



Testimony of NRG Energy, Inc.

In Opposition to LD 860,

An Act to Require Competitive Electricity Providers to Provide Certain Information to the Public Advocate

Before the Joint Standing Committee on Energy, Utilities, and Technology

March 18, 2025

Senator Lawrence, Representative Sachs, and Members of the Joint Standing Committee on Energy, Utilities, and Technology; I am Kandi Terry, Senior Director of Government Affairs for NRG Energy Inc and its affiliated companies. I am traveling to Maine today but may not make it to the hearing in time to testify in person but appreciate the opportunity to submit these comments by NRG in opposition to LD 860 *An Act to Require Competitive Electricity Providers to Provide Certain Information to the Public Advocate*, as drafted.

NRG Energy Inc. is a Fortune 500 company, and one of America's leading energy companies with 16,000 MW of generation in its portfolio and over 7.3 million customers nationwide. NRG's affiliate XOOM Energy is a regulated Competitive Electricity Provider (CEP) in Maine. NRG also operates Reliant Energy Northeast d/b/a NRG Home, Direct Energy Services, NRG Business, and NRG Business Marketing in Maine and New England. Beyond the sale of retail electricity service, NRG also offers smart home, solar and beneficial electrification products to residences and businesses. NRG supports and advocates for healthy energy markets that encourage innovation and cleaner energy. NRG provides customers with the energy products and services they want for their homes and businesses, including with their Goal Zero and Vivint Smart Home affiliates.

NRG participated in the Commission's docket 2024-00090 in which the Public Advocate ("OPA") requested access to Competitive Electricity Provider ("CEP") data. It appears that the decision in that proceeding is the direct origin of LD 860. For the committee's reference, I have attached a copy of NRG's comments in that proceeding as well as a copy of the Commission's decision. We opposed the request at that time and believe that the Commission made the correct decision then in order to protect confidential business and customer information.

For those members new to the Committee this year, NRG has been a staunch advocate of Maine's agencies using the tools given them by the Legislature to correct any utility or CEP violating Maine law or the Commission's rules. For example, instituting the concept of rapid switching, in order to allow consumers to switch electricity providers in a matter of days as opposed to months, was a concept brought to Maine by NRG, who has supported it in all the states in which we do business. However, there is plenty more that the Commission, under its statutes and law, and the Attorney General, under the Maine Unfair Trade Practices Act could be doing to ensure that habitual offenders under these laws lose the right to do business in Maine. NRG strongly supports vigorous enforcement of consumer protection statutes as opposed to re-regulation of an entire industry due to one or more bad actors.

There are real concerns and potential issues that should be addressed prior to passage of any version of LD 860. For example, the Commission noted that the OPA does not have a secure information management system to ensure maintenance of confidentiality and protection of business and personal information. The Commission has such, and any information request under a final version of LD 860 should require that a Commission proceeding be opened to provide such protection and address any issues that may arise. The Committee should think about whether any information provided to the OPA be ordered to remain confidential and to be excluded from Maine's Freedom of Access Act. Language prejudging the result of the study ("such as "disproportionate") should be excluded from the bill. Finally, the OPA should be required in its study to accurately differentiate between the often-diverse products offered by CEPs and the pure vanilla service of the standard offer provider. Apples should be compared to apples, not to cod.

We have had several conversations with the new Public Advocate and her legislative liaison and was hopeful that we could find a middle ground upon which we could agree. However, due to the rapidity of scheduling the hearing, we were not able to have a full discussion. As a result, we believe that the amendment that the OPA shared with us this morning needs more work before NRG could support it. We are preparing a revised version of the amendment to share with the OPA and the Commission and we ask that between today's hearing and the work session, the interested parties be given additional time to reach a consensus.

Thank you for the opportunity to submit this testimony regarding LD 860. NRG will have a representative monitoring the work session on this bill if the Committee has any questions.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2024-00090
May 20, 2024

OFFICE OF THE PUBLIC ADVOCATE
Request for Access to Competitive
Electricity Provider Data

NRG ENERGY INC'S
COMMENTS
On OPA REQUEST

NRG Energy, Inc, and its affiliates, Direct Energy Business, LLC, Direct Energy Services, LLC, Reliant Energy Northeast, LLC and Xoom Energy Maine, LLC (collectively, NRG Retail Companies), all registered in Maine as Competitive Electricity Providers (“CEP” or “CEPs”) submit the following comments in response to the Commission’s May 13, 2024, request for comments in the above docket. NRG is a Fortune 500 energy company with approximately 7.5 MM customers in at least 24 states. For the reasons stated below, NRG opposes the Office of Public Advocate’s (“OPA”) request for access to data belonging to Maine’s Competitive Electricity Providers and their customers and recommends that the Commission deny the OPA request.

I. BACKGROUND

On April 23, 2024, the OPA filed a request, seeking unprecedented access for it and its consultants to data held by Central Maine Power (“CMP”) and Versant Power (“Versant”) and relating to the provision of residential supply service by licensed CEPs.

The OPA claims that access “to the requested data is essential for the OPA to carry out one of its duties under 35-A M.R.S. § 1702, namely, to review, investigate, and make appropriate recommendations to the Commission with respect to the reasonableness and adequacy of the service furnished by CEPs.” The OPA further claims that it and its consultants will use the data “to better understand the impact of retail choice on Maine consumers” and “will focus on the impact of CEP pricing on customers, including low-income consumers” when compared to standard offer service pricing. Further, the OPA states without specificity that it “plans to use this information to conduct studies and write reports requested or required by the Legislature, subject to maintaining the confidentiality of customer-specific information.” The OPA asserts that access to the requested data would be similar to the access the Commission has provided the OPA to CEP annual reports under a protective order issued in Docket No. 2023-00003.

The OPA is requesting information on residential customers and residential customers on low-income assistance. Specifically, the customer counts; supply rates offered; total kilowatt billed at each supply rate; fees charged, and; total amount billed (excluding T&D charges), sorted by each CEP name and zip code in the State. The OPA requests the data in a format that does not disclose confidential, customer-specific information, and also states it will maintain the confidentiality of customer-specific information. The OPA has limited the scope of its request by seeking data for the period of April 2019 through April 2024. The OPA indicates CMP and Versant do not object to providing the requested data to the OPA, subject to a Commission order directing the utilities to do so.

II. THE OPA REQUEST SHOULD BE DENIED IN ITS ENTIRETY

The OPA's request should be rejected outright. No compelling or specific need for this extraordinary request has been provided to the Commission. There is no case in controversy at the Commission that would justify such a far-reaching request across both Maine's two largest utilities and involving every CEP and all of their customers in the state.

It would be an extraordinary application of the Commission's powers to grant such a far-reaching request to delve into customer records and CEP confidential business information without any specific allegation or complaint to support such inquiry and disclosure. The Commission has the authority to subject utilities to searching discovery, however, this should be done only as case-specific circumstances dictate and not where the information is simply requested. There is none such here. Specific CEPs are subject to discovery for their specific actions with customers and utilities, but no such action is even alleged by the OPA.

Most importantly, all the customer information sought by the OPA does not belong to either the utility or the CEP; it belongs to the customers. Absent a specific complaint from a customer or a specific allegation of a CEP violating Maine law or regulation, there is simply no basis to justify the OPA request. It does not matter that OPA promises to protect such information, absent a specific case at the Commission or in court, and subject to legal protection, only the customer can consent to disclosure of customer data. NRG notes that OPA has no independent authority to inspect or access information in the possession of utilities.

A corollary proposition is also true, that CEP data belongs to the CEP and unenforceable promises by the OPA to protect such data are simply not sufficient protection to justify granting such a broad request. OPA has no legislative command to inspect CEP business information, and no authority to do so on the scale proposed. OPA's citation of 35-A M.R.S. § 1702 as justifying its request would broaden that statutory language beyond its plain meaning. Section 1702 allows the OPA to "review, investigate and make appropriate recommendations *to the commission*" as to the "reasonableness and adequacy of the service furnished or proposed to be furnished by *any* public utility or competitive electricity provider" (emphasis added). The limitation to the commission and the specific use of the singular in the statute show that such efforts by the OPA are authorized only in support of investigation of specific actions by specific utilities and CEPs. If the legislature wished to authorize the type of fishing expedition proposed by the OPA, it would have clearly said so.

The information sought by the OPA also does not belong to the utilities, so the utilities have no authority to share it with anyone absent a lawful order to share it and which the affected consumers and CEPs have had opportunity to oppose if they wish.

Customer information is highly sensitive. This confidential information is at the heart of the individual CEPs' operations, business strategies, and relationships with individual customers. The information must be protected from disclosure to and use by any other party, particularly parties hostile to the CEPs and Maine's current structure for energy competition. The OPA has not demonstrated that it can guarantee the confidentiality of the information it seeks, as it has no control over the State of Maine's information systems. Should the confidential customer information be leaked, there is no remedy to the CEPs as the utilities will hide behind a Commission order and the OPA may claim sovereign immunity.

The OPA has demonstrated intense hostility to Maine's system of electricity restructuring and the lawfully authorized activities of CEPs through numerous efforts in recent years spending ratepayer funds on biased reports hawked to the media by its outside public relations firm and introducing multiple pieces of legislation to end the competitive retail market. Rather than aggressively pursuing known bad actors, the OPA is now seeking to access CEP and customer confidential information on a statewide scale to buttress its efforts to end retail customer choice in Maine.

Only individual customers or individual CEPs can consent to disclosure of their information without a lawful showing of a case in controversy and a compelling state interest. Relying on a third party to supposedly anonymize such data and then relying on vague promises of protection from disclosure with a formal protective order issued in a specific docket is simply inadequate protection of these interests. OPA's request effectively attempts to regulate CEPs as utilities and then fish in their business information, which it is not even allowed to do with actual regulated utilities.

III. COMMISSION REQUEST FOR ADDITIONAL INFORMATION AND OPPORTUNITY FOR COMMENT

NRG provides the following comments in response to the Commission Staff's questions seeking additional information.

1. The OPA states it seeks data in a format that does not disclose customer-specific information, but also states the OPA will maintain the confidentiality of customer-specific information. Will the OPA request and/or receive customer-specific information from the utilities?

Comment: The vagueness of the OPA request and the significant risks to individual customers and businesses clearly indicates why the request should be denied.

2. Does the requested data include confidential business information of licensed CEPs? Explain the extent to which it does or does not and why.

Comment: NRG asserts that such information is confidential business information and objects to its disclosure by the utilities in any manner.

3. To the extent the requested data will contain confidential customer-specific information or confidential business information, how will the OPA ensure all confidential data provided to it by the utilities will be appropriately protected? For example, does the OPA have a confidential information management system to protect the confidentiality of protected data collected by the OPA? See, e.g., *Efficiency Maine Trust Request to Order Participating Utilities to Provide Data to Initiate Program*, Docket No. 2011-00213, Compliance Order (January 11, 2012) (approving confidential information management system for the Trust).

Comment: Without waiving any objection stated in these comments, NRG notes that it does not believe that the OPA has such an information management system and has not been authorized to have such a system at ratepayer expense.

4. Title 35-A, section 1702 provides that the OPA may review, investigate, and make appropriate recommendations to the Commission, and specifically so with regard to the reasonableness and adequacy of the service furnished or proposed to be furnished by any CEP. As noted in footnote one above, however, in its request, the OPA does not identify a Commission purpose or docket for any anticipated OPA recommendation, and rather the OPA identifies a plan to use the information to conduct studies and write reports requested or required by the Legislature. What is the statutory need for the requested data? Did the Legislature direct the OPA to obtain the requested data for specified purpose?

Comment: As discussed above, NRG objects to the OPA request in part on the lack of such specific Commission purpose or case in controversy and the lack of such specific statutory direction that would justify such a broad and overreaching request.

5. As noted in footnote three above, the OPA acknowledges there may be a burden on the utilities to produce the requested data. What is the cost estimate to produce the requested data? Do the utilities intend to put the costs in rates?

Comment: NRG notes that this question points out another problem with the OPA request, in that it will expend ratepayer funds, not just at the OPA, but also by the utilities for an overly broad purpose not consistent with the statute cited by the OPA to justify the request.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2024-00090

July 16, 2024

OFFICE OF THE PUBLIC ADVOCATE
Request for Access to Competitive
Electricity Provider Data

ORDER

BARTLETT, Chair, SCULLY and GILBERT, Commissioners

I. SUMMARY

In this Order the Commission denies a request of the Office of the Public Advocate (OPA) that seeks a Commission order authorizing Central Maine Power (CMP) and Versant Power (Versant) to deliver to the OPA data held by the utilities and relating to the provision of residential supply service by licensed competitive electricity providers (CEPs), as well as data held by the utilities and relating to the provision of residential supply service by standard offer service providers.

II. OPA REQUEST AND ARGUMENT IN SUPPORT OF ITS REQUEST

On April 23, 2024, as supplemented and clarified on May 20, 2024, the OPA filed a request, seeking access for it and its consultants to data held by CMP and Versant and relating to the provision of residential supply service by CEPs and standard offer service providers. It states its request is in the public interest, noting the Legislature has recently amended consumer protection standards to address "some of the more egregious CEP pricing problems," and noting its belief that its analysis of the requested data "will be of significant interest to the public and their elected representatives." The OPA states the requested data will further assist it in building on prior work in which it demonstrated that from 2016 to 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 the standard offer service providers. The OPA further explains (A) the purpose of its request, (B) the scope and nature of the requested data, (C) how it would maintain the requested data.

A. Purpose of Request

The OPA states access to the requested data is essential for the OPA to carry out its duties regarding service furnished by CEPs. It states it and its consultants will use the data "to better understand the impact of retail choice on Maine consumers" and "will focus on the impact of CEP pricing on customers, including low-income consumers" when compared to standard offer service pricing. While there is no open Commission investigation generally dedicated to the issue of CEP service or pricing, the OPA states

it “plans to use this information to conduct studies and write reports requested or required by the Legislature” The OPA does not identify specific legislation underlying its request, but rather points to section 1702(1)(B), contending there is no need for an open Commission proceeding for the OPA to conduct its work on behalf of utility customers and make appropriate recommendations to the Commission. 35-A M.R.S. § 1702(1)(B) (providing, among other things, OPA may review, investigate, and make appropriate recommendations to the Commission with respect to the reasonableness and adequacy of service furnished by CEPs).

The OPA acknowledges that, unlike the Commission, the Legislature has not authorized the OPA to directly access the books and records of public utilities or CEPs. *Cf.* 35-A M.R.S. § 112 (authorizing Commission to investigate and inspect the books of public utilities), § 3203(13-A) (authorizing Commission to investigate any matter relating to the provision of service by a CEP). The OPA therefore concludes, to adequately fulfill its statutory duty to protect the interests of Maine utility ratepayers and adequately evaluate the impact of CEP rates on Maine electric ratepayers, in particular low-income ratepayers, “the OPA requires the cooperation of the Commission, CMP, and Versant.” The OPA further specifies the scope of the requested data.

B. Scope and Nature of Requested Data

The OPA requests certain data related to residential electric service provided in Maine. The OPA seeks, for residential customers and residential customers on low-income assistance, customer counts, supply rates offered, total kWhs billed at each supply rate, fees charged, and total amount billed (excluding T&D charges) extracted from individual bills and sorted by each CEP name and zip code. For residential customers and residential customers on low-income assistance, the OPA also seeks the number of customers who subscribe to standard offer service, sorted by zip code. In other words, the OPA seeks aggregated customer data sorted by specific CEP name and zip code and aggregated customer data by zip code with respect to standard offer service, and thus it states it does not seek customer-specific information.¹ While the OPA expects to expand its request later, it currently has limited the scope of its request to a single month, April 2024.²

As to whether the requested CEP data is confidential, the OPA states it understands that a standard form contract between the utilities and CEPs includes a

¹ Customer-specific data is confidential. 35-A M.R.S. § 704(5) (providing public utility customer-specific information is confidential); *id.* § 3203(18) (protecting CEP customer-specific information as afforded by 35-A M.R.S. § 704(5)).

² The OPA seeks a Commission order allowing access to data from April 2019 through April 2024, but states it intends to start its research with a smaller sample of data, which would consist of data for a single month, April 2024. Thereafter, it expects that any additional data request would be limited to a single month, April of each year.

broad confidentiality provision that covers all business, financial, and commercial information pertaining to the utilities and each CEP. The OPA explains the standard form contract contains a provision authorizing the utilities to disclose confidential information if such disclosure is made pursuant to any applicable law, regulation, ruling, or order. For this reason, the OPA states CMP and Versant will not provide the OPA with the requested data absent a Commission order authorizing them to disclose the CEP data.³ The OPA believes that CEPs have varying positions as to whether and to what extent the requested data is confidential, and it asserts authorizing the utilities to provide the OPA with the requested data would be like the provision of access the Commission afforded the OPA to CEP annual reports, under protective order. *Maine Public Utilities Commission, Protective Orders for 2023 Competitive Electricity Providers Annual Reports*, Docket No. 2024-00003, Amended Protective Order (May 10, 2024). The data requested here, however, would be provided directly to the OPA as discussed below.

C. Maintenance of Requested Data

The OPA states it will receive and maintain the confidentiality of the requested data. While the OPA requests data sorted by CEP name, it states it will not disclose the identity of any specific CEP in any report or public release of its analysis of CEP pricing information. Further, the OPA indicates it does not object to a provision in a Commission order that would prohibit it from releasing the identity of any individual CEP in connection with any report or release for the CEP pricing information. As to maintaining confidentiality, the OPA does not explain how it manages confidential data but rather states “[b]ecause of its small size, the OPA has an informal confidential information management system that carefully protects the confidentiality of any information received pursuant to a Commission Protective Order.” The OPA indicates CMP and Versant are willing and able and do not object to providing the requested data, subject to a Commission order directing the utilities to do so.

III. UTILITY COMMENTS ON OPA REQUEST

CMP and Versant each filed comments on the OPA’s request. CMP states, subject to receiving a Commission order authorizing the disclosure of the requested data to the OPA and its consultant, it does not object to providing the requested data for the month of April for the past six years. Similarly, Versant states it has only agreed to provide data from the month of April for the past six years. As to the amount of time to

³ From the initial filings in the docket, it was unclear whether the utilities were willing to provide the OPA with aggregated customer data related to standard offer service sorted by zip code without a Commission order authorizing them to do so. During the comment/exception period on a staff recommendation, CMP and Versant provided additional comment to address whether this subset data should be treated as confidential and why or why not they are willing to provide this subset of data with or without a Commission order authorizing them to do so. These additional comments are summarized in the staff recommendation section below.

prepare such a dataset, CMP estimates it would take approximately 120 hours to gather the requested data, and Versant states it has already spent 40 hours and expects an additional 20 hours would be required to fulfill the request. Both utilities state that the cost to produce the requested data is already incorporated into rates, and therefore there would be no additional cost to ratepayers. Other work, however, would be delayed while employees gather the data requested by the OPA.⁴

IV. CEP COMMENTS AND ARGUMENT IN OPPOSITION TO REQUEST

C.N. Brown Electricity, LLC (C.N. Brown)⁵ and NRG Energy, Inc., and its affiliates (NRG)⁶ filed comments, objecting to the request.⁷ These CEPs assert that the OPA has not identified a legal basis to obtain the requested data and that such information is confidential business information and not subject to disclosure by the utilities.

More specifically, C.N. Brown and NRG contend the requested data is not within the scope of the OPA's authority to investigate, the OPA has not identified a specific need for the requested data, and thus there is no legal basis to obtain the requested data. C.N. Brown notes that the OPA's authority under section 1702(1)(B) relates to the reasonableness and adequacy of service furnished by CEPs, and because Title 35-A does not regulate the rates at which competitive electricity service is provided, the OPA's request for information like supply rates, fees charged, and amounts billed, is beyond the scope of the OPA's authority to investigate. NRG concurs in that it states,

⁴ The OPA states it worked proactively with the utilities to limit the administrative burden on CMP and Versant in providing the requested data. To that end, the OPA states it has started with a smaller sample to allow it and the utilities to gauge the administrative burden of the request and to thereafter make any necessary adjustments to the way in which the data is compiled and provided to the OPA.

⁵ CN Brown is a licensed CEP in Maine. *C.N. Brown Electricity, LLC, Application for License to Operate as a Competitive Electricity Provider*, Docket No. 2012-00359.

⁶ Each affiliate listed by NRG Energy, Inc. is a licensed CEP in Maine, namely: *Direct Energy Business, LLC, Application for License to Operate as a Competitive Electricity Provider*, Docket No. 2011-00201; *Direct Energy Services, LLC, Application for License to Operate as a Competitive Electricity Provider*, Docket No. 2005-00479; *Reliant Energy Northeast, LLC, Application for License to Operate as a Competitive Electricity Provider*, Docket No. 2015-00224; and *Xoom Energy Maine, LLC, Application for License to Operate as a Competitive Electricity Provider*, Docket No. 2012-00596.

⁷ To the extent the OPA seeks customer-specific information, CN Brown and NRG object as they state release of such information would require consent by the customers. As explained in this Order, however, the OPA seeks CEP-specific and data specific to standard offer service providers but does not seek customer-specific data as it asks for only aggregate customer data.

absent a specific allegation, complaint, or Commission proceeding there is no basis for such broad sweeping discovery on all licensed CEPs. Thus, their position is that the OPA is authorized to seek access to CEP business information only in support of a Commission investigation of specific actions by specific CEPs, and NRG states, “[I]f the legislature wished to authorize the type of fishing expedition proposed by the OPA, it would have clearly said so.”

NRG further centers its comments on the proprietary nature of the requested data. NRG states the CEP data belongs to the CEPs and is highly sensitive. Its position is that the requested data “is at the heart of the individual CEPs’ operations, business strategies, and relationships with individual customers. The information must be protected from disclosure to and use by any other party, particularly parties hostile to the CEPs and Maine’s current structure for energy competition.” Its position is that the OPA has not demonstrated a legal basis to obtain the requested data, and that even if it did obtain the information, it could not guarantee the confidentiality of the information it seeks.

V. STAFF RECOMMENDATION AND ADDITIONAL COMMENT

Following receipt of the arguments summarized above, Commission Staff issued a recommended decision. In that recommended decision, as noted in footnote 3 above, Staff requested the utilities clarify whether the utilities were willing to provide the OPA with aggregated customer data related to standard offer service providers sorted by zip code without a Commission order authorizing them to do so, and Staff otherwise recommended that the Commission deny the OPA’s request.

During the comment/exception period on the Staff recommendation, CMP, the OPA, and the American Association of Retired Persons Maine (AARP) made filings in the docket. Although the Commission requested clarification of both utilities, CMP alone provided additional comment to address whether the subset of data related to standard offer service providers should be treated as confidential. CMP stated that this subset of data would also require a Commission order to be subject to disclosure to the OPA because its standard form contract with the standard offer service providers, like its standard form contract with the CEPs, prohibits it from disclosing business, financial, and commercial information absent an order to do so. The OPA and AARP opposed the Staff recommendation.

VI. LEGAL STANDARD

The Commission regulates CEPs and standard offer service providers. As to CEPs, the Commission is broadly authorized to investigate the retail, competitive sale of electricity in the State of Maine. 35-A M.R.S. § 3203(13-A) (authorizing Commission to

investigate any matter relating to the provision of service by a CEP).⁸ As to standard offer service providers, Commission rule requires that they be licensed and, upon providing service, enter into contracts with the transmission and distribution utilities with terms governing, for example, billing. MPUC Rules, ch. 301, §§ 3, 5.

In any investigation, the Commission treats proprietary business information as confidential, 35-A M.R.S. § 1311-A(1) (authorizing protective orders to protect confidential proprietary information, trade secrets, or similar matters as provided for by the Maine Rules of Civil Procedure), and with specific regard to CEPs, Title 35-A authorizes the Commission, subject to appropriate protective orders, to "require the submission of individual service contracts or any other confidential information from a competitive electricity provider," *id.* § 3203(3).

The Commission, however, does not regulate the rates of CEPs, and likewise the OPA is not authorized to formally investigate, as a legal matter, the rates of CEPs. Post restructuring, CEPs operate in a competitive market in Maine. *Id.* § 3202(2) ("Except as otherwise provided in this chapter, competitive electricity providers are not subject to regulation under this Title on or after March 1, 2000."), § 3209(9) ("The commission may impose by rule any additional requirements necessary to carry out the purposes of this chapter, except that this section may not be construed to permit the commission to regulate the rates of any competitive electricity provider.") Therefore, as a matter of formal investigatory authority the Commission regulates the service of CEPs and likewise the OPA is authorized to investigate the service of CEPs. 35-A M.R.S. § 1303(2), § 1701(1)(B), § 3203(13-A).

VII. DISCUSSION AND DECISION

As a preliminary matter, the Commission concludes the CEPs' objection to and the utility's position on the necessity of a Commission order with respect to the OPA's request is warranted. Following restructuring and the establishment of a competitive market, the requested CEP data is proprietary business information for which the Commission would grant protective treatment. For example, the Commission places customer count and sales information sorted by utility service territory under protective order, *Maine Public Utilities Commission, Protective Orders for 2023 Competitive*

⁸ As to Commission oversight, Title 35-A directs the Commission to license CEPs to provide for effective competition in the market for the sale of electricity. 35-A M.R.S. § 3203(1) & (6). To promote effective competition, the statute provides customer protection standards, for example CEPs must comply with the provisions of the Maine Unfair Trade Practices Act and any standard set by Commission rule. *Id.* § 3203(4-A). The statute directs the Commission to adopt rules to protect and promote market competition, and to protect retail customers from fraud and unfair and deceptive business practices. *Id.* § 3203(6). To that end, Chapter 305 of the Commission's rules provides licensing requirements, customer protection standards for the promotional and trade practices of CEPs, and finally defines the authority of the Commission to take enforcement actions against CEPs. MPUC Rules, ch. 305.

Electricity Providers Annual Reports, Docket No. 2024-00003, Amended Protective Order at 1-2 (May 10, 2024), and the data requested here is at an even finer granular level, for example by zip code. Similarly, as noted by CMP, the utilities' contracts with the standard offer service providers include a broad confidentiality provision applicable to commercial information. The Commission, therefore, considers whether the OPA has the authority to obtain the requested confidential data.

The Commission concludes the OPA does not have statutory authority to conduct an investigation of CEP rates in relation to obtaining the confidential data requested in this docket. While the OPA is authorized to conduct its own investigations of CEPs as to the reasonableness and adequacy of service furnished, 35-A M.R.S. 1702(1)(B), the OPA has not identified a provision of law authorizing it to obtain the requested confidential information for a purpose outside of a Commission investigation.⁹ As set forth in the legal standards section above, the statute authorizes the OPA to investigate only the service provided by CEPs, not rates, as compared to the OPA's authority to investigate the service provided and the rates charged by public utilities.¹⁰ 35-A M.R.S. § 1702(1)(A). As acknowledged by the OPA, there is no open Commission matter generally investigating the acts and practices of CEPs, and therefore there is no

⁹ With the adoption of the Electric Industry Restructuring Act, effective March 1, 2000, 35-A M.R.S. § 3202, the Legislature deregulated the supply of electricity, and as set forth in this Order specifically provided that CEPs are not subject to price regulation. That said, as set forth in footnote 8, the Commission has broad oversight authority over CEPs. Thus, while the Commission denies a request in this docket expressly focused on CEP pricing and not CEP rates in relation to the provision of CEP service, the scope of the Commission's authority under Title 35-A is certainly sufficient to require an examination of CEP rates when regulating and investigating whether any CEP has satisfied, for example, applicable licensing requirements and customer protection standards.

¹⁰ Nothing in this Order is intended to suggest that either the Commission or the OPA is prohibited from examining the rates of the CEPs. For example, by report dated February 15, 2028, the Commission analyzed the price difference between CEPs and standard offer service providers and submitted a report to the Maine Legislature with a comparison of CEP and standard offer pricing over the period of 2014-2016. However, that report was the result of a specific directive by the Legislature in P.L. 2017, ch. 74, which directed the Commission to conduct the price difference analysis. In conducting the analysis, the Commission relied on publicly available information published by the US Energy Information Administration in its Form 861. The Commission did not, in preparing its report, seek confidential CEP information from the utilities of the sort OPA seeks here. A copy of the report is available on the Commission's website: <https://www.maine.gov/tools/whatsnew/attach.php?id=787968&an=1>

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legal basis to authorize the requested disclosure.¹¹

The OPA states the purpose of the requested data is to conduct studies and write reports requested or required by the Legislature. In the last legislative session, however, the OPA presented a bill, LD 2163 (131st Legis. 2023), that would have authorized the OPA to require utilities and CEPs to provide the OPA with confidential information regarding sales by CEPs and standard offer service providers. This language was ultimately removed from the bill that was adopted. P.L. 2024, ch. 636. Given that the Legislature chose not to adopt the OPA language, it would be inappropriate to press the limits of the Commission's authority and order the release by CMP and Versant of the very same data. When the Legislature intends for a state agency or public instrumentality to have access to confidential information for a specified legal purpose, it expressly provides for it. See, e.g., 35-A M.R.S. § 10104(4)(A)(1) (requiring utilities to furnish data to the Efficiency Maine Trust upon request in support of Trust's efficiency initiatives, subject to confidential treatment provided by the Commission and as requested by the utilities).¹²

¹¹ For this reason, the OPA's request for a Commission order authorizing the utilities to provide the requested data to the OPA is not in the nature of the Commission having provided the OPA with access to CEP annual reports in Docket No. 2024-00003. CEPs file their annual reports in the Commission's electronic case management system (CMS) as required by Commission rule, MPUC Rules, ch. 305, § 2(E) and ch. 311, § 7(G), and to the extent the reports contain confidential information they are securely filed under protective order. Thus, the confidential information is collected for a regulatory purpose and securely maintained in the Commission's CMS. The Commission further notes that access was provided to the OPA in Docket No. 2024-00003 after notice to the CEPs and without objection.

¹² The Commission notes that, in instances where the Commission has authorized access to confidential information outside of the Commission's formal proceedings, it has required a demonstration of a protective scheme having been put into place to ensure the proper handling of confidential information. *Efficiency Maine Trust, Request to Order Participating Utilities to Provide Data to Initiate Program*, Docket No. 2011-00213, Order (Aug. 10, 2011) (requiring adoption of confidential information management system (CIMS)), Compliance Order (Jan. 11, 2012) (approving CIMS); *Efficiency Maine Trust, Request for Protective Order*, Docket No. 2016-00234, Temporary Protective Order No. 2 (Feb. 2, 2017) (granting access to confidential data under approved CIMS). The OPA has made no such showing here.

VIII. CONCLUSION

For the foregoing reasons the OPA's request that the Commission authorize CMP and Versant to provide the OPA and its consultants with the requested data is denied and to the extent the OPA wants such data the Commission recommends the OPA seek specific legislative authority to obtain the information it seeks.

Dated at Hallowell, Maine this 16th Day of July, 2024

BY ORDER OF THE COMMISSION

/s/ Amy Dumey
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
Scully
Gilbert

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.



The Fallacies of the Reform of Electricity Supply: CEP-Served Residential Retail Electric Market Study Report

A Response to the Maine Office of Public Advocate

Prepared on behalf of nrg.

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I. Introduction

The report¹ submitted by the Maine Office of Public Advocate (“OPA Report”) pursuant to LD318, “Resolve, To Direct the Office of the Public Advocate To Study Reforming Maine’s System of Retail Electricity Supply To Provide More Options to Maine Customers and Support Maine’s Climate Goals” (Public Law 2021, Chapter 164) includes a one-sided and biased report prepared by one of the OPA’s hired a consulting firms entitled the *“Reform of Electricity Supply: CEP-Served Residential Retail Electric Market Report”*² (“OPA Consultant Report”). At its core, the OPA Consultant Report falsely claims that Maine residential customers “lose” \$20 million per year taking service from competitive electric providers (“CEP”).³ The report perpetuates this false claim and other related claims to recommend the abolishment of the residential retail electricity market in the state of Maine despite the fact that most CEP electric supply offers currently posted on OPA’s rate comparison website offer significant savings over prevailing 2023 Maine utility Standard Offer Service (“SOS”) rates. For example, NRG’s retail brand affiliate, XOOM Energy offers 12- and 24-month residential fixed price products to all Maine residential customers that save them 26% over the Central Maine Power (“CMP”) SOS Small rate, 21% over the Versant Power (“Versant”) Bangor Hydro District SOS rate and 13% over the Versant Power Maine Public District SOS rate in every month of 2023.⁴ If all residential customers currently served by CMP and Versant SOS took advantage of the XOOM Energy offers the total market savings would be nearly \$190 million for 2023 alone.⁵ Hardly a \$20 million loss as purported by the OPA Consultant Report!

While the OPA Consultant Report proposed recommendation would clearly be deleterious to the state’s competitive retail electricity market, it would also infamously establish Maine as the first state in the nation to eliminate retail electricity choice -- a market that first began 23 years ago on March 1, 2000. Further, the OPA’s recommendation regarding its proposed public policy determinant concerning retail electricity choice casts a chilling effect that impacts all competitive or private sector enterprise currently in the Maine or desires to invest in the future. Today, the OPA is attacking the retail electricity supply industry, but its recommendation may similarly impact other private

¹ State of Maine Office of Public Advocate - Retail Electricity Supply Study Report (February 1, 2023)

² Reform of Electricity Supply: CEP-Served Residential Retail Electric Market (February 1, 2023) prepared by Susan M. Baldwin and Timothy E. Howington.

³ See OPA Consultant Report, page 1

⁴ See section *Retail Electric Choice Can Offer Significant Savings Opportunity*

⁵ See section *Retail Electric Choice Can Offer Significant Savings Opportunity*

enterprise and related business sectors in the future, including home heating oil, telecommunications, and cable television, etc. Moreover, the OPA's study paternalistically presumes Maine residential customers lack the knowledge, judgment, or expertise to make informed buying decisions pertaining to their energy supplier and thus, their freedom to choose their supplier must be eliminated for their protection. This view is wrong-minded and suggests a degree of elitism.

To be clear, competition is the key driver to obtain beneficial savings, attain new and innovative products and services and to enhance service quality and value to end-use customers. Nevertheless, the OPA Study proposes to eliminate residential retail electricity choice in the State of Maine, ignoring both the letter and spirit of LD 318.

II. Failure to Address the Directives of LD318

Before addressing the core elements of the OPA Consultant Report, it is important to address how the overall OPA retail study failed to address the legislative directives set forth in the LD318 from the 2022 legislative session. In this regard, OPA's performance in this matter falls short.

Firstly, in Sec. 1. of LD318, the "Resolve" states "*that the Office of the Public Advocate shall conduct a study of options for reforming the State's current system of retail electricity supply in ways that will provide greater competition among retail electricity supply providers (emphasis added) and more options and protections for customers, including access to renewable and clean energy supply options. The office shall examine options relating to the State's standard offer system for facilitating the achievement of the State's climate goals and beneficial electrification.*"

 **Nonetheless, the OPA's No. 1 recommendation calls for the discontinuance of the residential retail electricity market effective January 1, 2024. The OPA Study lacks any constructive recommendations and/or initiatives to enhance or provide greater competition among retail electricity supply providers.**

In Sec. 2. of LD318, the "Resolve" states the "*Authority to retain consultant with regard to study on reform of retail electricity supply. That, in conducting the study under section 1, the Public Advocate may retain one or more consultants, including, to the greatest extent possible, persons from academic or research institutions in the State for analysis and report preparation*" (emphasis added).

 **While the OPA is quick to publicly castigate many of the Competitive Energy Providers ("CEPs") that may have headquarters based outside of the state of Maine (as though that somehow negates conducting business in Maine), the OPA did not fully disclose the two**

lead consulting firms that prepared the OPA Study are located out of state. SM Baldwin Consulting in Boston, MA and Exeter Associates is located in Columbia, Maryland. It is not entirely clear how these two consulting firms were selected and the OPA's efforts to seek out persons from academic or research Institutions in the State of Maine for analysis and report preparation.

In Sec. 3. of LD318, the "Resolve" states that in conducting the study, the Public Advocate shall ensure that, at a minimum, the following issues are examined.

1. The Public Advocate shall examine methods of protecting customer rights and interests including through the establishment of a public access website portal through which customers may obtain information on and shop for competitive electricity supply. The Public Advocate shall examine the feasibility of a publicly accessible website maintained by the Public Utilities Commission or by the Office of the Public Advocate that provides current, independent and objective information that allows customers to compare terms, conditions and prices and value-added service offers provided by competitive electricity providers, as well as any other information the Public Advocate or the commission determines would be useful to customers. The Public Advocate shall consider how to ensure customers may use the website to easily access external publicly accessible websites where customers may review offers and contract details and execute agreements electronically.

❖ Despite the willingness and interests of CEPs to design and help implement a public access website portal that provides electricity consumers, especially residential consumers, with a consumer-friendly, easy to navigate shopping website that clearly discloses competitive rate plan offers, this important retail market enhancement receive limited consideration by the OPA.
2. The Public Advocate shall examine the development and adoption of customer protections that include at least the following:
 - A. Conditions for, or prohibitions on, any fees for residential customers seeking to change a product or pricing plan.
 - B. Credits for excessive call center wait times.
 - C. Education programs to inform customers about customer choices and protections and public service announcements by state agencies encouraging customers actively to shop for electricity supply options before winter and summer seasons when prices may be higher.
 - D. Options for allowing retail electricity suppliers to bill for their electricity supply, value-added services and products along with the local distribution company's regulated charges, as well as an examination of whether retail electricity suppliers should be allowed to collect electricity bills that include value-added services and products other than generation supply service and whether nonpayment of those portions of electricity bills should be subject to the threat of disconnection of service;

- E. Publication, at least annually, of a competitive electricity provider report card that includes, but is not limited to, levels of verified complaints filed with the Public Utilities Commission against electricity providers.
- F. Examining the advantages and disadvantages of variable-rate contracts for residential customers.
- G. Requiring renewable energy products marketed by retail electricity suppliers to be consistent with the State's renewable energy resources laws.
- H. Examining whether retail electricity suppliers should be allowed to conduct door-to-door sales only if the individual personally attempting to make a sale is employed by and supervised by the retail electricity supplier and whether the State's existing consumer protection laws adequately protect the State's retail electricity consumers; and
- I. Programs to protect low-income customers that incorporate energy equity considerations, including but not limited to a hardship program that provides grants to qualifying low-income customers on an annual basis; a payment extension program that allows a qualifying low-income customer additional time to pay a bill without the threat of termination; a payment plan program that allows qualifying low-income customers to pay the balance owed in installments along with the regular monthly bill; a bill discount program that provides qualifying low-income customers with a fixed discount on their monthly bill; and other programs designed to increase access to renewable energy for such customers.



While the OPA Consultant Report does indeed provide recommendations related to consumer protections, many of the proposed measures are presented in a highly punitive manner directed at CEPs and customers alike. For example, one recommendation called for the prohibition of variable rate products by CEPs. With the substantial investment of ratepayer dollars and deployment of advanced or smart meter technology throughout the CMP and Versant service territories, it seems short-sighted to remove the ability of a residential customer to obtain beneficial time-varying rate ("TVR") designs, especially for those residential customers that have PV solar, electric vehicles, battery storage and/or heat pumps. CEPs like NRG can provide TVR products that can provide free nights and weekends or offer energy saving devices designed to help customers reduce or shift their energy loads to off-peak times when the price of electricity is less expensive.

Another recommendation proposes to discontinue CEP service for those participating in energy assistance programs, despite beneficial savings that can be realized by these consumers. It is important to note that a similar recommendation was put forth in the state of Connecticut based on flawed assumptions and related methodologies provided by author of the OPA Consultant Report that unfortunately led to the inability of economic hardship customers to shop for lower electricity rates offered by competitive retail suppliers. The action resulted in thousands of customers being denied their right to

obtain lower electricity rates. Accordingly, House Bill No. 6724⁶ was introduced in the Connecticut General Assembly this session to provide these customers some degree of rate relief. The pending legislation would allow customers who are designated “hardship cases” to enroll with a retail electric supplier for their electric generation service if their contracts with the suppliers are entered into on or after March 1, 2023, for the standard service rate or less.

Short of the abolishment of residential retail electric choice in the state, as proposed by the OPA Consultant Report, companies like NRG are prepared to work within the legislative and regulatory arenas to develop and strengthen consumer protection measures as well as new retail market enhancements that protect and provide greater value to Maine’s electricity consumers.

III. Fallacies of the OPA Consultant Report

The OPA Consultant Report is a largely a one-sided, opinion-based paper that masquerades as serious, scientific analysis. However, the report is a highly sensationalized review devoid of critical analysis or research. The OPA Consultant Report draws upon data points from other jurisdictions and recirculates many anti-competition themes that have been repudiated and discredited based on flawed methodology and unsubstantiated data. For example, the OPA Consultant Report presents rudimentary Energy Information Administration (“EIA”) data, compares it to known Maine utility Standard Offer Service (“SOS”) rates from 2021 and falsely claims that proves Maine’s residential electricity market must be abolished. The report further accuses CEPs of providing “fraudulent” renewable or green energy products to their customers despite providing no evidence to support this claim. The report was drafted in a manner that offered little analytical or scientific methodology in its investigation of the Maine retail electricity market. Nevertheless, despite any analytical findings, the report assails CEPs with pre-conceived and unfounded conclusions resulting in recommendations that the competitive retail electricity market is harmful and needs to be eliminated in favor of a return to utility monopoly supply service. As this report will demonstrate, the OPA Consultant Report presents an elementary view of the Maine residential market, ignores the current state of SOS rates, and downplays the benefits of consumer choice. Accordingly, the report and its unprecedented as well as unsettling recommendations should not be used to deny Mainers their right to choose.

⁶ House Bill No. 6724 at 18- <https://www.cga.ct.gov/2023/FC/PDF/2023HB-06724-R000029-FC.PDF>

A. Overview and Critique of the OPA Consultant Report

Notably, the OPA Consultant Report claims that Maine “policy makers should phase out the residential retail electric supply market”⁷. The reasoning the OPA Consultant Report puts forth is the following:

- 1) *CEP Customer Decision Making* – the OPA Consultant Report implies that Maine residential customers, and low-income customers in particular, lack the ability to make informed buying decisions and therefore, they should be denied the ability to purchase CEP electric products as an alternative to utility SOS. In other words, choice should be taken away from these customers for their own good. This highly paternalistic viewpoint demeans Maine residential customers, who make complex purchasing decisions every day without assistance. Further, the OPA Consultant Report appears to treat all residential customers as a homogenous class that make uniform buying decisions as well as simply ignores or fails to appreciate the multi-faceted reasoning behind customer purchasing decisions. For example, three-fifths of Maine households use fuel oil as their primary energy source for home heating, a larger share than any other state in the United States⁸. Mainers are perfectly capable of making affirmative buying decisions when it comes to home heating oil. These energy consumers can lock into a fixed price contract for a fixed term of service or opt for a month-to-month variable priced contract. Nevertheless, the OPA Consultant Report suggests that there is a dramatic distinction between home heating oil and competitive electricity supply.
- 2) *CEP Product Innovation* – the OPA Consultant Report uses the word “innovation” multiple times to state that “there is no evidence of” CEP product innovation⁹, yet never defines the term “innovation” or explains what threshold must be met for a product to be considered “innovative.” As such, the OPA Consultant Report simply states an opinion unbacked by reason, analysis, or evidence of any kind, yet insists this opinion be considered by regulators as a key motive to abolish retail consumer choice. However, for innovation to flourish and thrive, it requires the appropriate business and regulatory environment to do so. As a member of the OPA Retail Study Stakeholder Advisory Group, NRG noted the types of product innovation that could be deployed in Maine -- products

⁷ See OPA Consultant Report, page 4

⁸ U.S. Energy Information Administration (EIA) - Maine State Energy Profile (September 15, 2022)

⁹ See OPA Consultant Report, page 1



that have already been placed into other markets. Beneficial products that are generally “bundled” with electricity supply such as community solar, residential battery storage, EV chargers, home energy management devices, home security technology, home warranty plans, to name of few. However, as stated above, to make the necessary level of capital investment to provide these innovative products and services, the business and regulatory environment need to remain stable and open to competition. The primary recommendation of the OPA Consultant Report which calls for the discontinuance of the residential retail electric market effective January 1, 2024, is the antithesis of a stable market environment. Contrarily, NRG believes that choice and competition benefit consumers. Moreover, NRG has a vision to help improve the retail electricity market through product innovation, competitive pricing, and enhanced consumer protection measures.

- 3) **CEP Economic Contribution** – despite having no analytical basis and citing only rudimentary data analysis, the OPA Consultant Report declares that the “*opportunity cost...of continuing the residential CEP market is substantial*”¹⁰ and that CEPs don’t contribute to Maine’s economy because “with one exception, the CEPs that serve Maine’s households are headquartered out of state”.¹¹ The OPA Consultant Report clearly reflects a highly biased opinion that is only intended to discredit CEPs by suggesting that they need to be headquartered in Maine in order to provide value and quality service to Mainers. However, leading companies like Walmart, Apple, Staples as well as countless others are not headquartered in Maine. Yet, CEPs are being held to a different standard despite providing electricity supply products that Mainers buy by their own choice. Finally, it is hypocritical of the consultant to publicly criticize CEPs for being headquartered out of state when she herself does not reside in the State of Maine and yet is all too happy to take Maine taxpayer funding dollars.
- 4) **CEP Pricing** – using only high-level data downloaded from U.S. Department of Energy EIA, the OPA Consultant Report declares that CEPs charge more to serve residential customers than they should so Maine should return to the old utility monopoly model that was in place 23 years ago. The report once again suggests that a paternalistic and heavy hand

¹⁰ See OPA Consultant Report, page 1

¹¹ See OPA Consultant Report, page 16

must be imposed on residential customers for their own good and their right to make their own informed buying decisions should be eliminated. The OPA Consultant Report does this without any serious analysis of CEP product pricing, and completely ignores the consequences of utility monopoly pricing.

- 5) *The Gap Between Maine Utility SOS and CEP Pricing* – the OPA Consultant Report declares that the gap between CEP residential prices and utility SOS residential prices “increased in recent years.”¹² Setting aside that this so-called gap is meaningless, even the OPA Consultant Report’s own debatable definition of “recent years” illustrates no such trend. Additionally, the most “recent years” we currently know of are 2022 and 2023 which saw CMP residential SOS prices rise by a whopping 173% from 2021 and Versant prices rise by 165%. While the OPA Consultant Report conveniently omits 2022 and 2023 from their CEP/SOS price gap analysis, it is highly doubtful the so-called increasing gap would have manifested in those years. Moreover, the OPA Consultant Report clearly demonstrates the analytical “gymnastics” the consultant used to arrive at a pre-conceived narrative based on a flawed methodological approach.
- 6) *Renewable Products* – the OPA Consultant Report declares that, despite not knowing the composition of CEP renewable or green energy products, such products do not meet the OPA Consultant Report’s measure of “green.” As such, no CEP green energy products actually exist, but the ones that do are overpriced. All of Section 6 of the OPA Consultant Report is spent either accusing CEPs of offering “fraudulent” green products or restating basic information about renewable energy standards, yet never offers evidence (much less proof) that CEP green energy products are anything other than what CEPs claim them to be. Moreover, instead of appropriately using the role of “consultant” as part of the OPA Retail Study Stakeholder Advisory Group, to objectively examine voluntary renewable energy products and the types of enhancements that can be made to better inform electricity consumers of green energy products, the author of the OPA Consultant Report chose to level false accusations against CEPs. NRG believes a constructive recommendation would relate to enhancing the customer-facing Environmental Disclosure Label to make the label contents easier to interpret and understand the type of product the customer is purchasing.

¹² See OPA Consultant Report, page 2

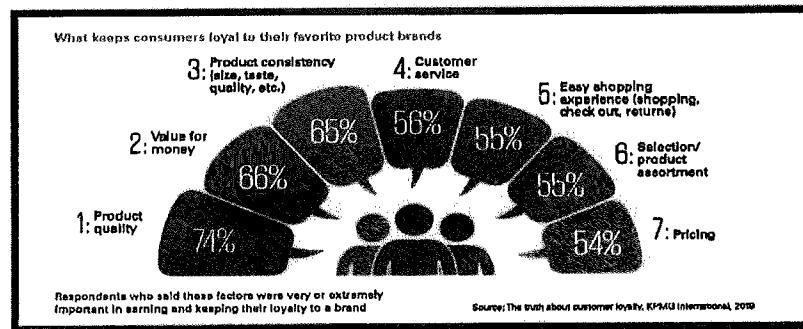
Finally, noticeably absent from the OPA Consultant Report is any discussion of whether Maine residential customers want the right to choose their energy supplier abolished and discontinued in favor of utility monopoly supply service. After twenty-three years, the opponents of retail electricity competition want to deny the right of Mainers to make an affirmative choose. It bears reiterating that customers are free to remain on utility SOS service if they prefer to, and yet not all of them do. A competitive market exists precisely because different consumers have different preferences, needs and motivations. It is not for the OPA Consultant Report to decide what is best for all residential customers in Maine.

B. Debunking the OPA Consultant Report: A Detailed Examination

1. CEP Customer Decision Making

Opponents of retail electricity choice continually put forth a false narrative that choosing one's energy supplier is too complicated and beyond the capacity of residential consumers. However, residential customer purchasing decisions, whether for electricity or other products and services, are based on a range of overlapping factors. Consumers routinely make everyday purchase decisions for common items such as food, clothing, consumer goods, electronics, etc. Customers also engage in more complex purchase decisions for things like insurance, lease and rental agreements, financial services, entertainment subscriptions, and mobile phone and internet service. Shopping for a CEP is no more complex than these other everyday purchase decisions that customers are accustomed to making. In making these everyday buying decisions, consumers are motivated by various factors. The snapshot below from a 2019 KPMG report¹³ summarizes some of the dimensions of consumer shopping decisions. This report summarizes the findings of a survey of thousands of customers worldwide.

Diagram 3.1: Results of KPMG Report



¹³ Consumers reveal what keeps them coming back - KPMG Global



Of particular note, while price is an important factor in purchasing decisions, it is not the only important factor or even the most important factor according to the study.

While it may be easy to presume that electricity service is homogenous, CEPs offer a range of products differentiated along the same consumer preference dimensions:

Table 3.2 – CEPs Serve Consumer Preference Factors

Consumer Preference Factors	Differentiation Opportunities for Retail Energy Supplier Products
<ul style="list-style-type: none">• Product Quality / Consistency	<ul style="list-style-type: none">• CEP brand reputation• Complaint history• Ease of enrollment, billing accuracy, customer service quality
<ul style="list-style-type: none">• Value for money	<ul style="list-style-type: none">• CEP price competitiveness• Value of amenities, perks, etc.• Availability of fixed price options• Total bill management solutions (energy efficiency, etc.)
<ul style="list-style-type: none">• Customer service	<ul style="list-style-type: none">• Customer service experience for billing questions, renewal process, etc.• Complaint handling• Quality and type of ongoing customer communications (service portals, consumption analysis, expiration/renewal notices)
<ul style="list-style-type: none">• Easy shopping experience	<ul style="list-style-type: none">• Ease of enrollment process• Troubleshooting enrollment problems• Ease of price discovery and product comparison
<ul style="list-style-type: none">• Selection/product assortment	<ul style="list-style-type: none">• Availability of varying term lengths• Green energy options• Bundled products and services• Amenities/perks
<ul style="list-style-type: none">• Pricing	<ul style="list-style-type: none">• Competitiveness of supplier price versus other options (utility, other suppliers)• Term of service available• Competitiveness of renewal pricing• Availability of longer term, fixed price offers

The OPA Consultant Report ignores the possibility that Maine residential customers can make rational buying decisions for themselves, and simply assumes customers that sign up for higher priced CEP service are incapable of understanding CEP products. The consultant appears to dismiss that some customers may want a longer-term contract with a fixed rate plan that can provide a customer with price certainty and predictability for 12-, 24- or 36-month term of service. Regardless, the OPA Consultant Report failed to examine or ignore a recommendation to develop new consumer educational and outreach initiatives that would constructively assist Mainers to make better and more informed buying decision, e.g., fixed vs. variable rate plans, rate plan offers without early termination fees, reasonable buying opportunities, etc.

2. CEP Product Innovation

Based on the Eco Watch website¹⁴ and data provided by XOOM Energy, as result of Maine's electric market restructuring and retail choice, at the very least, the following CEP products are offered to residential customers that Maine regulated utilities do not offer:

- ❖ Variable one-month products
- ❖ Variable price products with two months fixed price
- ❖ Variable price products with three months fixed price
- ❖ 6-month fixed price products
- ❖ 7-month fixed price products
- ❖ 12-month fixed price products at start and end dates different from the utility
- ❖ 18-month fixed price products
- ❖ 24-month fixed price products
- ❖ 100% renewable products
- ❖ Green products (products with higher percentage green than the state required minimum)
- ❖ Products that donate to charity
- ❖ Products that provide airline miles

In addition to the many products CEPs offer that utilities do not, CEPs also offer customer service different from the utility, technology such as customer web portals and other amenities that prove attractive to existing and potential customers. Every one of these things is an innovation that differentiates a customer experience from utility SOS service.

In addition, Maine utility SOS itself, which is unbundled from delivery rates and sourced from a competitive wholesale market that is kept honest due to a competitive retail market, is an innovation of electric deregulation. Further, it is electric deregulation at the retail level that has been instrumental in the advent of solar, wind, hydrogen, fuel cells and other technologies introduced across deregulated states, as CEPs connect with these technologies to bring them to their customer base. Furthermore, there are also demand side innovations such as smart thermostats and other energy saving devices that CEPs provide to their customers that reduce demand on the grid. To suggest, as the OPA Consultant Report does, that electric deregulation has resulted in no innovation simply ignores reality.

3. CEP Economic Contribution

Using no economic analysis, the OPA Consultant Report once again falsely claims that CEPs do not contribute to Maine's economy because only one CEP serving Maine is headquartered in Maine.¹⁵

¹⁴ <https://www.ecowatch.com/electricity/rates/me>

¹⁵ See OPA Consultant Report, page 16



Setting aside the absurdity that every CEP must be located in the state in order to contribute to a state's economy, nowhere in the OPA Consultant Report is there a discussion of even basic economic questions such as:

- 1) Do CEPs serving Maine pay taxes to the State of Maine?
- 2) Do CEPs serving Maine employ Maine residents as direct employees or contractors?
- 3) Do CEPs serving Maine employ companies in Maine such as marketing firms, sales firms, brokers, law-firms, lobbyists, etc.?
- 4) Do CEPs serving Maine rent or own office space or other real estate in the state of Maine?
- 5) Do CEPs serving Maine provide products that Maine residents opt to buy by their own choice?
- 6) Do CEPs serving Maine do business with Maine utilities and generators?

The answer to every one of the questions above is yes, yet the OPA Consultant Report simply ignores these key economic considerations.

The OPA Consultant Report also claims that CEP residential customers in Maine pay \$20 million more for CEP service annually than they would with utility SOS. The OPA Consultant Report makes this assessment based on a highly simplified analysis that compared basic EIA data to 2021 utility SOS prices. The EIA data used by the OPA Consultant Report is high-level and does not breakdown what competitive supply products were opted for by any residential customer, when a given product was purchased or how it compares to SOS prices for the term of the product. For example, did the competitive supply product include 100% renewable energy content, an extended term of service, smart devices, home warranty plans, rewards points, and gift cards, etc. It is highly likely that some residential customers saved money with CEP service, but regardless, customers opted for CEP service by their own volition. As such, claiming that there is a \$20 million opportunity cost is erroneous on its face as rational customers signed up for CEP service by their own choice.

The OPA Consultant Report's \$20 million figure also does not account for the high SOS price increases that occurred in 2022 and 2023. Again, the OPA Consultant Report conveniently ignored 2022 and 2023 SOS price data to better support its anti-competition narrative as opposed to conducting a more balanced analysis of Maine's retail electricity market.

4. Retail Electric Choice Can Offer Significant Savings Opportunity

XOOM Energy Offers Nearly \$190 Million in Savings Opportunities Over Utility SOS in CY2023

As of April 15, 2023, NRG retail brand affiliate, XOOM Energy offers 12- and 24-month residential fixed price products at a price of 12.99 cents per kWh available to any residential customer residing in CMP and Versant service areas regardless of zip code or customer income level.

Table 3.3: XOOM Energy Residential Supply Offers taken on 4/17/2023¹⁶

XOOM Energy	12.99	12.99	12 Months	No	888-997-8979
	12.99	12.99	24 Months		
	18.29 (50% Green)	17.19 (50% Green)	Variable		

By contrast, the SOS Small Customer Rate for CMP is 17.631 cents per kWh for 2023¹⁷, while the Versant - Bangor Hydro District SOS Small rate is 16.438 cents per kWh for 2023¹⁸ and the Versant - Maine Public District SOS Small rate is 14.879 cents per kWh for 2023.¹⁹ As such, the XOOM Energy rate offers CMP residential customers a savings of 4.641 cents per kWh or 26% over SOS, and offers Versant residential customers a savings of 3.448 cents per kWh or 21% in Bangor Hydro District and 1.889 cents per kWh or 13% in Maine Public District for all of 2023.

Taken across the 2023 calendar year, these savings are quite substantial. Using the same EIA data source as the OPA Consultant Report, residential customer counts and load are reported for CMP and Versant. The relevant data taken directly from EIA is provided in *Table 3.4* below.

Table 3.4: Maine IOU residential customer counts and load for 2021²⁰

2021 Utility Bundled Sales to Ultimate Customers- Residential

(Data from forms EIA-861-schedules 4A & 4D and EIA-861S)

Entity	State	Ownership	Customers (Count)	Sales (Megawatthours)	Revenues (Thousands of Dollars)	Average Price (cents/kWh)
Central Maine Power Co	ME	Investor Owned	503,190	3,600,474	693,980.0	16.46
Versant Power	ME	Investor Owned	126,991	806,993	143,018.4	17.68

Using values from *Table 3.3* and *Table 3.4* above, the total savings for each residential customer that takes advantage of the XOOM Energy rate can be derived for CY 2023:

Table 3.5: XOOM Energy Available Savings per Residential Customer in 2023

Year	Utility	SOS Small Rate (in \$ per kWh)	XOOM Energy Rate (in \$ per kWh)	XOOM Energy Savings (in \$ per kWh)	Residential Customer Annual Usage (in kWh) ²¹	2023 Residential Customer Savings with XOOM Energy Rate (in Total \$)
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¹⁶ <https://www.maine.gov/meopa/electricity/electricity-supply>

¹⁷ Standard Offer Rates for Central Maine Power - Residential and Small Commercial Customers | MPUC

¹⁸ Standard Offer Rates for Versant Power - Bangor Hydro District - Small | MPUC (maine.gov)

¹⁹ Standard Offer Rates for Versant Power - Maine Public District - Small | MPUC

²⁰ <https://www.eia.gov/electricity/data.php#sales>

²¹ Figures are derived by dividing Sales (Megawatt-hours) by Customers (Count) in *Table 2*



2023	CMP	\$0.17631	\$0.12990	\$0.04641	7,171	\$332.82
2023	Versant - Bangor Hydro District	\$0.16438	\$0.12990	\$0.03448	6,370	\$219.65
2023	Versant - Maine Public District	\$0.14879	\$0.12990	\$0.01889	6,370	\$120.34

Consequently, if all CMP and Versant customers opted to take service under the XOOM Energy rate, *the potential market wide savings would be approximately \$190 million, as illustrated in Table 4.0 below (see highlighted below)*. Moreover, XOOM Energy is prepared to offer this 12.99 cents/kWh rate offer to all residential customers in CMP and Versant service areas.

Table 3.6: XOOM Energy Available Savings for Residential Market in 2023

Year	Utility	2023 Residential Customer Savings with XOOM Energy Rate (In Total \$)	Customers (Count) ²²	Total Residential Market Available Savings for 2023 (in \$)
2023	CMP	\$332.82	503,190	\$167,469,278
2023	Versant	\$170.00 ²³	126,991	\$21,587,978
Total 2023 Available Savings				\$189,057,257

CEP Regulation v Monopoly Utility Regulation

The OPA Consultant Report also alleges that the Maine competitive market should be abolished because “Ensuring compliance with regulations (addressing consumer complaints and pursuing enforcement actions) is time-consuming and resource-intensive.”²⁴ This claim is simply another unsubstantiated attempt by the consultant to discredit CEPs, as one only needs to examine the time and resources required to regulate monopoly utilities. Cost of service regulation of a monopoly utility where ratepayers are effectively paying for the electric distribution service requires that every change in policy, product, system, pricing, and rate tariffs must be thoroughly investigated and approved by regulators through a time-consuming regulatory process, oftentimes in the form of an extensive rate case. Conversely, CEPs are supported by shareholder dollars that financially underpins their business

²² Based on EIA 2021 figures

²³ Figure derived by averaging the Table 3.0 figures for Bangor Hydro District and Maine Public District

²⁴ See OPA Consultant Report, page 1



model. Moreover, CEPs make independent business and administrative decisions without burdening regulators and operate within the confines of state law and regulations.

5. CEP Pricing

The OPA Consultant Report claims that in 2021 "The rates that CEPs charged Maine households in 2021 ranged between \$0.0670 per kWh and \$0.1708 per kWh".²⁵ This statement, however, is false and exhibits a lack of fundamental understanding regarding the EIA data that was relied upon. The OPA Consultant Report uses EIA data table EIA-861 schedule 4B for 2021²⁶. This data table, shows, among other things, the annual 2021 weighted average price charged by each CEP to residential customers in each state. It **does not show** (*emphasis added*) the high and low price charged by each CEP to residential customers, any specifics regarding CEP product term, product structure, green, add-on services, etc. For example, the OPA Consultant Report claims that the lowest price charged by a CEP in 2021 was \$0.0670 per kWh, but that is false. The \$0.0670 per kWh price is the "weighted average" price of all 2021 prices charged by a single CEP. As such, this charge is an average of prices both higher and lower than the price reported, meaning the lowest price charged by this CEP, much less any CEP, **cannot** be derived from this EIA table.

Additionally, the prices shown in EIA-861 schedule 4B encompass contracts that were entered into in previous years, as well contracts entered in each month of 2021. It simply cannot be known how much any one residential customer benefited from any individual CEP product. Finally, there is no accounting in EIA-861 schedule 4B of additional value provided by any CEP product above the base commodity. For example, locking in a price for two years may require a premium, and add-ons like green or additional benefits may impact the product price as well.

The bottom line is that the authors of the OPA Consultant Report fundamentally do not fully comprehend the EIA data sets that they are using in their assessment of the Maine retail electricity market yet are using this data to recommend the complete dissolution of the residential electricity market. Given the serious public policy implications, the impact on residential electricity consumers and chilling message that Maine is not open to business, one would expect a study with more gravitas and scientific rigor before denying residential customers their freedom to choose their energy supplier.

²⁵ See OPA Consultant Report, page 1

²⁶ [table12.xlsx \(live.com\)](http://table12.xlsx (live.com))

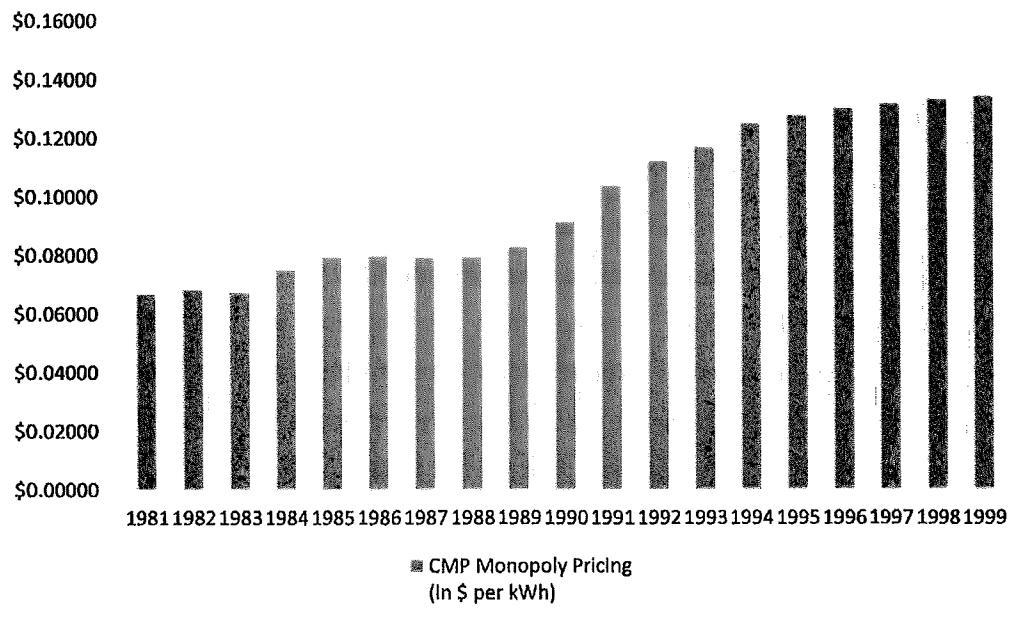
Monopoly v Competitive Pricing

Another key element ignored by the OPA Consultant Report is the change in Maine retail electricity pricing that took place as the result of deregulation. **Chart 3.7** below shows the history of CMP residential monopoly electric service prices from 1981 through 1999, the year right before deregulation began. This data was obtained from the CMP website.²⁷ Regrettably, we could not find equivalent data for Versant (BHE).

Chart 3.7: CMP Monopoly Pricing

CMP Residential Monopoly Pricing 1981 - 1999

*Assumes a residential customer using 750kWh per month
(in \$ per kWh)*



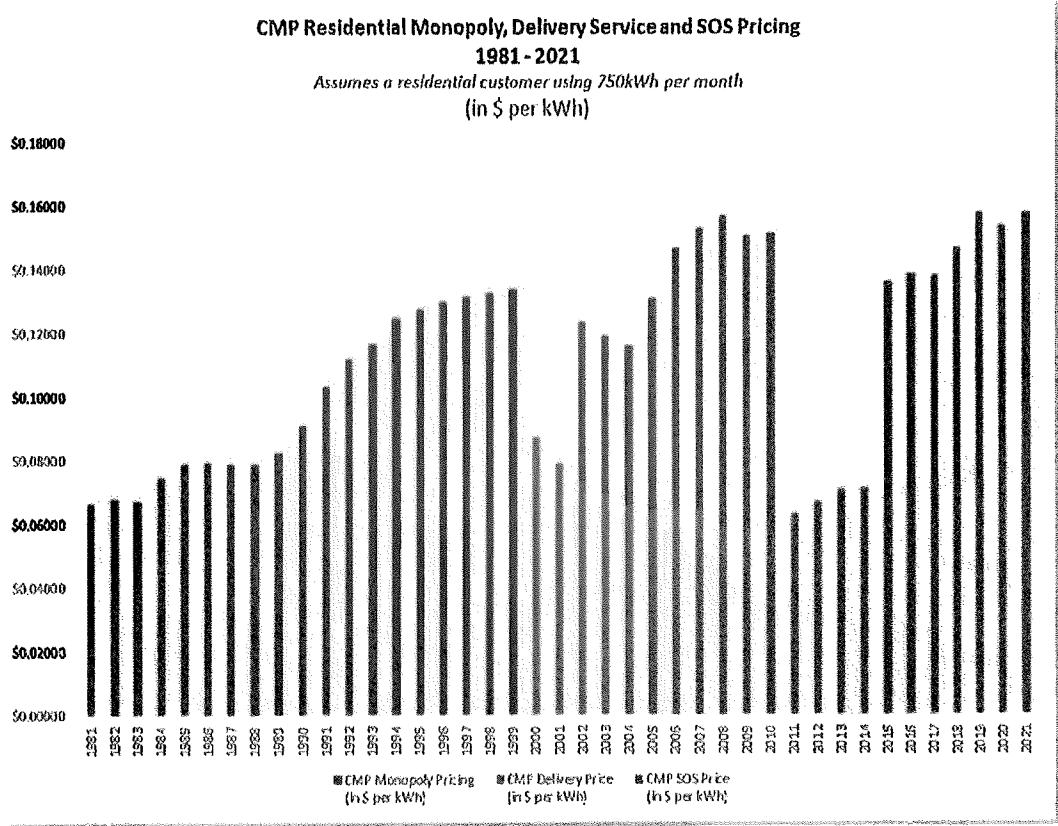
As shown in the chart, there was a consistent rise in the CMP monopoly price prior to deregulation. In fact, prices from 1981 to 1999 increased from \$0.06668 per kWh in 1981 to \$0.13391 per kWh in 1999, an increase of a 101% in just 18 years. This story is not unique to electric monopoly service across U.S. states, as, with few or no exceptions, monopoly utilities continually lobby regulators to approve rate increases over time. In 2000, when Maine deregulated, the CMP monopoly price split

²⁷ https://www.cmpco.com/wps/wcm/connect/cmpagrc/account/account/nc_understandyourbill/pricing/historicalpricing

into a delivery service price and an SOS price. Although we were not able to obtain the residential SOS price for each year in the set below, *Chart 3.8* shows how the CMP monopoly price prior to deregulation compares to the combined CMP residential delivery price plus SOS price (for the years we had data) from 2000 through 2021, a period of over twenty years.

Chart 3.8: CMP Monopoly and Unbundled Pricing

Note: I could not find CMP SOS prices for 2000-2001 and 2011-2014. As such, no SOS prices (denoted in blue) for those years appear on the chart. However, this does not change the point of the chart, or the conclusions reached by the chart.



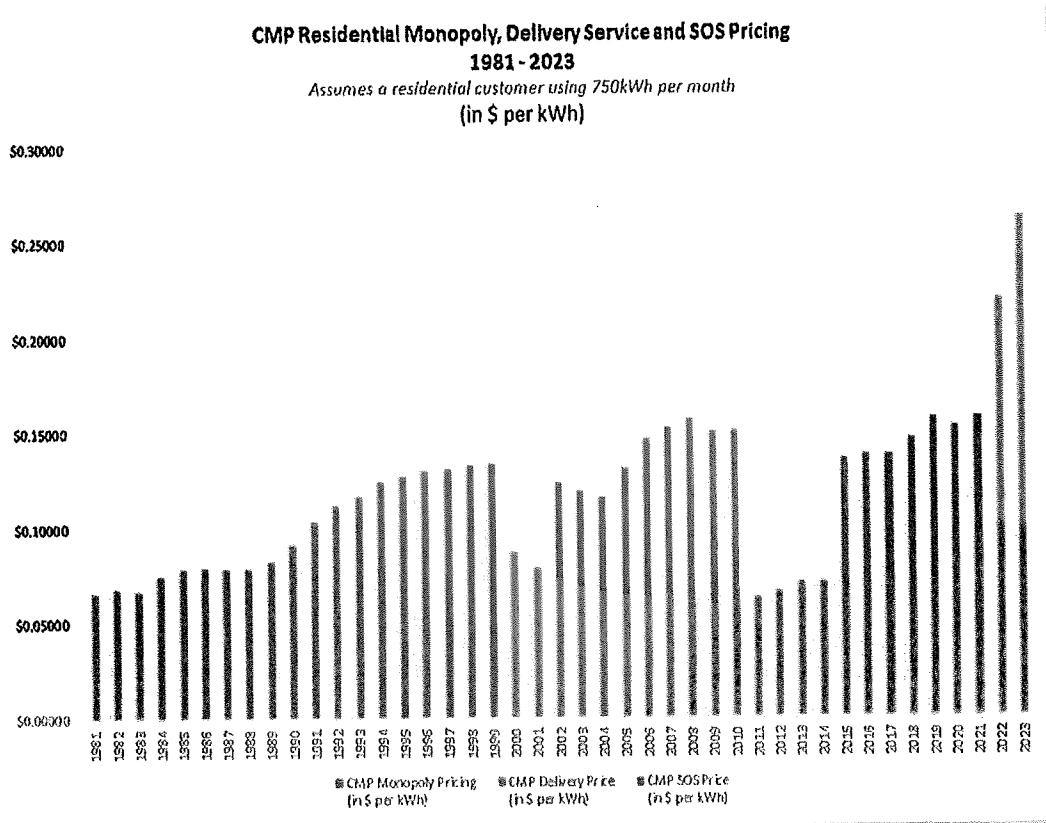
As shown on the chart, for the next 22 years after deregulation began the total combined price of CMP residential service (delivery plus SOS) rose from the 1999 monopoly price of \$0.13391 per kWh in 1999 to the combined delivery plus SOS price of \$0.15795 in 2021, an increase of only 18%. Forcing customers back to monopoly service will undoubtedly create a never-ending cycle of price increases as competition will not be there to keep utility prices in line.

Price Increases in 2022 and 2023

Beginning in 2020, changes in federal government energy policy, combined with geopolitical forces resulted in a steady increase of fuel prices that has not yet abated. This trend, in turn, caused electricity prices across the country to rise in 2022 and 2023. CMP residential default prices increased a whopping 89% in 2022, and another 29% in 2023.

Chart 3.9: CMP Pricing with 2022 and 2023 Added

Note: I could not find CMP SOS prices for 2000-2001 and 2011-2014. As such, no SOS prices (denoted in blue) for those years appear on the chart. However, this does not change the point of the chart, or the conclusions reached by the chart.



It is important to understand that energy price spikes caused by prevailing market conditions, federal government policy, geopolitics, or severe weather events like Winter Storm Uri cannot be simply wished away or negated by abolishing consumer choice. The key to dealing with energy price volatility is competition, which protects consumers with long run volatility hedges in the form of fixed price contracts, as well as drives innovative solutions that bring prices down in the long run.



Monopoly utilities across fifteen states lost billions of dollars because of Winter Strom Uri. The customers of those monopoly utilities are now being forced to pay for these losses so that monopoly utility shareholders are kept whole²⁸. Conversely, the shareholders of CEPs impacted by Winter Storm Uri had to honor their customers' fixed price contracts despite losing hundreds of millions of dollars. Maine CEPs are no different. Residential CEP customers that entered 12 and 24-month fixed price contracts in 2020 and 2021, before SOS price spikes began, have, and will get their price for the contract term regardless of how much money they save or how much money CEP shareholders lose. Further, unlike the electric distribution companies, CEPs that may lose money on these or any contracts, are not subject to cost-of-service recovery and must absorb these costs. The OPA Consultant Report appears to ignore this key market distinction entirely, focusing instead on a historical year deliberately chosen before Maine utility SOS price spikes began in order to amplify an anti-competition narrative.

6. The Gap Between Maine Utility and CEP Pricing

The OPA Consultant Report claims that there has been a growing gap "in recent years" between CEP prices and Maine utility SOS prices, but the notion of a universal gap between CEP pricing and utility SOS is erroneous on its face. Each Maine utility provides one residential SOS price for a single product and term with no add-on options. By contrast, CEPs offer an array of residential offers that encompass different prices for different products with different start dates, term, levels of green, and an assortment of bundled service options. As such, any comparison between CEP and SOS should be based on overall value to the customer, which may or may not be based on price alone. A customer locking in a 100% green product for 24 months that also provides airline miles may opt for that product regardless of whether the prevailing SOS price is lower or not. However, to the OPA Consultant Report, consumer preferences are irrelevant, the product price comparison to SOS at the time of contract is the only thing that should ever matter.

There is also no evidence that a trend of a widening gap between CEP prices and utility SOS rates has existed "in recent years" or ever. The OPA Consultant Report simply makes this up. The initial claim by the OPA Consultant Report is that the gap between CEP and utility pricing "increased in recent years" because "In 2018, on average, households paid between \$150 and \$200 more for electricity per year if they purchased from CEPs", but in "2021, on average, households paid between \$310 and

²⁸ See Beyond Texas Evaluating Customer Exposure to Energy Price Spikes: A Case Study of Winter Storm Uri, February 2021

\$340 more for electricity per year if they purchased from CEPs.”²⁹ However, a chart provided in a later page of the OPA Consultant Report shows the so-called “overpayment” to CEP’s in 2019 was between \$306 and \$347 and in 2020 was between \$269 and \$309.³⁰ In other words, even if the OPA Consultant Report’s values were blindly accepted, there is no indication of any trend. One could just as easily say that the gap between CEP residential prices and utility SOS residential prices decreased in recent years because the OPA Consultant Report’s CEP overpayment value is higher for 2019 than it is for 2021. The OPA Consultant Report also ignores the steep rise in Maine utility SOS prices in 2022 and 2023 which would show any gap between CEP and SOS pricing decreasing.

Other Markets

The OPA Consultant Report claims that there are “examples of harm” in other jurisdictions in terms of consumer overpayment to CEPs with respect to utility default rates. The OPA Consultant Report lists six states and also a “Nationwide” category.³¹ However, the so-called “examples of harm” are nothing but subjective arguments, some even coming from the lead author of the OPA Consultant Report, which were refuted and not universally agreed upon. For example, the OPA Consultant Report’s “example of harm” in Maryland sites a paper titled *“Maryland’s Residential Electric and Gas Supply Markets: Where Do We Go from Here?”* prepared by Susan M. Baldwin and Sarah M. Bosley.³² Much like the OPA Consultant Report, however, this paper was an opinion piece debunked under scrutiny³³. Additionally, in the case of Illinois, one of the six states listed, no “example of harm” is even provided. Finally, it should also be noted that electric deregulation has not been abolished in any of the states listed, much less nationwide.

7. Renewable Products

Despite presenting no evidence or proof the OPA Consultant Report accuses CEPs of offering “fraudulent” green products and once again implies that Maine residential customers are not astute to shop for CEP service. The following are direct quotes from the OPA Consultant Report:

²⁹ See OPA Consultant Report, page 1

³⁰ See OPA Consultant Report, page 28

³¹ See OPA Consultant Report, page 29

³² See OPA Consultant Report, page 75

³³ <https://www.resausa.org/new-analysis-reveals-flaws-in-recent-maryland-opc-and-the-abell-foundation-reports-on-retail-energy-market-independent-study-finds-electric-suppliers-could-have-saved-maryland-consumers-more-than-203/>

- ❖ “The “greenness” of CEP products is ambiguous at best, and likely based on out-of-region fuel sources.”³⁴
- ❖ “Consumers may not understand that standard offer service is the same “shade of green” as is CEPs’ basic products – because standard offer service is also based on a fuel mix that comports with Maine’s renewable portfolio standards.”³⁵
- ❖ “A CEP pitching a “green” product generally does not provide the basis for this labeling. It is not clear, for instance, whether it is asserting that its product exceeds the minimum RPS requirement or merely complies with it. Further, if a CEP is asserting that it exceeds the minimum requirement, the basis for such a claim may be inaccurate or misleading, for instance regarding whether their incremental purchases are compliant with Maine RPS certification requirements. As a result, a CEP claim that it is offering a “green” product could be misleading.”³⁶
- ❖ “The electricity being marketed [by a CEP] is not any “greener” than standard offer service, but consumers believe that it is.”³⁷
- ❖ “Consumers don’t realize they are paying a larger mark-up to purchase products marketed as renewable than they would for other equally (or more) effective climate-friendly options”³⁸

To summarize, despite presenting no evidence or proof, the OPA Consultant Report claims as fact that:

- 1) CEP green products may not exceed the Maine’s minimum green requirement.
- 2) Utility SOS is just as green as CEP green products.
- 3) Maine residential customers are not smart enough to shop for green products.
- 4) CEP green products are overpriced.

CEP “green” products are defined as those that provide two basic categories or levels of renewable or green energy:

Level 1: The minimum state mandated requirements designed to meet Maine’s annual Renewable Portfolio Standards (“RPS”) compliance obligation.

Level 2: Voluntary green energy above the minimum state mandated requirement.

The OPA Consultant Report simply engages in speculation when stating that any CEP green product does not meet the definition stated above. Further, not a single example is provided that demonstrates how Maine CEPs buy renewable energy credits (“RECs”) or how much they pay for RECs.

³⁴ See OPA Consultant Report, page 2

³⁵ See OPA Consultant Report, page 2

³⁶ See OPA Consultant Report, page 39

³⁷ See OPA Consultant Report, page 48

³⁸ See OPA Consultant Report, page 48



It is also speculation to suggest that CEP green products are “not any “greener” than standard offer service.” Maine utility SOS only provides the state mandated minimum RPS requirements, while CEP voluntary green products provide a substantially higher percentage of green than the annual RPS minimum.

IV. Conclusion

Making significant changes to the rules, market structure or design of Maine’s retail electric market, much less abolishing it, should only be considered after thorough analytical review and careful consideration of the public policy considerations and related consequences of such changes on customers. Accordingly, the unsubstantiated and prejudicial opinions provided in the OPA Consultant Report do not meet this critical threshold test and thus, should be dismissed as a valued resource, especially policies that may lead to the elimination of consumer choice in the State of Maine.