



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Philip L. Bartlett II
CHAIR

Patrick J. Scully
Carolyn C. Gilbert
COMMISSIONERS

Amy Dumeny
ADMINISTRATIVE DIRECTOR

Testimony of the Maine Public Utilities Commission

Neither for nor Against

LD 860, An Act to Require Competitive Electricity Providers to Provide Certain Information to the Public Advocate

March 18, 2025

Senator Lawrence, Representative Sachs, and Distinguished Members of the Joint Standing Committee on Energy, Utilities, and Technology (Committee), my name is Deirdre Schneider, testifying neither for nor against LD 860, An Act to Require Competitive Electricity Providers to Provide Certain Information to the Public Advocate on behalf of the Public Utilities Commission (Commission).

LD 860 requires competitive electricity providers (CEPs) to provide the Public Advocate with copies of reports and other information required to be submitted or may be submitted with the Commission. It also allows the Public Advocate to make recommendations to the Commission and the Legislature on the reasonableness of rates charged by a public utility or CEP. This bill appears to be an appropriate expansion of the Public Advocates authority and provides the Public Advocate with the ability to access information from utilities and CEPs.

On July 16, 2024, the Commission denied the Office of the Public Advocate's (OPA) request for a Commission order that would authorize Central Maine Power and Versant Power to provide the OPA with data held by the utilities relating to the provision of residential supply service by licensed CEPs and standard offer service providers.¹ The OPA requested this information for a study on the impact of retail choice on Maine consumers with a "focus on the impact of CEP pricing on customers, including low-income consumers" when compared to standard offer service pricing.

The Commission denied the OPA's request for the following reasons:

- The OPA does not have statutory authority to conduct an investigation of CEP rates in relation to obtaining the confidential data requested as the law only authorizes the OPA to investigate the service provided by CEPs; and
- In the prior session a bill that would have required disclosure of confidential information to the OPA by utilities and CEPs was amended to remove this directive.²

I would be happy to answer any questions or provide additional information for the work session.

¹ Docket No. 2024-00090 (Order attached)

² LD 2163, enacted as P.L. 2023, ch. 636.

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*, LLC, 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>

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 Dumeny
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.