is not part of a customer class served by the provider.
- c. **Customer complaint.** A customer complaint relating to the denial of service pursuant to state or federal equal credit opportunity laws ~~shall~~will be coordinated with the ~~Department Maine Office~~ of the Attorney General. ~~Any finding by an entity of competent jurisdiction that a competitive electricity provider violated the Maine Human Rights Act 5 M.R.S. Chapter 337 or the Federal Equal Credit Opportunity Act, 15, U.S.C. §§ 1691-1691f is deemed to be a violation of this subsection. A competitive electricity provider must provide the Commission written notice in the Commission's electronic case management system's docket for the competitive electricity provider within 30 days of any decision or order by an entity of competent jurisdiction that the competitive electricity provider violated the Maine Human Rights Act, 5 M.R.S. Chapter 337, or the Federal Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 – 1691f.~~

~~1819.~~ **Dispute Resolution and Complaint Procedure**

This subsection applies to all competitive electricity providers, including aggregators and brokers. The Commission or the Consumer Assistance ~~and~~ Safety Division ~~shall~~will resolve disputes among competitive electricity providers and retail consumers of electricity regarding the provisions of this Chapter, other Commission rules, and statutory provisions regarding competitive electricity provider activities and service according to the following procedures:

- a. **Provider Employee Available.** Each competitive electricity provider must provide at least one employee (whose duties need not be limited to this obligation) during business hours to respond to questions and resolve complaints from customers and applicants, and to work with the Commission on complaint resolution. If a competitive electricity provider is not able to provide a real time response to the customer or applicant, it must respond no later than within 48 hours of the contact or, if the contact is received after 5:00 p.m. on a Friday, a competitive electricity provider must respond no later than the following business day by noon. A competitive electricity provider must provide customers with the option of leaving a telephone message when the competitive electricity provider is not able to answer the phone in-person.
- b. **Provider Investigation.** When a competitive electricity provider becomes aware of a complaint by a customer or applicant, the provider must:
- (i) investigate the complaint, preserving the record of the substance and results of the investigation;
 - (ii) report the results of its investigation to the customer; and
 - (iii) attempt in good faith to resolve the complaint.
- c. **Notification of Right to File a Complaint with the Consumer Assistance and Safety Division.** If the competitive electricity provider cannot resolve the dispute with the customer after the procedures in paragraph 2 are completed, the provider must orally inform the customer of his or her right to file a complaint with the Commission's Consumer Assistance and Safety Division and of the toll free telephone number of the Commission.
- d. **Investigation by the Consumer Assistance and Safety Division; Appeal to the Commission.** All complaints brought to the Consumer Assistance and Safety Division against a competitive electricity provider ~~shall~~ will follow the procedures set forth in Chapter 815, section 13(H). Each competitive electricity provider must respond to any inquiry or request for information from the Consumer Assistance and Safety Division within the timeframe specified in Chapter 815, section 13(H)(3). Each competitive electricity provider must respond to a Consumer Assistance and Safety Division contact no later than within 48 hours of the contact.
- e. **Procedure for Resolving Customer Service Verification Complaints**
- (i) **Complaint.** Any person may file a complaint with the Consumer Assistance and Safety Division stating that a competitive electricity provider has transferred the customer to its service without the customer's authorization required section 4(B)(3) of this Chapter.

- (ii) **Timing.** Within 10 business days of filing the complaint, the Consumer Assistance and Safety Division will request from the customer: a copy of the customer's bill or notice that included the information regarding the initiation of generation service; the name of the original provider; and any other information the Consumer Assistance and Safety Division determines to be relevant. The Consumer Assistance and Safety Division will request that the customer, within 15 business days of the Consumer Assistance and Safety Division notification, respond to the Consumer Assistance and Safety Division's request for information.
- (iii) **Request for information.** The Consumer Assistance and Safety Division will inform the transmission and distribution utility and original competitive electricity provider of the pending complaint and request that information relevant to the initiation of generation service be furnished.
- (iv) **Request for evidence.** The Consumer Assistance and Safety Division will notify the new competitive electricity provider of the pending complaint and request evidence of the customer's affirmative choice to initiate generation service as provided for in this subsection, and any additional information the Consumer Assistance and Safety Division determines to be relevant.
- (v) **Provision of information.** The transmission and distribution utility, the original competitive electricity provider and the new competitive electricity provider must respond to the Consumer Assistance and Safety Division's request within 5-five business days from the issuance of the requests.
- (vi) **Determination.** Within 30 days after receiving evidence of the customer's affirmative choice and all relevant information, the Consumer Assistance and Safety Division will determine if the customer authorized the new competitive electricity provider to initiate generation service.
- (vii) **Refunds.** If the Consumer Assistance and Safety Division determines that the new competitive electricity provider does not possess the required evidence of the customer's affirmative choice as provided for in section 4(B)(3) of this Chapter and that the customer made an initial complaint within 75 days after the statement date of a bill containing charges from the new provider or notice indicating that the unauthorized transferred has occurred, the Consumer Assistance and Safety Division will require the new provider to refund to the customer, any charges already paid to the new provider and any reasonable expense the customer incurred in switching back to the original provider.

C. Representatives and Agents

For purposes of this section, the obligations and requirements of a competitive electricity provider ~~shall~~ apply to representatives or agents, including any third-party sales agents, that who act on behalf of a competitive electricity provider. Competitive electricity providers are ~~responsible subject to liability to the full extent authorized under this Chapter and Title 35-A~~ for the violations of the provisions of this section by of their representatives or agents, including third-party sales agents, acting on their behalf.

D. Disclosure Label

Each competitive electricity provider must prominently display on its website a disclosure label or labels that complies with Chapter 306 of the Commission rules. The disclosure label or labels must be available and easily accessed on the webpage without any requirement that any personal or customer specific information be provided.

E. Market Risk Disclosure

1. Applicability

This subsection applies to all competitive electricity providers, including aggregators and brokers, that are offering to provide or arrange for an electricity product in which the price to the customer varies with changes in energy prices or an energy price index.

2. Disclosure Requirement

All competitive electricity providers ~~subject to this subsection~~ must provide a written disclosure to customers of the market risks associated with their electricity products prior to or at the time the customer agrees to take generation service from the competitive electricity provider.

3. Disclosure Language

The Commission or the Director of Electric and Natural Gas Industries ~~shall~~ will by order specify the language competitive electricity providers must use in the market risk disclosure statement. A competitive electricity provider may request approval to use alternative language. Approval of alternative language pursuant to this provision is delegated to the Director of Electric and Natural Gas Industries.

4. Distribution

Competitive electricity providers must provide the market risk disclosure statement as a provision in the contract for service or Terms of Service document, as applicable:

- a. As a provision in the contract for service with the customer acknowledging the provision by signature or initials; or
- b. On a document separate from the contract containing only the market risk disclosure statement.

§ 5. INFORMATIONAL FILINGS

A. Generally Available Service

1. **Filing Required.** Competitive electricity providers must file with the Commission and provide to the Public Advocate rates, terms, and conditions of any service generally available to the public or any segment of the public prior to offering the service. This subsection does not apply to standard offer service.
2. **Modification.** Competitive electricity providers must file any modifications to generally available rates, terms and conditions prior to the effective date of the modification.
3. **No Approval.** The generally available rates, terms and conditions are for informational purposes and do not require Commission approval.

B. Individual Service Contracts

Competitive electricity providers are not required to file individual service contracts. The Commission may at any time request and obtain individual service contracts from competitive electricity providers. The Commission may subject individual service contracts to appropriate protective orders.

§ 6 WAIVER OR EXEMPTION

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any of the requirements of this Chapter that are not required by statute. The waiver may not be inconsistent with the purpose of this Chapter or Title 35-A. The Commission, the Director of Electric and Natural Gas Industries, the Director of [the Consumer Assistance and Safety Division](#), or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

STATUTORY AUTHORITY: 35-A M.R.S. §§ 104, 111 and 3203

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on February 3, 1999. It was filed with the Secretary of State on February 5, 1999 and was effective on February 10, 1999.

EFFECTIVE DATE: This amended rule was approved as to form and legality by the Attorney General on May 11, 2000. It was filed with the Secretary of State on May 12, 2000 and was effective on May 17, 2000.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on March 13, 2006. It was filed with the Secretary of State on March 14, 2006 as filing 2006-114 and was effective on March 19, 2006.

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on January 20, 2015. It was filed with the Secretary of State on January 21, 2015 and became effective on January 26, 2015 (filing 2015-010).

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on September 24, 2018. It was filed with the Secretary of State on September 25, 2018 and became effective on September 30, 2018 (filing 2018-211).

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on _____ . It was filed with the Secretary of State on _____ and became effective on _____ (filing DN).