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Janet T. Mills
 GOVERNOR

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**Testimony in Support of
 LD 2163, “An Act to Require Electricity Providers to Inform Customers of Alternative
 Electric Rates and Gather Consent Prior to Contract Renewal”
 February 6, 2024**

Senator Lawrence, Representative Zeigler and distinguished members of the Joint Standing Committee on Energy, Utilities, and Technology,

My name is William Harwood, here today as Public Advocate, to testify in strong support of LD 2163, “An Act to Require Electricity Providers to Inform Customers of Alternative Electric Rates and Gather Consent Prior to Contract Renewal.” Thank you, Senator Grohoski, for sponsoring this important bill.

The issue of protecting consumers from aggressive, unfair, and misleading sales and marketing tactics by Competitive Electricity Providers (CEPs) continues to be a major concern of the OPA. Although less than 10% of ratepayers elect to receive CEP service, rather than Standard Offer (SO) service, the financial harm to those approximately 55,000 ratepayers is significant. Over the last few years, the CEPs have charged ratepayers approximately \$80M more than if those ratepayers had been on SO service. Below is a chart showing the amount of overcharging over the last seven years:

Total Payments in Excess of Standard Offer Rate	
2016	\$30,350,984
2017	\$18,841,561
2018	\$15,920,084
2019	\$4,735,869
2020	\$18,163,917
2021	\$25,551,475
2022	-\$33,205,291
7-yr total	\$80,358,598

Attached is a copy of the OPA consultants’ Memo providing this information (Attachment 1).



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The OPA has been involved in some challenging cases to enforce the existing consumer protection rules against unscrupulous CEPs. The most noteworthy case involves Electricity Maine (EM). For too many years EM has flagrantly violated our consumer protection rules. EM transferred its customers to a variable rate without their affirmative consent and began charging 39 cents per kWh; more than twice the standard offer rate in effect at the time. When outraged customers received these high bills, many of them called to cancel their accounts, but Electricity Maine informed them that it would take 1-2 billing cycles to close their accounts and they would be responsible for all charges during that time. I have attached a copy of the OPA's testimony in the pending PUC case to investigate EM's marketing and sales activities (Attachment 2).

We believe that most of the financial harm caused by aggressive CEPs is borne by low-income ratepayers. Clearly, if a ratepayer is struggling to pay their CMP or Versant bill, they will be more susceptible to an aggressive or misleading sales pitch promising lower electricity bills. Unfortunately, in far too many cases, the ratepayer ends up paying more, not less. In some cases, twice as much: 39 cents/kWh for CEP service vs. 17 cents/kWh for SO service. It is truly heartbreaking when a ratepayer calls our office in despair because they cannot afford to pay both their utility bills and the cost of needed food or medicine for their family and, upon investigation, we find out they are being charged 39 cents/kWh by an unscrupulous CEP.

Maine is not alone in facing this problem. Many of the 24 states that restructured their electric utilities 25 years ago and de-regulated the supply side of the electricity business are considering stricter regulation of CEPs. Attached is a recent letter from members of the Massachusetts congressional delegation to the Federal Trade Commission urging the FTC to take action to protect ratepayers from "unfair and deceptive marketing and sales tactics" by CEPs (Attachment 3).



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This bill proposes a number of changes to strengthen protection of CEP consumers. First, it requires the affirmative consent of any residential consumer for any renewal of a CEP agreement (Section 3). This will stop any automatic renewals that have too often resulted in rates above the SO price.

Second, at the time of renewal, it requires the CEP to inform the consumer of the alternative SO price (Section 3). On the attached proposed amendment (Attachment 4), we also recommend that the bill be amended to require the CEP to provide the alternative SO price prior to entering into the initial agreement, as well as any renewal agreement. This will go a long way to alerting consumers if the CEP is charging more than the prevailing SO price.

Third, it requires T&D utilities that provide billing services for CEPs to provide web site addresses for where the consumer can get information on the alternative SO price (Section 9). As recommended on the attached, it may be more efficient to simply require the utilities to disclose the SO price on the bill, rather than send the customer to a web site to find it. In many cases, this will quickly alert the customer that they are being charged more than the SO price.

Fourth, the bill prohibits CEPs from charging low-income ratepayers enrolled in the LIAP program a CEP price that is higher than the SO price (Section 8). This will protect our most vulnerable consumers from being taken advantage of. This approach has been adopted in several other states, including CT, MD, PA, and NY. We have attached a housekeeping amendment to make the administration of this provision easier on the utilities.

Finally, the bill requires CEPs to provide billing and marketing information requested by the OPA so we can continue to closely monitor the CEP market and prices (Section 7). On our attached proposed amendment, we propose clarifying that Section 10 only applies to SO information, as Section 7 already gives the OPA access to CEP information. Of course,



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the OPA will carefully protect the confidentiality of any pricing information provided under this provision.

Thank you for your time, attention, and consideration of this testimony. The Office of the Public Advocate looks forward to working with the Committee on LD 2163 and will be available for the work session to assist the Committee in its consideration of this bill.

Respectfully submitted,

William S. Harwood
Public Advocate

Memo

To: William Harwood, Maine Public Advocate
From: Timothy Howington, Consultant to Maine Office of the Public Advocate
Date: January 29, 2024
Re: Results of examination of confidential Maine Competitive Electricity Provider data

Introduction

This memo describes the results of aggregating and analyzing confidential annual data submitted to the Maine Public Utility Commission (“MPUC”) by Competitive Electricity Providers (“CEPs”) from 2016 through 2022. The objective of this analysis is to quantify the financial effects on Maine consumers of participation in the competitive market for electricity. This analysis updates and refines similar work provided in a report written in January 2023.¹ In that report, Ms. Baldwin and I relied upon publicly available data provided by CEPs to the U.S. Energy Information Administration² (“EIA”) to develop high- and low-end estimates of the excess amounts Maine consumers paid when purchasing electricity from CEPs instead of obtaining service under the standard offer rate from the default utility.

While the EIA reporting system provides the total number of customers served, total sales (in megawatt-hours), and total revenues for each CEP providing service in Maine, and separately by customer class, it does not differentiate between customers located in the various utility service territories. Because each territory has its own standard offer rate, the EIA reporting does not allow us to pinpoint the amount consumers *would have paid* had they bought service from the default provider rather than from the CEP. Instead, we must compare the actual rate paid to the highest and lowest standard offer rates, and develop a *range* of excess rates paid.

The updated analysis provided here utilizes confidential annual reporting by the CEPs to the MPUC. The MPUC data includes the number of customers, sales (in megawatt-hours), and revenue by customer class. Importantly, in contrast to the EIA system, the MPUC reporting mechanism treats each utility territory separately.³ Because the time series of historic standard offer rates for each territory is also available from the MPUC, this data set allows us to calculate exactly what the consumer would have paid had s/he bought electricity service from the default utility. Summing up the excess payments over all the CEP customers, over several years, provides an aggregate measure of the financial impact of allowing CEPs to charge rates greater than the standard offer rate.

¹ “Reform of Electricity Supply: CEP-Served Residential Retail Electric Market,” Prepared by Susan M. Baldwin and Timothy E. Howington on behalf of the Maine Office of Public Advocate per 2021 P.L. ch. 164 (LD 318), January 31, 2023 (“Baldwin/Howington 2023 Report”).

² U.S. Energy Information Administration, EIA Form 861 data, table “Sales_Ult_Cust_yyyy”. See [Annual Electric Power Industry Report, Form EIA-861 detailed data files](#).

³ The three service territories analyzed here are the Central Maine Power District, the Bangor Hydro District, and the Maine Public District.

Excess payments by year and in aggregate

Over the period 2016 – 2022, Maine consumers who purchased electricity from CEPs paid over \$80 million more than what they would have paid for the same amount of electricity from their default utility. This astounding total includes (is net of) the results for 2022, the only year in this period when CEP customers paid less than they would have paid under the standard offer rate.

Table 1, below, shows the total excess payments by year for the seven-year period.⁴

Table 1

Total Payments in Excess of Standard Offer Rate	
2016	\$30,350,984
2017	\$18,841,561
2018	\$15,920,084
2019	\$4,735,869
2020	\$18,163,917
2021	\$25,551,475
2022	-\$33,205,291
7-yr total	\$80,358,598

Standard offer rates versus CEP rates by year and district

Using MPUC data, it is also possible to look at the average rates (\$ per kWh) paid by CEP customers compared to standard offer rates. By dividing the total CEP revenues by the total CEP sales, and dividing by 1000 to convert from MWh to kWh, it is clear that the rates charged by CEPs are generally much higher than the standard offer rates – sometimes as much as 50% higher. Table 2 provides a summary of weighted average CEP rates compared to standard offer rates by district and year.

⁴ Excess payments are calculated for each CEP by multiplying the usage (kWh) times the standard offer rate, and then subtracting this amount from the actual CEP revenues. Excess payments from each CEP are then summed to generate the yearly excess payments.

Table 2

Standard Offer Rates versus CEP Rates						
	Central Maine Power		Bangor Hydro District		Maine Public District	
	Standard rate	CEP rate	Standard rate	CEP rate	Standard rate	CEP rate
2016	\$0.064643	\$0.097309	\$0.066240	\$0.062423	\$0.082595	NA
2017	\$0.066910	\$0.087149	\$0.063220	\$0.065386	\$0.070669	\$0.070680
2018	\$0.079206	\$0.092153	\$0.072250	\$0.092249	\$0.074230	\$0.066930
2019	\$0.090029	\$0.093207	\$0.083695	\$0.090049	\$0.084610	\$0.071972
2020	\$0.073037	\$0.091609	\$0.068785	\$0.091695	\$0.067294	\$0.071280
2021	\$0.064494	\$0.085861	\$0.061960	\$0.081348	\$0.060267	\$0.070856
2022	\$0.118161	\$0.091005	\$0.116840	\$0.083348	\$0.110873	\$0.077952

Note: CEP rates are average CEP rates weighted by usage in each district.

Number of CEP customers by year

While the data reported to EIA largely agree with those reported to MPUC, there are some differences. For example, some CEPs that report customers, sales, and revenues to EIA do not have corresponding reports on file to MPUC. Likewise, some CEPs report data to MPUC, but not to EIA. In addition, those CEPs reporting through both systems rarely show exactly the same numbers for customers, sales, and revenues. Nevertheless, both sources show similar a similar trend in residential CEP customer count over the study period.

Table 3 shows year-end customer counts from both sources.

Table 3

Total Year-end Residential CEP Customers		
	MPUC	EIA
2016	115,040	117,544
2017	116,700	112,504
2018	85,843	105,786
2019	71,600	76,053
2020	67,553	67,730
2021	64,693	64,279
2022	51,834	62,100

Adjustments to the reported data

Inspection of the data as reported to the MPUC revealed some anomalies. In one case, a CEP interchanged residential and non-residential customer totals for one period. The error was confirmed by

examining other years of data for that CEP. Another CEP consistently reported revenues in thousands of dollars, rather than dollars. Finally, some CEPs mistakenly reported sales and revenues as if they were providing service under the standard offer rate. In each case, a reasonable correction was made and incorporated into the analysis.

BEFORE THE STATE OF MAINE PUBLIC UTILITIES COMMISSION

Commission Initiated Investigation
Pertaining to Electricity Maine, LLC
Docket No. 2023-00024

**Direct Testimony of
Jesse Houck and Elizabeth Deprey**

**On Behalf of
Maine Office of the Public Advocate**

September 26, 2023

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Exhibits

JH-1 Jesse Houck Resume

ED-1 Elizabeth Deprey Resume

1. 2022-C-4315 December 19 Call Recording at Approximately 15:00
 2. CONFIDENTIAL OPA-001-027 Selected Emails
 3. ADVOC-001-013
 4. Excerpts from 8/4/23 Technical Conference Transcript
 5. 2022-C-4152 November 10 Call Recording at Approximately 2:30
 6. 2022-C-4034 September 26 Call Recording at Approximately 2:30
 7. CONFIDENTIAL - Excerpts from 8/21/23 Technical Conference Transcript
 8. 2023-C-0110 – January 5 Call Recording at Approximately 4:30
 9. 2023-C-0183 – January 5 Call Recording at Approximately 3:30
 10. 2023-C-0032 – December 5 Call Recording at Approximately 1:30
 11. ODR-002-006
 12. ADVOC-001-001 Terms of Service Applicable in 2021
 13. CONFIDENTIAL OPA-001-027 Selected Emails
 14. OPA-001-007 Attachment 1
 15. ODR-001-019
 16. OPA-001-012
 17. Zytron Website Screenshot
 18. 2023-C-0130 – December 22 Call Recording at Approximately 5:40
 19. 2023-C-0128 – January 11 Call Recording at Approximately 6:00
 20. CONFIDENTIAL OPA-001-027 Selected Emails
 21. Variable Rate Renewal Notice and Terms of Service
 22. ODR-001-007
 23. CONFIDENTIAL ODR-001-016 Feb ME Rate Update Email
 24. Electricity Maine Variable Rates Website Screenshot
 25. ADVOC-001-001 Table A
 26. CONFIDENTIAL OPA-001-027 Selected Emails
 27. ODR-001-015
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28. CONFIDENTIAL OPA-001-027 Selected Emails
 29. CONFIDENTIAL OPA-001-027 Selected Emails
 30. 2023-C-0080 - November 21 Call Recording at Approximately 4:00
 31. 2023-C-0183 – January 5 Call Recording at Approximately 5:30
 32. OPA-001-051
 33. 2023-C-0823 February 15 Call Recording at Approximately 2:30
 34. ADVOC-001-028 Attachments
 35. 2022-C-4315 December 19 Call Recording at Approximately 7:30
 36. 2023-C-0032 January 4 Call Recording at Approximately 3:30
 37. CONFIDENTIAL OPA-001-027 Selected Emails
 38. 2023-C-0309 January 25 Call Recording at Approximately 9:00
 39. ADVOC-001-010 Service Alerts
 40. 2023-C-0509 February 3 Call Recording at Approximately 8:15
 41. CONFIDENTIAL OPA-001-027 Selected Emails
 42. CONFIDENTIAL ODR-001-020 Attachment
 43. OPA-001-072
 44. OPA-001-043
 45. 2023-C-0110 January 5 Call Recording at Approximately 12:45
 46. 2023-C-0032 December 5 Call Recording at Approximately 2:45
 47. 2023-C-0509 February 3 Call Recording at Approximately 14:30
 48. OPA-001-039
 49. 2023-C-0600 February 8 Call Recording at Approximately 6:45
 50. 2023-C-0927 January 17 Call Recording at Approximately 7:00
 51. CONFIDENTIAL OPA-001-027 No Payment Plan Email
 52. 2023-C-0172 January 13 Call Recording at Approximately 3:25
 53. ODR-001-028
 54. CONFIDENTIAL ODR-002-002 Attachment 1
 55. CONFIDENTIAL ADVOC-001-002 Attachment 1
 56. CONFIDENTIAL OPA-001-002 Attachment
 57. CONFIDENTIAL EME Pricing
 58. OPA-001-028
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1 **I. INTRODUCTION AND OVERVIEW**

2 **INTRODUCTION AND QUALIFICATIONS**

3 **Q. Please identify yourselves and summarize your professional and educational**
4 **experience.**

5 ED. My name is Elizabeth Deprey. I am the Consumer Advisor for the Office of the Public
6 Advocate (the OPA). I graduated from the University of Maine in 2007 with a BA in
7 Journalism. In my career since, I have worked in journalism, communications and
8 nonprofit roles before joining the Office of the Public Advocate in December of 2022. A
9 copy of my resume is attached as Exhibit ED-1.

10 JH. My name is Jesse Houck. I am an Economic Analyst for the OPA. My professional
11 experience is largely within private industry accounting and finance. I have prepared a
12 Summary that can be seen in Exhibit JH-1. Prior to my professional career I received a
13 bachelor's degree in Business and Economics from the State University of New York
14 College at Cortland, and a Master of Business Administration from Clarkson University.

15 **Q. On whose behalf are you testifying in this case?**

16 A. We are testifying on behalf of the OPA.

17 **Q. What is the purpose of your testimony?**

18 A. The purpose of our testimony is to identify Electricity Maine's (EME) violations of
19 Maine law and the Commission's rules. Based on these violations we recommend that
20 EME's competitive energy provider (CEP) license be permanently revoked and EME be
21 ordered to issue refunds to all customers that were transferred to non-indexed variable
22 rates without their affirmative consent.

23 **SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS**

24 **Q. Please summarize your primary conclusions.**

25 A. Our primary conclusions include the following:

-
- 1 • EME’s practice of transferring its customers to a non-indexed variable rate as high as
2 39.99 cents/kWh without their affirmative consent constitutes an unfair and
3 deceptive trade practice.
- 4 • Apart from the primary unfair and deceptive trade practice we identify, EME made
5 many false and misleading statements to its customers in violation of Commission
6 rules and Maine law.
- 7 • EME’s conduct has already had a significant impact on its customers. We remain
8 concerned about EME’s customers who remain on EME’s non-indexed variable
9 rates.

10 **Q. Please summarize your primary recommendations.**

11 A. Our primary recommendations include the following:

- 12 • EME’s CEP license should be permanently revoked and all of its customers should
13 be returned to standard offer service immediately.
- 14 • EME should be ordered to issue refunds to all customers who were transferred to
15 non-indexed variable rates and paid prices higher than the standard offer rate.

16 **ORGANIZATION OF TESTIMONY**

17 **Q. How is the remainder of your testimony organized?**

18 A. Our testimony is organized as follows. In section II, we provide an overview of the
19 impact on customers of EME’s decision to transfer its customers to non-indexed variable
20 rates as high as 39.99 cents/kWh. In Section III, we explain why EME’s stated rationale
21 for transferring its customers to non-indexed variable rates is not convincing and offer an
22 alternative explanation that EME attempted to circumvent the restrictions in Commission
23 rules for increasing rates in renewal contracts. In Section IV, we explain why EME’s
24 conduct of transferring its customers to non-indexed variable rates constitute an unfair
25 and deceptive trade practice. In Section V, we identify other false and misleading conduct
26 from EME. In Section VI, we quantify the financial impact on customers of EME’s
27 conduct. In Section VII, we explain our recommended penalty. Finally, in Section VIII,
28 we offer a brief conclusion.

1 **II. EME’S CONDUCT HAD A SIGNIFICANT FINANCIAL AND**
2 **EMOTIONAL IMPACT ON ITS CUSTOMERS**

3 **Q. Please explain how you first became aware of EME’s decision to begin charging its**
4 **customers high variable rates.**

5 A. Beginning in December 2022, the OPA began receiving many calls and emails from
6 EME customers who received very high bills. Between December 2022 and March 2023,
7 the OPA received more than 125 calls and emails from EME customers. This is a very
8 high rate of contacts regarding a single company. To put this in perspective, from
9 October through December 2022, our office received an average of 104 customer calls
10 per month. Many more customers also contacted CASD to file complaints, as shown by
11 the complaint record in this proceeding.

12 **Q. Please explain what EME did and why so many of EME’s customers filed**
13 **complaints.**

14 A. Until August of 2022, EME only offered its customer fixed price contracts for a fixed
15 term, usually 12 or 24 months. At the expiration of a customer’s contract term, EME
16 would send notices to its customers advising them that their contract would renew at the
17 end of the contract term into a new fixed rate contract. EME referred to this as an “auto
18 renew” contract, requiring no action on the customer’s part.

19 EME’s practice changed around August 2022 when EME made the decision to change
20 the terms of service applicable to its customers and move them from fixed price contracts
21 to non-indexed variable rate contracts upon the expiration of their fixed price contract
22 terms. EME’s non-indexed variable rate, which has no maximum and is set at EME’s sole
23 discretion, was as high as 39.99 cents/kWh, more than double the standard offer rate, and
24 in some cases, more than three times what EME previously charged its customers.

25 EME made this change and began charging this incredibly high rate without obtaining
26 any affirmative consent from the customer. EME purportedly mailed un-dated notices to
27 its customers advising them of this change, but many customers told our Office and the
28 Commission’s Consumer Assistance and Safety Division (CASD) that they never
29 received any notices from EME. One woman who called in February due to a \$437 bill
30 reported she felt taken advantage of and didn’t even know who Electricity Maine was.

1 **Q. How did EME’s actions impact its customers?**

2 A. Many consumers reached out to our office after receiving electricity bills significantly
3 higher than their normal bills, many stating their bills had “doubled” or “tripled.” The
4 variable rate consumers most commonly reported to us was 39.99 cents per kWh, with
5 some reports of 37.99 per kWh. This supply rate resulted in bills reported to us ranging
6 from \$170 to \$1,400. These bill increases were not easily absorbed by the ratepayers who
7 contacted us, especially seniors on a fixed income. As one consumer wrote, “My husband
8 and I have lived in our home for about 60 years, I just got my January light bill and it
9 went from 274.88 dollars to 771.43 and my Social Security check is 669.00 so you can
10 understand why I am so concerned.”

11 As another example, attached as Exhibit 1¹ is an excerpt of a phone call recording from
12 December 19 provided in CASD file 2022-4315 at approximately the 15:00 mark, in
13 which the customer says they are retired and cannot afford EME’s bill. The customer
14 references Maine’s cold winters and tells the agent, “It’s awful that you’re charging this
15 much and I’m not even warm.” At the end of the clip, the customer repeats that they are
16 “so upset with this company.”

17 For other examples see Exhibit 2 – Confidential, which includes selected emails from
18 EME’s customers to EME in which the customers describe their shock, outrage, and
19 desperation upon learning about the high bills.

¹ Included as exhibits to this testimony are multiple excerpts from phone call recordings provided by EME to CASD. These excerpts are provided for the convenience of the parties and to provide public versions of the recordings that do not reveal any confidential customer information. This testimony incorporates the full versions of the identified calls as exhibits by reference and encourages the parties and the Commission to listen to the full versions of the recordings.

1 **III. EME’S STATED RATIONALE FOR SWITCHING CUSTOMERS TO**
2 **VARIABLE RATE CONTRACTS IS NOT CREDIBLE**

3 **Q. EME claims that it switched its customers from fixed rate contracts into non-**
4 **indexed variable rate contracts because it was worried about customers being**
5 **“locked in” to a high fixed rate for many months. Does this explanation make sense?**

6 A. No. EME claims it switched its customers to a variable rate to give them “flexibility”
7 and to avoid “locking [them] into a fixed rate.” See Exhibit 3. EME’s explanation does
8 not make sense for many reasons.

9 First, EME acknowledged that it has no early termination fee for contract renewals and
10 therefore its customers would not have been “locked in” to a new fixed rate because they
11 could have cancelled at any time without paying any additional fees. See Exhibit 4 -
12 8/4/23 Tr. at 147-148.

13 Second, EME admitted that it never offered variable rates to new customers, only to
14 existing customers who failed to affirmatively renew their contracts. EME’s stated
15 rationale—that it was concerned about customers being “locked in” to fixed rate
16 contracts—would apply equally to both existing and new customers. But EME had no
17 clear explanation for why it did not offer variable rates to new customers. See Exhibit 4 -
18 8/4/21 Tr. at 167-68.

19 Third, EME’s own customer service agents told customers that they did not recommend a
20 variable rate contract and encouraged them to renew into new fixed rate contracts. For
21 example, attached as Exhibit 5, is an excerpt of a November 10 phone call recording
22 provided in CASD file 2022-C-4152 at approximately the 2:30 mark in which the
23 customer service agent tells the customer that they would not recommend a variable rate.

24 In fact, EME even offered a product that allowed customers on a fixed rate contract to
25 change their contract price during the contract term if supply prices decreased. For
26 example, attached as Exhibit 6, is an excerpt of a September 26 phone call recording
27 from CASD file 2022-C-4034 at approximately the 2:30 mark in which the customer
28 service agent tells the customer that they would be allowed to lower their contract price
29 under a fixed price contract when supply prices decreased.

1 Fourth, EME has continued to transfer customers to non-indexed variable rates despite
2 the fact that wholesale energy prices have decreased substantially from their peak in
3 2022. See Exhibit 7 – Confidential 8/21/23 Tr. at 33.

4 Finally, EME’s customer service agents falsely told customers that the reason they were
5 transferred to a variable rate was because of a change in state law or state regulations. For
6 example, attached as Exhibit 8, is an excerpt of a January 5 phone call recording from
7 CASD file 2023-C-0110 at approximately the 4:30 mark in which the customer service
8 agent tells the customer that the reason the customer was transferred to a variable rate
9 was due to a change in state regulations.

10 Attached as Exhibit 9, is an excerpt of a different January 5 phone call recording from
11 CASD file 2023-C-0183 at approximately the 3:30 mark involving a different customer
12 service agent in which the agent tells the customer a similar story about a change in state
13 law.

14 Attached as Exhibit 10, is an excerpt of a December 5 phone call recording from CASD
15 file 2023-C-0032 at approximately the 1:30 mark in which the customer service agent
16 provides a similar story to the customer about a change in state regulations.

17 To be clear, as EME later admitted, see Exhibit 4 - 8/4/23 Tr. at 188, there was no change
18 in state law or regulations that required EME to transfer its customers to a non-indexed
19 variable rate contract. But the fact that EME felt it necessary to lie to customers suggests
20 that they are not being honest about the reason they decided to begin charging variable
21 rates.

22 **Q. Why do you think EME transferred customers to variable rate contracts?**

23 A. It is likely that EME decided to transfer its customers to non-indexed variable rate
24 contracts because Chapter 305 does not allow a CEP to automatically renew a customer
25 into a new fixed rate contract at a price that is more than 20% higher than the current
26 contract price. EME likely found that, given high supply prices in 2022, it needed to
27 increase prices by more than 20% to maintain its profitability. EME apparently
28 anticipated that many of its customers would complain about the high variable rate
29 because it prepared Visa gift cards and “concessions” that it could offer its customers.

1 See Exhibit 11. EME’s strategy appears to have been to offer any customers who
2 complained a gift card or bill credit if they agreed to sign a new fixed rate contract at a
3 much higher rate than their previous contract.

4 **IV. EME’S PRACTICE OF SWITCHING CUSTOMERS TO NON-**
5 **INDEXED VARIABLE RATE CONTRACTS CONSTITUTES AN**
6 **UNFAIR AND DECEPTIVE TRADE PRACTICE**

7 **Q. Please explain why EME’s conduct constitutes an unfair and deceptive trade**
8 **practice.**

9 A. We are not lawyers, and the OPA’s legal arguments regarding EME’s unfair and
10 deceptive trade practices will be fully set forth in the OPA’s briefs. However, we
11 understand that the following factors are relevant to whether EME engaged in unfair and
12 deceptive trade practices:

- 13 1. Whether EME clearly and conspicuously disclosed the material terms of the variable
14 rate contract.
- 15 2. Whether EME disclosed the material terms of the variable rate contract prior to
16 charging its customers the variable rate.
- 17 3. Whether EME obtained customers’ affirmative consent to the variable rate contract.
- 18 4. Whether EME imposed unreasonable barriers to cancellation of the variable rate
19 contract.

20 As discussed in more detail below, these factors support a finding that EME’s conduct
21 constitutes an unfair and deceptive trade practice in violation of the Commission’s rules
22 and Maine law.

23 **EME DID NOT CLEARLY AND CONSPICUOUSLY DISCLOSE THE MATERIAL TERMS OF THE**
24 **NON-INDEXED VARIABLE RATE CONTRACT TO CUSTOMERS**

25 **Q. Please explain the first factor—whether EME clearly and conspicuously disclosed**
26 **the material terms of the non-indexed variable rate contract to customers.**

27 A. EME failed to properly notify its customers that they would be transferred to a non-
28 indexed variable rate contract at the end of their fixed rate contract term. There are
29 several key points to consider under this factor:

1 (1) Nothing in EME's fixed rate contracts advised customers that they would be
2 transferred to a variable rate at the end of their contract terms.

3 (2) Many EME customers reported not receiving the renewal notices and EME has
4 provided minimal evidence to rebut these claims.

5 (3) EME's own customer service agents told customers that a problem with the postal
6 service is the reason that they did not receive the notices.

7 **Q. Please elaborate on your first point about language in EME's terms of service.**

8 A. EME's terms of service do not state that EME will charge a non-indexed variable rate at
9 the expiration of the term of a fixed rate contract. Attached as Exhibit 12 is a copy of
10 EME's terms of service that were effective in calendar year 2021.² Because these terms
11 were in effect during 2021, they were applicable to most customers whose contracts
12 expired in 2022. EME acknowledged that there is no language in the terms of service that
13 informs the customer that they could be transferred to a variable rate at the end of their
14 fixed rate term. See Exhibit 4 - 8/4/21 Tr. at 152:19-23.

15 **Q. Please elaborate on your second point about EME customers reporting not receiving**
16 **the renewal notices.**

17 A. The only way that EME claims it notified its customers that they their contract would be
18 changed to a non-indexed variable rate contract at the end of their fixed rate contract
19 terms was through two un-dated notices that were purportedly mailed by its vendor
20 Zytron. However, there are many examples of customers reporting to the OPA and to the
21 CASD that they never received a renewal notice from EME. For a partial list of
22 customers that informed CASD they never received notices from EME, see the CASD
23 case summaries in the following CASD files:

24 2022-C-4315; 2022-C-4324; 2023-C-0100; 2023-C-0106; 2023-C-0110; 2023-C-0128;
25 2023-C-0130; 2023-C-0140; 2023-C-0144; 2023-C-0151; 2023-C-0153; 2023-C-0162;
26 2023-C-0163; 2023-C-0167; 2023-C-0176; 2023-C-0177; 2023-C-0183; 2023-C-0184;
27 2023-C-0203; 2023-C-0210; 2023-C-0220; 2023-C-0223; 2023-C-0227; 2023-C-0244

² These terms of service were updated in 2022 but the relevant sections remain largely unchanged.

1 EME’s customers also emailed EME stating that they never received any notice of the
2 changes as shown in Exhibit 13 - Confidential, which includes selected emails provided
3 by EME in response to OPA-001-027.

4 **[BEGIN CONFIDENTIAL]** [REDACTED]
5 [REDACTED]

6 [REDACTED] **[END CONFIDENTIAL]**

7 While some customers acknowledged receiving at least one notice from EME, based
8 upon a review of the CASD files and the OPA’s own conversations with EME’s
9 customers, it appears that many more customers claim they never received any notices
10 from EME.

11 **Q. Has EME demonstrated that it mailed all the other notices as required by Chapter**
12 **305?**

13 **A.** No. EME has provided minimal evidence that its vendor mailed contract renewal notices
14 for its other customers, and there are reasons to be skeptical that all notices were mailed
15 as EME claims.

16 First, as CASD observed, all the renewal notices purportedly mailed between August and
17 December 2022 are un-dated, which means that it is not apparent when the notice was
18 printed.

19 Second, EME did not use its normal vendor to send the renewal notices. EME’s back-up
20 vendor, Zytron, did not offer an intelligent mail barcode service, see Exhibit 15, which
21 allows the USPS to sort and track mail by scanning it. EME also did not purchase any
22 kind of tracking information or delivery confirmation, see Exhibit 16, despite the fact that
23 Zytron’s website advertises such services: “[a]dvanced mail tracking capability gives our
24 clients delivery status information beyond the mailing.” See Exhibit 17. Given a lack of
25 any delivery confirmation or tracking information, EME cannot demonstrate that
26 customers who report not receiving notices actually received them.

1 Finally, EME did not make contemporaneous notes of customer notice mailings in its
2 billing system. Rather, EME made system-wide updates in its billing system months after
3 the fact stating that the notices had been mailed. See Exhibit 7 – Confidential 8/21/23 Tr.
4 at 55:20-23. This is not consistent with EME’s practice for other types of notices.

5 **Q. Please elaborate on your third point about EME acknowledging a problem with the**
6 **“postal service” that prevented customers from receiving the notices.**

7 A. EME’s own customer service agents told customers that they had received many reports
8 from other customers who did not receive any notices from EME and that this was due to
9 a problem with the postal service.

10 For example, attached as Exhibit 18 is an excerpt of a December 22 phone call recording
11 from CASD file 2023-C-0130 at approximately the 5:40 mark in which the customer
12 service agent tells the customer that many customers reported not receiving any notices
13 from EME and that this is due to a problem with the postal service.

14 Attached as Exhibit 19 is an excerpt from a January 11 phone call recording from CASD
15 file 2023-C-0128 at approximately the 6:00 mark in which the customer service agent
16 tells the customer there is a problem in their postal area.

17 While EME now claims that it has no knowledge of any problem with the postal service,
18 its customer service agents concluded that there was such a problem.

19 **Q. Assuming EME did mail notices to most of its customers, does that change your**
20 **opinion about whether its conduct was unfair or deceptive?**

21 A. No. Even assuming that many customers were mailed and received the notices, which
22 EME has not proved, as discussed below EME’s notice itself was deficient because it
23 purported to “renew” the contract but actually changed the terms of service of the
24 contract without the consent of the customer.

25 Furthermore, prior to August 2022, EME had a consistent practice of automatically
26 renewing its customers into new fixed rate contracts for many years. See Exhibit 4 -
27 8/4/21 Tr. at 131-32. Customers could reasonably have concluded that EME’s letter was
28 simply notifying them that the same process would be followed. Certainly, customers
29 would not have anticipated that EME would change the terms of their contract and raise

1 its prices by 300% without any affirmative consent. EME knew or should have known
2 that customers would not want to be transferred to this high rate.

3 Finally, many customers were confused by EME's notice as shown in Exhibit 20 -
4 Confidential, which includes selected customer emails provided by EME in response to
5 OPA-001-027. These emails show that customers did not understand the notice, and
6 many customers believed they could simply notify EME that they wanted to renew their
7 fixed rate contracts as EME had done for them in the past.

8 **EME DID NOT DISCLOSE THE PRICE OF THE NON-INDEXED VARIABLE RATE PRIOR TO**
9 **CHARGING IT TO CUSTOMERS**

10 **Q. Did EME notify customers ahead of time what the price of the non-indexed variable**
11 **rate would be prior to charging it to its customers?**

12 A. No. Attached as Exhibit 21 is a copy of the notice and terms of service that EME
13 purportedly mailed to customers advising them that they would be transferred to a non-
14 indexed variable rate at the expiration of their fixed rate contract.³ The contract
15 disclosure statement attached to the notice does not inform customers of the price, despite
16 the fact that section 1 of the terms of service states that the price for the first month of the
17 contract would be identified in the contract disclosure statement. Instead, the contract
18 disclosure statement directs customers to EME's website for pricing information.

19 **Q. Did EME disclose the price on the website prior to charging it?**

20 A. EME has failed to show that it updated its website to include the non-indexed variable
21 rate prior to charging it to customers. EME has no records regarding when the variable
22 rate portion of its website was first updated, and it was unable to testify to when the
23 website was updated. While EME claims it has a "practice" regarding when its website is
24 to be updated, it does not have any written policy. See Exhibit 22. And EME's own
25 emails produced in discovery show that EME does not follow what it claims to be its
26 "practice." See Exhibit 23 – Confidential.

³ The notice was provided in CASD file 2023-C-0172. EME stated that this is the same renewal notice template mailed to customers prior to the end of their contract terms. See Exhibit 4 - 8/4/23 Tr. at 153.

1 In addition, EME’s website does not provide the effective date of the variable rates
2 charged to customers. It simply states that the website will be updated with rates at least
3 one week before the rates become effective. But upon receiving EME’s notice, a
4 customer would have no way of knowing if the variable rate on the website would be
5 applicable to the customer’s upcoming variable rate contract or if a different rate would
6 be in effect by that time. Also, the website provides different rates for customers of the
7 same utility (Evergreen, T1, and T2), but EME’s notice does not inform the customer
8 which specific rate will apply to the customer.

9 Finally, EME’s website includes incorrect information. Attached as Exhibit 24 is a
10 screenshot of the variable rates page of EME’s website that was taken on July 28, 2023.
11 EME reported that it first began charging a variable rate on October 4, 2022. However,
12 the website provides variable rate prices for June through September of 2022. When
13 asked why EME’s website included variable rate information for periods when it did not
14 charge a variable rate, EME had no explanation. See Exhibit 4 - 8/4/21 Tr. at 157.

15 It also appears that the information provided for November 2022 is incorrect because
16 EME increased its variable rate from 27.99 cents to 37.99 cents/kWh on November 14,
17 yet the graph shows the rate for the month of November was 28 cents. See Exhibit 25 and
18 Exhibit 24.

19 Also, included in Exhibit 26 - Confidential, is an email from a customer to EME in which
20 the customer includes a screenshot of EME’s website. The screenshot, reproduced below,
21 shows rates as high as 43.99 cents/kWh with an effective date of 8/22/22:

Brand	Market	Commodity	Product Name	Rate Effective Start Date	New Rate
Electricity Maine	CMP	Electric	Residential Evergreen T1	8/22/2022	0.2799
Electricity Maine	CMP	Electric	Residential Evergreen T2	8/22/2022	0.4299
Electricity Maine	CMP	Electric	Residential Evergreen	8/22/2022	0.4399
Electricity Maine	BHEC	Electric	Residential Evergreen T1	8/22/2022	0.2799
Electricity Maine	BHEC	Electric	Residential Evergreen T2	8/22/2022	0.4299
Electricity Maine	BHEC	Electric	Residential Evergreen	8/22/2022	0.4399

1 But according to EME, it never charged rates higher than 39.99 cents/kWh to customers.

2 **Q. Besides the inaccuracies that you've identified, were there any other problems with**
3 **EME's website?**

4 A. Yes. Many EME customers emailed EME to notify the company that its website was not
5 providing rate information and that it did not allow customers to renew or cancel their
6 contracts. This was true despite the fact that EME's notice directed customers to the
7 website. Exhibit 26 – Confidential, includes many examples of these customer emails,
8 which were provided by EME in response to OPA-001-027.

9 Other elements of the historical variable rate graph provided on the website are, if not
10 wrong, then confusing. For example, the historical rates graph is based on “average
11 monthly usage of 2,000 kWh” but that is far greater than a customer's typical monthly
12 usage of 550 kWh.

13 **Q. Did EME's notice disclose the highest and lowest non-indexed variable rate charged**
14 **over the last 12 months?**

15 A. No. EME admitted that, although it began charging a variable rate in October 2022, it did
16 not start providing the highest and lowest variable rate charged in the last 12 months in its
17 renewal notices until June 2023. See Exhibit 27.

18 **Q. Did EME file the non-indexed variable rate with the Commission?**

19 A. No. Chapter 305 Section 5(A)(1) requires competitive electricity providers to “file with
20 the Commission and provide to the Public Advocate rates, terms, and conditions of any
21 service generally available to the public or any segment of the public prior to offering the
22 service.” The EME terms of service filed with the Commission all state in the contract
23 disclosure statement section that they are for fixed rate contracts. See Docket 2010-
24 00256, which includes all of the terms of service filed by EME. Accordingly, the
25 Commission had no way of knowing ahead of time that EME had decided to begin
26 charging customers a variable rate or the amount of that rate.

27 **Q. Did EME file the non-indexed variable rate with the OPA?**

1 A. No.

2 **EME DID NOT OBTAIN EXPRESS INFORMED CONSENT FROM ITS CUSTOMERS PRIOR TO**
3 **SWITCHING THEM TO A VARIABLE RATE CONTRACT**

4 **Q. Did EME obtain its customers' affirmative consent before charging them a non-**
5 **indexed variable rate?**

6 A. No. EME purportedly mailed renewal notices and if a customer did not respond to the
7 notice, EME began charging the non-indexed variable rate without the customer's
8 affirmative consent. EME did this despite language in its own terms of service stating
9 that customers must affirmatively consent to changes in the terms of service and despite
10 Chapter 305's requirement that customers must affirmatively consent to changes in the
11 terms of service.

12 **Q. Can you identify where in EME's terms of service it states that customers must**
13 **affirmatively consent to changes in the terms of service.**

14 A. Yes. As shown in Exhibit 12, EME's terms of service effective in 2021, Section 6 states:

15 The initial term of a fixed term agreement will expire on the
16 meter read date in the last month of the initial term. If we
17 propose to change the terms of service, we will provide you
18 written notice between 30 and 60 days in advance of the
19 change. **You must affirmatively consent to continued service**
20 **under the changed terms** or the Company will respond as
21 permitted until [sic] applicable law.

22 (emphasis added). Given this language, a customer would expect that any change to their
23 terms of service would require affirmative consent.

24 **Q. Does Chapter 305 require a CEP to obtain a customer's affirmative consent prior to**
25 **a change in the customer's terms of service?**

26 A. Yes. The OPA's full legal argument regarding the requirements of Chapter 305 will be
27 set forth in its brief, but, Chapter 305 Section 4(B)(8) provides that CEPs must provide
28 advance notice to customers of any change in the customer's terms of service and that
29 "customers must affirmatively consent to continued service under the modified terms of
30 service" As explained above, EME's terms of service did not state that its fixed
31 price contract would renew at a non-indexed variable rate at the end of the term.

1 Accordingly, EME could only transfer customers to a variable rate by changing the terms
2 of service.

3 **EME IMPOSED UNREASONABLE BARRIERS TO CUSTOMER CANCELLATION**

4 **Q. Please explain how EME imposed unreasonable barriers to cancellation once**
5 **customers discovered that they were being charged an incredibly high non-indexed**
6 **variable rate.**

7 A. EME’s customer service following its decision to begin charging a non-indexed variable
8 rate was severely deficient for multiple reasons, including:

- 9 1. EME customers were placed on hold for long periods or were unable to reach anyone
10 at EME. When customers left messages or emailed, EME failed to respond to emails
11 and voice messages in a timely manner.
- 12 2. EME did not allow customers to cancel their service by email.
- 13 3. EME informed customers that they could not cancel their service by calling their
14 utility.
- 15 4. EME failed to inform its customers that they could request an off-cycle cancellation
16 and instead told customers that cancellation would take 1-2 billing cycles during
17 which time the customer would continue to be charged the high non-indexed variable
18 rate.

19 In addition to these problems, EME only offered bill credits and refunds to customers
20 who re-enrolled with EME. As a result, customers who were struggling to pay their high
21 bills due to EME’s non-indexed variable rate were only offered meaningful help if they
22 agreed to continue taking service from EME. This tactic of using the high variable rate
23 bills as leverage over customers to get them to re-enroll in new EME contracts is itself an
24 unfair sales tactic.

1 **Q. Please provide support for your statement that EME placed customers on hold for**
2 **long periods of time.**

3 A. The CASD files in the complaint record are full of customer statements that they could
4 not reach anyone at EME or that they were put on hold for long periods. Some examples
5 are provided below:

- 6 • In CASD file 2023-C-0162,⁴ the customer told CASD that they called EME and
7 got a recording that it would take 3-4 days to get a response from EME.
- 8 • In CASD file 2023-C-0491, the customer told CASD that they called EME and
9 got a recording that it could take up to two weeks to get a response from EME.
- 10 • In CASD file 2023-C-0247, the customer told CASD that they were put on hold
11 for a long time with EME and unable to leave a voicemail.
- 12 • In CASD file 2023-C-0203, the customer told CASD that he was put on hold for
13 an hour and a half and then for an hour with no representative answering.
- 14 • In CASD file 2023-C-0227, the customer told CASD that they were not able to
15 reach a representative from EME but got a recording instructing them to leave a
16 message and they would receive a return call in 3-5 days.
- 17 • In CASD file 2023-C-0232, the customer told CASD that they spent a lot of time
18 trying to reach EME but has been put on hold for hours.
- 19 • In CASD file 2023-C-0294, the customer told CASD that they tried to dispute
20 their bill with EME but no one answered the phone for 15 minutes. The customer
21 then emailed EME but never received a response.
- 22 • In CASD file 2023-C-0302, the customer told CASD that they tried to contact
23 EME but gave up after repeated calls.

⁴ The OPA incorporates all CASD files cited in this testimony by reference.

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- 1 • In CASD file 2023-C-0480, the customer told CASD that they tried to call EME
2 but all the lines were busy.
 - 3 • In CASD file 2023-C-0530, the customer called CASD to confirm EME’s phone
4 number because when they called, no one answered.
 - 5 • In CASD file 2023-C-0560, the customer told CASD that when he called EME he
6 was run through an automated message that instructed him to leave a message but
7 the customer never received a call back after leaving a message.

8 Customers who called the OPA also described long hold times and difficulty reaching
9 anyone at EME’s customer service line.

10 In addition, as shown in Exhibit 28 – Confidential, which includes selected emails
11 provided in response to OPA-001-027, many customers emailed EME stating that they
12 were placed on hold for long periods of time or simply disconnected. Others reported that
13 EME’s phone number did not work.

14 **Q. Please provide support for your statement that EME failed to respond to customer**
15 **emails in a timely manner.**

16 A. As shown in Exhibit 29 - Confidential, which includes selected emails provided in
17 response to OPA-001-027, when customers emailed EME they received an automated
18 message that someone would respond to their message within 24-48 hours. However,
19 many customers later emailed that they never received a response to their original email.

20 **Q. Please provide support for your statement that EME did not allow customers to**
21 **cancel their service by email.**

22 A. EME claims that it never had a policy that prevented customers from canceling their
23 service by email, see Exhibit 4 - 8/4/21 Tr. at 219:9-13; however, its customer service
24 agents told customers who tried to cancel by email that they could only cancel over the
25 phone.

26 For example, attached as Exhibit 30 is an excerpt of a November 21 phone call recording
27 from CASD file 2023-C-0080 at approximately the 4:00 mark, in which EME’s customer
28 service agent tells the customer that they cannot cancel their service by email but must do
29 so over the phone.

1 **Q. Is the customer service agent’s statement to the customer consistent with EME’s**
2 **terms of service?**

3 A. No. EME’s terms of service in its renewal notice explicitly state that a customer can
4 reject the new plan by email at customerservice@electricityme.com. See Exhibit 21 at
5 page 3.

6 **Q. Please provide support for your statement that EME told customers that they could**
7 **not cancel their account by contacting their utility.**

8 A. In Maine, customers of a CEP can request that their utility cancel their CEP service and
9 transfer them to standard offer service. Nevertheless, EME informed its customers that
10 they could only cancel EME’s service by contacting EME directly.

11 For example, attached as Exhibit 31 is a recording from CASD file 2023-C-0183 from a
12 January 5 call at approximately the 5:30 mark in which the customer tells EME that they
13 are going to call CMP to cancel their service with EME. The customer service agent
14 responds that the utility “cannot cancel us, you have to cancel with us right here on the
15 line.”

16 **Q. Please provide support for your statement that EME failed to inform its customers**
17 **that they could request an expedited cancellation.**

18 A. EME admitted that it only trained its customer service agents to advise customers that a
19 cancellation request will go into effect on the next meter read date, which can take from
20 1-2 billing cycles to implement. See Exhibit 32. In fact, based on several of the phone
21 call recordings provided in the CASD files, it appears that EME’s customer service
22 agents were completely unaware that there is a process to request an expedited
23 cancellation of CEP service.

1 In one particularly telling example, the customer actually informs the customer service
2 agent that there is a process in Maine that allows the utility to read a customer’s meter
3 and implement the cancellation before the next scheduled meter read date so that the
4 customer will not continue to be charged the high variable rate. See Exhibit 33, which is
5 an excerpt of a February 15 phone call recording from CASD file 2023-C-0823 at
6 approximately the 2:30 mark. The customer service agent responds to the customer that
7 he was not aware of that process but has no reason to doubt that it is true. Nevertheless,
8 even after this customer educated EME’s agent, EME still failed to inform other
9 customers of this process.

10 Despite EME’s claim to the contrary, Exhibit 4 - 8/4/21 Tr. at 211:8-10, based on our
11 review of the CASD files, we could not find a phone call recording in which the customer
12 service agent notified the customer that they could request an expedited cancellation. We
13 also could not find anything in EME’s customer service agent training materials showing
14 that EME educated its agents about this process. See Exhibit 34 – Confidential.

15 **Q. Can you explain the process for an expedited cancellation of CEP service?**

16 A. Yes. Based on our understanding, under Chapter 305 Section 4(b)(16)(b), a CEP is
17 required to notify the customer’s utility of the customer’s desire to cancel service within
18 two business days. The rule further provides that CEPs “must take all necessary actions
19 to effectuate a cancellation request from a customer.”

20 Under Chapter 322, a customer or CEP may request the utility perform an expedited
21 cancellation to end service before the customer’s next regularly scheduled meter read
22 date. The utility may charge a fee for this service.

23 **Q. If EME initiates a request for an expedited cancellation on behalf of a customer,
24 who is responsible for paying the meter read fee to the utility?**

25 A. As EME’s witness admitted at the technical conference, if EME requests an expedited
26 cancellation on behalf of a customer, EME is responsible for paying the utility’s fee, not
27 the customer. See Exhibit 4 - 8/4/21 Tr. at 215. If a customer requests an expedited
28 cancellation from their utility directly, then they are responsible for paying the additional
29 meter read fee. Based on its witness’s testimony, EME was aware of this distinction.

1 It therefore appears that, in an effort to avoid incurring this fee and to continue to bill the
2 canceling customer at the high variable rate, EME declined to inform its customers that
3 they could request an expedited cancellation under the Commission's rules.

4 **Q. What are the consequences of EME's failure to inform customers that they could**
5 **request an expedited cancellation request and terminate their service with EME in a**
6 **matter of days rather than 1-2 billing cycles?**

7 A. Understandably, customers became very upset when they were told by EME that it could
8 take up to 1-2 billing cycles to cancel their service, during which time they would
9 continue to be charged a non-indexed variable as high as 39.99 cents/kWh. These
10 customers made it very clear that they wanted to cancel their service immediately.
11 Nevertheless, EME informed them that would be responsible for EME's charges for 1-2
12 billing cycles.

13 For example, attached as Exhibit 35, is an excerpt of a December 19, 2022, phone call
14 recording from CASD file 2022-C-4315 at approximately the 7:30 mark in which the
15 customer makes it very clear that she wants her service with EME cancelled as soon as
16 possible. But the customer service agent tells the customer that the next meter read date
17 would be January 17 and the utility would send her a final EME bill after that date. And
18 even after the customer raises the possibility of contacting her utility to have the meter
19 read sooner, the EME agent does not even confirm that is a possibility, much less offer to
20 submit an expedited cancellation request to the utility directly.

21 In another example, attached as Exhibit 36 is an excerpt of a January 4 phone call
22 recording from CASD file 2023-C-0032 at approximately the 3:30 mark in which the
23 customer service agent explains how even though the customer called to cancel their
24 contract on December 5, the cancellation was not complete until December 27. And after
25 the customer requested cancellation, EME actually increased the customer's variable rate
26 and charged it for weeks after the cancellation request was made.

27 For other examples, see Exhibit 37 – Confidential, which includes selected emails
28 provided by EME in response to OPA-001-027.

29 This was very unfair to EME's customers. Not only did EME charge extremely high
30 variable rates to its customers without their knowledge, when customers did learn about

1 the high variable rate they were being charged, EME failed to inform them that they
2 could stop incurring this high rate sooner by requesting an expedited cancellation.

3 **Q. Please explain how EME used high variable rate bills as leverage to get its**
4 **customers to re-enroll in new contracts.**

5 A. The vast majority of customers in the CASD complaint files only learned about the rate
6 they were being charged by EME when they received their electric bill. Many of these
7 customers received electric bills that were hundreds of dollars higher than their normal
8 bills. These customers were panicked and stressed about how they would be able to pay
9 these large, unexpected bills.

10 EME offered to work with these desperate customers by providing refunds or re-rating
11 their bills, but only if the customer agreed to sign a new contract with EME. If the
12 customer declined to sign a new contract with EME, generally nothing was done for the
13 customer.

14 For example, attached as Exhibit 38, is an excerpt of a January 25 phone call recording
15 provided in CASD file 2023-C-0309 at approximately the 9:00 mark in which the
16 customer tells the customer service agent that they are going to switch to another
17 provider. The customer service agent responds by telling the customer that if they choose
18 to cancel, the customer will have to pay for all charges on the account. No refund, bill
19 credit, or gift card is offered to the customer.

20 Information provided by EME in discovery confirms that customer service agents were
21 authorized by management to offer refunds and bill credits only to customers that agreed
22 to re-enroll in a new contract. See Exhibit 39 – Confidential at 7-8.

23 When customers hesitated to renew their contracts because of their outstanding high bills,
24 EME offered to re-rate these prior bills if the customer agreed to sign a new contract. For
25 example, attached as Exhibit 40 is an excerpt of a February 3 phone call recording
26 provided in 2023-C-0509 at approximately the 8:15 mark. EME offered to re-rate the
27 customer's bill, but only if the customer agreed to sign a new contract. This call
28 demonstrates EME's strategy of using the offer to re-rate a high bill to entice the caller to

1 remain an EME customer. If the customer refused to sign a new contract, they were told
2 to pay the amount due in full.

3 EME's strategy appears to have been at least somewhat successful, as shown in Exhibit
4 41 – Confidential, which includes selected emails provided by EME in response to OPA-
5 001-027. Several customers explicitly told EME they would only remain customers if
6 EME would rerate their prior bills to the new fixed contract rate.

7 This strategy was reinforced to EME's customer service agents through their
8 compensation structure. According to EME's compensation policy, [BEGIN

9 [CONFIDENTIAL] [REDACTED]

10 [REDACTED]
11 [REDACTED] [END CONFIDENTIAL]

12 **V. EME PROVIDED OTHER TYPES OF FALSE OR MISLEADING**
13 **INFORMATION TO ITS CUSTOMERS**

14 **Q. Did EME engage in other deceptive sales tactics in addition to the unfair and**
15 **deceptive trade practice of transferring customers from a fixed rate to a non-**
16 **indexed variable rate contract?**

17 A. Yes. In addition to the practices identified above, EME regularly provided customers
18 false or misleading information; or failed to provide information required by Commission
19 rules. This includes the following:

- 20 1. EME told its customers that it has offices in the State of Maine when in fact EME has no
21 offices in Maine.
- 22 2. EME told its customers that the standard offer rate varies from month to month.
- 23 3. EME told its customers that they must contact their utility to dispute EME charges or
24 enter into a payment plan.
- 25 4. EME told its customers that EME lacked the ability to apply a bill credit on their account.
- 26 5. EME failed to notify its customers of their right to file a complaint with CASD.

1 **Q. Please provide support for your first statement that EME falsely told its customers**
2 **that it has offices all over the State of Maine.**

3 A. EME has no offices in the State of Maine and no Maine employees. See Exhibit 43 and
4 Exhibit 44. Nevertheless, EME portrays itself as a local Maine business in its advertising,
5 including on its website, and even falsely tells customers that it has offices in Maine so
6 that its customers believe they are buying energy from a Maine company.

7 For example, attached as Exhibit 45, is an excerpt of a phone call recording from a
8 January 5 call in CASD File 2023-C-0110 at approximately the 12:45 mark in which the
9 customer service agent tells the customer that EME has different offices throughout the
10 State.

11 In our experience talking to Maine customers who contact the OPA, many Mainers like
12 to work with local Maine businesses. By portraying itself as a local Maine company,
13 EME is deceiving its customers into believing they are purchasing their energy supply
14 from a local Maine business.

15 **Q. Please provide support for your statement that EME told its customers that the**
16 **standard offer rate varies from month to month.**

17 A. In trying to convince customers to sign up for a new EME contract, when customers
18 raised the fact that the standard offer rate was cheaper, EME's customer service agents
19 responded that the standard offer rate was variable and therefore the customers should
20 consider a fixed rate that would not fluctuate from time to time.

21 For example, attached as Exhibit 46, is an excerpt of a phone call recording from a
22 December 5 call in CASD file 2023-C-0032 at approximately the 2:45 mark in which the
23 customer service agent tells the customer that the standard offer rate could change in the
24 next month.

25 Another example is attached as Exhibit 47, which is an excerpt of a phone call recording
26 from a February 3 call in CASD file 2023-C-0509 at approximately the 14:30 mark.

27 **Q. Does the standard offer rate fluctuate month-to-month?**

28 A. No. As the Commission is well aware and EME admitted, the standard offer rate is fixed
29 for the 12-month calendar year period. See Exhibit 48.

1 **Q. Please provide support for your statement that EME told its customers that they**
2 **had to dispute their bill with their utility.**

3 A. As customers began receiving very high bills from EME over the winter 2022-2023, they
4 contacted EME to dispute their bills. But EME told customers that they must dispute their
5 bill directly with the utility, despite the fact that customers were seeking to dispute only
6 the EME portion of the bill.

7 For example, attached as Exhibit 49 is an excerpt of a February 8 phone call recording
8 provided in CASD file 2023-C-0600 at approximately the 6:45 mark. The customer
9 service agent tells the customer to call the utility to dispute the bill rather than working
10 with the customer directly.

11 Another example is attached as Exhibit 50, which is an excerpt of a January 17 phone call
12 recording provided in CASD file 2023-C-0927 at approximately the 7:00 mark, in which
13 the customer service agent tells the customer they should contact CMP to set up a
14 payment plan. After the customer explains the unfairness of the situation and how the
15 customer cannot afford to pay the bill, the customer service agent responds unhelpfully,
16 “I do apologize . . . but there is no way we are going to remove that.”

17 Another example is attached as Exhibit 51 – Confidential, which is a selected email
18 provided by EME in response to OPA-001-027, in which EME notifies the customer that
19 it cannot offer a payment arrangement and that the customer would need to contact their
20 local utility company.

21 EME’s practice unfairly imposed another hurdle for its frustrated customers to obtain any
22 relief and inappropriately shifted customer service work to the customer’s utility, which
23 was not responsible for the supply charges EME charged its customers.

1 **VI. FINANCIAL IMPACT OF EME’S UNFAIR AND DECEPTIVE**
2 **PRACTICES**

3 **Q. How many customers were victims of EME’s unfair and deceptive trade practices?**

4 **A. [Begin Confidential]** [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] **[End Confidential]**

8 **Q. Has EME identified those of its customers that were transferred to non-indexed**
9 **variable rates?**

10 **A.** Yes. Attached as Exhibit 56 – Confidential, is the list of customers that were transferred
11 to non-indexed variable rates and their current status.

12 **Q. Can you quantify the extent to which these customers overpaid for supply service**
13 **compared to the standard offer rate?**

14 **A.** Based on the available information, we are not able to quantify the exact amount that
15 EME’s customers overpaid because EME has not provided the specific dates that
16 customers were transferred to its non-indexed variable rates or the exact usage of all its
17 customers. However, by making a few reasonable assumptions, we can provide a rough
18 estimate of the collective financial impact of EME’s conduct.

1 As shown in Exhibit 57 – Confidential, under the “Customer Impact” tab, we estimate
2 that EME’s customers overpaid for electric supply in December 2022 and January 2023
3 by millions of dollars compared to what these customers would have paid had they been
4 on the standard offer.

5VII. REQUESTED PENALTY

6 **Q. What enforcement actions are you recommending the Commission take against**
7 **EME?**

8 A. The OPA’s final recommendations will be set forth in its brief but based on the
9 seriousness of the conduct, EME’s recent prior violations, and the fact that EME does not
10 appear to provide any benefits to Mainers, the OPA recommends that, at a minimum, the
11 Commission permanently revoke EME’s license to operate as a competitive energy
12 provider and provide full refunds to all of its customers that were charged a non-indexed
13 variable rate that was at any time higher than the standard offer rate.

14 **Q. Please explain why you believe the conduct in this case justifies revocation of EME’s**
15 **CEP license.**

16 A. EME’s conduct was egregious. Without its customers’ consent or knowledge, it started
17 charging up to 39.99 cents/kWh for energy supply, causing customers’ overall electric
18 bills to double or triple. Customers endured significant frustration and stress over very
19 high bills based on this outrageous rate over the winter when many Mainers’ budgets are
20 already squeezed. EME willfully took these steps in violation of Commission rules. EME
21 then engaged in a pattern of unfair and deceptive conduct in an effort to lure its customers
22 into signing new fixed rate contracts at much higher prices than it charged previously.
23 EME engaged in this conduct in an attempt to avoid the restrictions set forth in Chapter
24 305.

1 **Q. Please explain EME’s prior violations and why they are relevant to this proceeding.**

2 A. This is not the first time EME has been involved in an enforcement investigation before
3 the Maine PUC. On February 26, 2021, the Commission issued an order imposing
4 sanctions on EME for what it described as “serious willful violations of the
5 Commission’s consumer protection standards.” Unfortunately, it appears that EME’s
6 willful violations of consumer protection rules have only continued in a different form.
7 EME’s affiliates have also been involved in multiple enforcement investigations as
8 shown in Exhibit 58. Given this poor track record, EME should not be allowed to
9 continue to serve Maine customers.

10 **Q. Does EME provide any benefits to Mainers that might weigh against imposing a**
11 **significant penalty in this proceeding?**

12 A. No. First, EME does not employ any Mainers and has no offices in the State.

13 Second, based on our analysis, it appears that EME’s customers have significantly
14 overpaid for electric supply service compared to standard offer rates, even before EME
15 began charging variable rates.

16 As shown in Exhibit 57, based on the available billing histories provided in OPA-001-
17 003 and the CASD files for 29 customers, these customers have collectively overpaid for
18 electric supply by more than \$67,000, compared to the standard offer. And every single
19 customer for which data is available would have been better off financially had they
20 never signed up with EME and stayed on the standard offer.

2MIII. CONCLUSION

22 **Q. Do you have any concluding remarks?**

23 A. We encourage the Commission to listen to the full phone call recordings provided in the
24 CASD files to hear customers in their own words explain the impact of EME’s high
25 variable rates on their budgets and how they felt that EME took advantage of them. Many
26 of these customers expressed astonishment and asked how EME could be legally allowed
27 to triple their bills overnight without their consent. For all the reasons identified above,

1 we ask that the Commission validate these customers' concerns and stop EME's abuses
2 once and for all.

3 **Q. Does this conclude your testimony?**

4 A. Yes.

Congress of the United States

Washington, DC 20515

December 11, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

Deregulation of the residential electric supply market promised to bring consumers in Massachusetts and other states a choice of electricity supply providers and lower bills. Instead, consumers — disproportionately in low-income communities and communities of color — have endured unfair and deceptive marketing and sales tactics by competitive electric suppliers, saddling those consumers with higher electric bills and costing them hundreds of millions of dollars in net losses, with knock-on effects that delay climate action. The Federal Trade Commission (FTC) needs to intervene, investigate, and rigorously enforce consumer protection laws against an industry that too often preys on, misleads, and overcharges vulnerable consumers for a basic and essential service.

In the late 1990s, Massachusetts and other states enacted legislation allowing residents to buy electricity from a supplier other than their default utility.¹ Underlying this deregulatory effort was the assumption that competition in the market for residential electricity would bring lower power prices for customers. But the *Wall Street Journal*, for example, found that “in nearly every state where they operate, retailers have charged more than regulated incumbents.”² Specifically, data from Massachusetts, Connecticut, Illinois, Maine, Maryland, New York and Pennsylvania “confirm that families pay far too much when they sign up for alternative electric supply instead of sticking with their utility companies.”³

Competitive electric suppliers, such as Liberty Power and Starion Energy, have fleeced Massachusetts consumers. As Massachusetts Attorney General Andrea Joy Campbell recently explained in testimony before the state legislature: “From Boston to Lawrence to Lynn — and beyond — we have seen again and again Massachusetts residents being targeted by competitive electric suppliers. And these suppliers use deceptive marketing tactics that hide the fact that their products do not provide consumers with meaningful savings and in fact, can result in higher utility bills.”⁴ Indeed, Attorney General Campbell’s office has found that, in the last seven years,

¹ Mass. Gen. Laws ch. 164, § 1 (1997).

² Scott Patterson & Tom McGinty, *Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn’t*, Wall St. J. (Mar. 8, 2021) (emphasis added), <https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623?page=16>.

³ Jenifer Bosco, *Retail ‘choice’: A bad deal for consumers and the planet*, Utility Dive (Sept. 22, 2023), <https://www.utilitydive.com/news/retail-choice-bad-deal-consumers-arrearages-renewable-energy-community-choice/694355/>.

individual residential customers who received their electric supply from competitive suppliers paid \$607 million more on their electric bills than they would have paid to their default utility.⁵

Especially troublesome, the Attorney General's Office found that competitive electric suppliers have targeted vulnerable populations:

- low-income customers in Massachusetts are nearly twice as likely to sign up with individual competitive electric suppliers and are charged higher rates than non-low-income customers;
- assuming 600-kilowatt hour per month usage, typical for a Massachusetts household, an average non-low-income customer who signed up with a competitive supplier lost \$222 per year while the average low-income customer lost \$254 per year;
- low-income customers collectively experienced an annual net loss of more than \$20 million due to higher rates and additional monthly fees;
- communities of color, communities with low median incomes, and communities with high percentages of residents lacking English proficiency correlate with higher rates of participation in the individual residential market for electric supply;⁶ and
- customers of advanced age who cannot understand the transaction or are particularly vulnerable are targeted and subjected to aggressive sales tactics.⁷

The competitive electric suppliers and their marketing agents have engaged in myriad unfair and deceptive acts and practices to lure consumers into oppressive retail electricity contracts, including:

- selling unnecessary “price protection” or “rate increase” protection products by convincing customers that electricity prices would otherwise soar without the protections;
- misleading customers about the actual difference in price between the competitive plan and basic utility service;

⁴ Remarks of Attorney General Andrea Joy Campbell before the Joint Committee on Telecommunications, Utilities and Energy, Massachusetts House of Representatives (Sept. 21, 2023); see Miriam Wasser, *Why a plan to drive down electric prices in Mass. Led to higher bills*, NPR (May 8, 2023), <https://www.wbur.org/news/2023/05/08/massachusetts-eversource-national-grid-third-party-competitive-electricity>.

⁵ Remarks of Attorney General Andrea Joy Campbell before the Joint Committee on Telecommunications, Utilities and Energy, Massachusetts House of Representatives (Sept. 21, 2023).

⁶ *Id.*; Susan M. Baldwin & Timothy E. Howington, *Consumers Continue to Lose Big: the 2023 Update to An Analysis of the Individual Residential Electric Supply Market in Massachusetts*, Massachusetts Attorney General's Office (May 2023), <https://www.mass.gov/doc/consumers-continue-to-lose-big-the-2023-update-to-an-analysis-of-the-individual-residential-electric-supply-market-in-massachusetts/download>.

⁷ *In re Liberty Power Holdings LLC*, Addendum to Proof of Claim Filed by the Commonwealth of Massachusetts, Case No. 21-13797-SMG (Bankr. S.D. Fla.).

- failing to disclose industry consensus about price drops and that, if basic service prices decreased, consumers would pay higher prices under the competitive plan;
- failing to disclose that the customer’s introductory rate would automatically renew to a higher variable rate;
- falsely stating the rates that customers currently paid for basic service in order to trick them into signing up for contracts that charged an even higher rate than those the customers were currently paying; and
- switching customers from their utility to competitive services without authorization, a practice known as “slamming.”

Competitive electric supplier scams come with another high cost — climate change. Massachusetts and other states are working hard to transition from dirty fossil fuels to a clean energy future. But when consumers see high electric bills due to inflated prices charged by non-utility energy supply companies, they “may be understandably hesitant to switch their home heating and appliances from gas-powered to electric.”⁸ One way to help keep the cost of electricity low is to stop competitive electric suppliers from conning consumers out of hundreds of million dollars for the same electricity they would have received if they had just stayed with their local utility.

The Massachusetts Attorney General’s Office, like other states’ consumer protection watchdogs, has taken enforcement action against competitive electric suppliers who engage in wrongful marketing and sales practices. But many of these bad-actor competitive electric suppliers operate across state lines, which makes enforcement actions time-consuming and difficult for state officials, thereby warranting federal intervention. Indeed, after ten years pursuing competitive electric suppliers, the Massachusetts Attorney General’s office has recovered only \$19 million — a small fraction of the more than \$600 million lost.⁹

Under the FTC Act, the Commission is charged with protecting consumers from “unfair or deceptive acts or practices.”¹⁰ In 2020, then-FTC Commissioner Rohit Chopra said that the agency had a key opportunity to “reduce residential consumers’ burdensome energy costs” by taking action against “unscrupulous energy suppliers that employ deceptive marketing practices to entice consumers to switch from their local distribution company’s services.”¹¹ As these

⁸ Jenifer Bosco, *Retail ‘choice’: A bad deal for consumers and the planet*, Utility Dive (Sept. 22, 2023), <https://www.utilitydive.com/news/retail-choice-bad-deal-consumers-arrears-renewable-energy-community-choice/694355/>.

⁹ Chris Lisinski, State House News Service, *Mass. leaders eye changes to ‘predatory’ electric sales tactics*, WBUR (June 6, 2023), <https://www.wbur.org/news/2023/06/06/mass-leaders-eye-changes-to-predatory-electric-sales-tactics>.

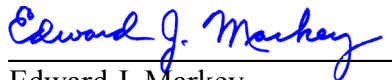
¹⁰ 15 U.S.C. § 45.


¹¹ Rohit Chopra, *Statement: Regarding the FTC EnergyGuide rule*, U.S. Federal Trade Commission (Dec. 22, 2020), https://www.ftc.gov/system/files/documents/public_statements/1585238/20201222_final_chopra_statement_on_energysguide_rule.pdf.


practices have continued in the intervening years, the FTC still has both the opportunity and the responsibility to protect consumers.

As colder weather approaches and competitive electric suppliers across the nation continue to prey on fears of high electricity bills, the FTC must signal it will not tolerate business as usual by competitive electric suppliers. These suppliers continue to target vulnerable populations, engage in unlawful tactics, and dramatically overcharge consumers — precisely the types of wrongdoing against which the FTC is empowered to act to protect consumers. We urge the FTC to immediately open an investigation into the unfair and deceptive marketing acts and practices of competitive electric suppliers.

Sincerely,


Edward J. Markey
United States Senator


Elizabeth Warren
United States Senator


Ayanna Pressley
Member of Congress

**An Act to Require Electricity Providers to Inform Customers of Alternative Electric Rates
and Gather Consent Prior to Contract Renewal**

1 **Be it enacted by the People of the State of Maine as follows:**

13 **Sec. 2. 35-A MRSA §3203, sub-§4-B, ¶A**, as enacted by PL 2017, c. 74, §1, is
14 amended to read:

15 A. Shall disclose, before entering into an agreement to provide service to a residential
16 consumer, to the residential consumer ~~where the~~ prevailing standard-offer service rate in
effect at the time and publicly accessible website addresses and the telephone numbers of
the commission and the Office of the Public Advocate from which the residential
consumer can obtain information with which to compare the rates for service provided by
the standard-offer service provider and other competitive electricity provider and the
standard-offer service providers;

17 **Sec. 3. 35-A MRSA §3203, sub-§4-B, ¶A and ¶C**, as enacted by PL 2017, c. 74, §1, is
amended to read:

18 A. Shall disclose, before entering into an agreement to provide service to a
19 residential consumer the standard offer service rate in effect at the time and
20 where the residential consume can obtain information with which to compare
21 the service provided by the competitive electricity provider and the
22 standard-offer service;

23 C. May not renew a contract for generation service ~~at a fixed rate that is 20% or more~~
24 ~~above the contract rate in the expiring contract~~ without the express consent of the
25 residential consumer. Prior to securing the express consent of the residential consumer,
26 the competitive electricity provider shall provide the residential consumer in writing
27 with the proposed renewal rate and terms, the standard-offer service rate in effect at
28 the time consent is requested and the time period for which it is effective, any additional
29 standard-offer service rate approved by the commission that will be in effect during the
30 contract and the time period for which it is effective and the publicly accessible website
31 addresses and the telephone numbers of the commission and the Office of the Public
32 Advocate from which the residential consumer can obtain information with which to
33 compare the rates for service provided by a standard-offer service provider, the
34 residential consumer's current competitive electricity provider and other competitive
35 electricity providers; and

36 **Sec. 6. 35-A MRSA §3203, sub-§15**, as enacted by PL 1997, c. 316, §3, is amended
37 by enacting at the end a new first blocked paragraph to read:

40 An entity providing electric billing and metering services for a competitive electricity
41 provider shall indicate on each bill the standard offer service rate in effect at the time and
42 the publicly accessible website addresses and the telephone numbers of the commission
and the Office of the Public Advocate from which the residential consumer can obtain
information with which to compare the rates for service provided by the standard-offer service
provider and other competitive electricity providers.

1 **Sec. 8. 35-A MRSA §3203, sub-§19** is enacted to read:

2 **19. Low-income customers.** Whenever a competitive electricity provider enters into
3 an agreement to provide service to a residential customer, either initially or for renewal of
4 an existing agreement, the residential customer shall consent to the competitive electricity
5 provider having access to confidential information held by the transmission and distribution
6 utility of the residential customer about whether the residential customer is receiving
7 financial assistance pursuant to a low-income assistance program authorized by section
8 3214. On a monthly basis, a transmission and distribution utility shall send competitive
9 electricity providers a list of all residential customers served by that **competitive**
10 **electricity provider** ~~transmission and distribution utility~~ that are receiving financial
11 assistance pursuant to a low-income assistance program authorized by section 3214.
12 If a competitive electricity provider is informed that a residential customer is receiving
13 financial assistance **or, has received financial assistance within 12 months prior to the**
14 **renewal,** pursuant to a low-income assistance program authorized by section 3214, the
15 competitive electricity provider ³⁰ may not enter into a renewal contract with that
31 residential customer that would result in a rate being charged during the contract period
32 that is higher than the standard-offer service rate in effect at the time the contract is entered
into.

33 **Sec. 10. 35-A MRSA §3212, sub-§8** is enacted to read:

34 **8. Confidentiality of customer information.** Information concerning customers of a
35 standard-offer service provider or any of its 3rd-party sales agents is subject to the same
36 confidentiality protections afforded utility customer information under section 704,
37 subsection 5. Upon the request of the Office of the Public Advocate, an entity providing
38 electric billing and metering services ~~or a competitive electricity provider~~ shall provide the
39 Office of the Public Advocate with confidential information regarding standard-offer
40 service provider sales, the confidentiality of which the Office of the Public Advocate shall
41 protect in the same manner as records placed under a protective order by the commission.