

**Testimony Neither For Nor Against
L.D. 508 - An Act To Improve Regulation of Door-to-door Marketing of Retail Energy Supply
March 9, 2021**

Distinguished Members, of the Committee on Energy, Utilities & Technology,

Constellation NewEnergy (“Constellation”) respectfully submits the following written testimony regarding LD 508 An Act To Improve Regulation of Door-to-door Marketing of Retail Energy Supply (Act). Constellation, an Exelon company, is a leading competitive energy company providing power, natural gas, renewable energy, and energy management products and services for homes and businesses across the continental United States. We provide integrated energy solutions — from electricity and natural gas procurement and renewable energy supply to energy efficiency and distributed energy solutions — that help customers strategically buy, manage and use their energy. Today, approximately 2 million residential, public sector and business customers, including those here in the Maine, rely on our commitment to innovation, dependability, transparency and service.

Background

Maine restructured its electric industry beginning in 2000 to allow all electricity customers to choose their retail electricity supplier (referred to as competitive electricity providers (CEP)) from a competitive market, while transmission and distribution service continued to be provided by public utilities. Maine's restructuring law provides that any customer that does not choose a CEP will automatically receive default service, known as standard offer service.

Since the beginning of restructuring, most residential customers have taken standard offer service. However, over the past several years a significant number of residential customers have chosen to take service from a CEP. Pursuant to statutory authority, the Commission has adopted comprehensive consumer protection rules applicable to CEP marketing activities. These rules are contained in Chapter 305 section 4.

L.D. 508

The Act would impose additional registration requirements and penalties against third party agents who perform door-to-door marketing of electricity supply on behalf of the competitive electricity providers (CEP) and hold CEPs responsible for violations by their third party agents. In general, Constellation supports the intent of L.D. 508 and agrees oversight and enforcement of residential door to door sales is appropriate. However, as written the Act imposes potentially unintended consequences to CEPs and unaffiliated third party electricity brokers. Specifically, the Act, as written, does not limit these rules to third party agents who perform door-to-door sales to residential customers on behalf of CEPs and would encompass all customer classes. Additionally, the current definition of ‘3rd party sales agent’ could extend to brokers who may also approach businesses without the “consumer soliciting” the initial meeting.

As the Commission knows, CEPs do not have oversight or control over aggregators or brokers. Brokers work on behalf of customers and act independently to solicit their own clients and discuss the best options for that consumer. The current definition would make CEPs responsible for actions of brokers who solicit business clients and who ultimately act as an intermediary on behalf of that client to purchase retail electricity. Instead, Constellation would amend the language to apply to those

third parties that have a direct contractual relationship with a CEP to solicit residential customers door-to-door. Constellation hereby offers an alternative to the current language by specifying residential customers in the language of the Act.

Additionally, the current version of the Act adds contradictory and confusing language to the “Consumer protection standards; rules” under §3203 (6). As written the language would prohibit a CEP or 3rd-party sales agent from representing itself as “an alternative to a transmission and distribution utility”. This is contradictory and confusing because CEPs ARE an alternative to the utility’s supply. In some markets CEPs are referred to as ‘Alternative Retail Electricity Suppliers’.

Constellation assumes that the intent of this language is to make sure CEP’s and their 3rd-party sales agents are not representing themselves in any way as being associated with the Utility. Constellation agrees with this concept and offers language to clarify this intent. Constellation hereby submits proposed changes to the Act which would fully capture

Constellation’s understanding of the intent of the Act, specifically, to enact certain requirements, and enforce certain penalties, on third party door-to-door agents who have a direct contractual relationship to act on behalf of the CEP to sell retail electricity to residential customers as an alternative to utility supply service.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Gretchen Fuhr".

Gretchen Fuhr

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**Proposed Committee Amendment to L.D. 508,
An Act To Improve Regulation of Door-to-door Marketing of
Retail Energy Supply**

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

Sec. 1. 35-A MRSA §102, sub-§19-A is enacted to read:

19-A. Third-party sales agent. "Third-party sales agent" means a person or entity that has a business relationship with a competitive electricity provider in which the person or entity conducts ~~or arranges to conduct~~ sales of retail electricity to ~~the public~~ residential consumers at retail on behalf of ~~the a specific~~ competitive electricity provider through direct contact accomplished by means of a personal visit to the residential consumer, other than at the 3rd-party sales agent's place of business (which includes temporary places of business such as in-store kiosks, etc.) , without the consumer soliciting the initial contact. "Third-party sales agent" does not include an employee of a competitive electricity provider or registered brokers.

Sec. 2. 35-A MRSA §1508-A, sub-§1, ¶B-1 is enacted to read:

B-1. In addition to any penalty imposed on a competitive electricity provider under paragraph A or B, the commission may:

(1) For a willful violation of this Title by a 3rd-party sales agent, impose an administrative penalty in an amount that does not exceed \$5,000 or .25% of the annual gross revenue that the 3rd-party sales agent received from sales and commissions in the State. Each day a violation continues constitutes a separate offense. The maximum administrative penalty for any related series of violations may not exceed \$500,000 or 5% of the annual gross revenue that 3rd-party sales agent received from sales and commissions in the State, whichever amount is lower; and

(2) For a violation in which a 3rd-party sales agent was explicitly notified by the commission that it was not in compliance with the requirements of this Title, a commission rule or a commission order and that failure to comply could result in the imposition of administrative penalties, impose an administrative penalty that does not exceed \$500,000 and may terminate the registration of the 3rd-party sales agent.

Sec. 3. 35-A MRSA §1508-A, sub-§1, ¶C, as amended by PL 2011, c. 623, Pt. B, §5, is further amended to read:

C. The commission may impose an administrative penalty in an amount that does not exceed \$1,000 on any person that is not a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or a competitive electricity provider or 3rd-party sales agent and that violates this Title, a commission rule or a commission order. Each day a violation continues constitutes a separate offense. The administrative penalty may not exceed \$25,000 for any related series of violations.

Sec. 4. 35-A MRSA §3203, as amended by PL 2017, c. 74, §1, is further amended to read:
§3203. Licensing of competitive electricity providers; consumer protections; enforcement

1. Authority. In order to provide effective competition in the market for the generation

and sale of electricity in the State ~~and to provide an orderly transition from the current form of regulation to retail access~~, the commission shall license competitive electricity providers in accordance with this section.

2. Requirements. A competitive electricity provider may not undertake the sale of electricity at retail in this State without first receiving a license from the commission. Before approving a license application, the commission must receive from the applicant:

- A. Evidence of financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or nonperformance or for any other reason;
- B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities;
- C. Disclosure of all pending legal actions and customer complaints filed against the competitive electricity provider at a regulatory body other than the commission in the 12 months prior to the date of license application;
- D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210;
- E. Disclosure of the names and corporate addresses of all affiliates of the applicant; and
- F. Evidence that the applicant is registered with the State Tax Assessor as a seller of tangible personal property pursuant to Title 36, section 1754-B, together with a statement that the applicant agrees to be responsible for the collection and remission of taxes in accordance with Title 36, Part 3 on all taxable sales of electricity made by the applicant to consumers located in this State.

The commission shall consider the need for requiring and, if it determines there is a need, may require a competitive electricity provider to file a bond with the commission as evidence of financial ability to withstand market disturbances or other events that may increase the cost of providing service or to provide for uninterrupted service to its customers if a competitive electricity provider stops service.

2-A. Requirements for 3rd-party sales agents. A 3rd-party sales agent undertaking the retail sale or marketing of electricity in the State:

A. May not engage in any sales or marketing activity unless the 3rd-party sales agent has registered with the commission. A 3rd-party sales agent shall provide to the commission the following information in order to register:

(1) Name;

(2) Corporate address;

(3) The 3rd-party sales agent's transient seller's license number issued by the Department of Professional and Financial Regulation pursuant to Title 32, chapter 128, subchapter 2; and

(4) Any other information the commission

determines is necessary. The commission shall provide a registration number to each registrant;

B. Shall comply with the provisions of the Maine Unfair Trade Practices Act;

C. May not enter into an agreement on behalf of a competitive electricity provider to

provide service to a residential consumer when that service is solicited using door-to-door sales practices without providing the residential consumer a standard disclosure form that meets the requirements of this subsection and obtaining the consumer's signature on the form. The commission shall prescribe, by rule, requirements for the format and contents of the standard disclosure form. The requirements must include, but are not limited to:

(1) A type size that is no less than 14 point; and (2) The following information:

(a) Contact information, including telephone numbers, for the competitive electricity provider, the Public Utilities Commission and the Office of the Public Advocate; A telephone number and website where the consumer may obtain information on the current standard-offer service rate and expiration date, and the website address for electricity supply information available through the Office of the Public Advocate;

(b) Information regarding the consumer's right to rescind service as provided in subsection 4, paragraph C; and

(c) The 3rd-party sales agent's registration number issued by the commission pursuant to paragraph A and the transient seller's license number issued by the Department of Professional and Financial Regulation pursuant to Title 32, chapter 128, subchapter 2;

D. Shall comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of door-to-door sales practices; and

E. Shall comply with applicable standards or requirements established by the commission by rule.

3. ~~Informational filings~~ Filings; public information. The commission shall establish by rule information disclosure and filing requirements for competitive electricity providers. The rules must require generation providers to file their generally available rates, terms and conditions with the commission. The commission, subject to appropriate protective orders, may require the submission of individual service contracts or any other confidential information from a competitive electricity provider.

The commission by rule shall establish standards for making available, through any means considered appropriate, information that enhances consumers' ability to effectively make choices in a competitive electricity market.

Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Consumer protection provisions. As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a residential consumer or to a small commercial consumer:

A. May not terminate generation service without at least 30-day prior notice to the consumer;

B. ~~Must~~ Shall offer service to the consumer for a minimum period of 30 days;

C. ~~Must~~ Shall allow the consumer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection;

D. ~~Must~~ Shall comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing;

E. ~~Must~~ Shall provide to the consumer within 30 days of contracting for retail service a

disclosure of information provided to the commission pursuant to rules adopted under subsection 3 in a standard written format established by the commission; and

F. ~~Must~~ Shall comply with any other applicable standards or requirements adopted by the commission by rule or order.

For purposes of this subsection, "residential consumer" means a consumer defined as residential under the terms and conditions of the consumer's transmission and distribution utility. For purposes of this subsection, "small commercial consumer" means, in the case of a consumer served by an investor-owned transmission and distribution utility, a nonresidential consumer that meets the availability criteria to take service under a core customer class of the transmission and distribution utility that does not pay a demand charge to the transmission and distribution utility or, in the case of a consumer served by a consumer-owned transmission and distribution utility, a nonresidential consumer with a demand of 20 kilowatts or less.

4-A. General consumer protections. As a condition of licensing, a competitive electricity provider:

- A. Shall obtain a consumer's authorization before serving the consumer;
- B. May not release to any other entity, other than for purposes of debt collection or credit reporting pursuant to state and federal law or to law enforcement agencies pursuant to lawful process, any personal information regarding a customer, including name, address, telephone number, usage and historical payment information, without the consent of the customer;
- C. ~~Must~~ Shall comply with the provisions of the Maine Unfair Trade Practices Act, ~~Title 5, chapter 10;~~
- D. May not collect or seek to collect unreasonable costs from a customer who is in default;
- E. ~~Must~~ Shall comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f;
- F. ~~Must~~ Shall comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; and
- H. ~~Must~~ Shall comply with any other applicable standards or requirements established by the commission by rule.

4-B. Residential consumer protections. As a condition of licensing, a competitive electricity provider that provides or proposes to provide generation service to a residential consumer:

- A. Shall disclose, before entering into an agreement to provide service to a residential consumer, to the residential consumer where the residential consumer can obtain information with which to compare the service provided by the competitive electricity provider and the standard-offer service;
- B. May not renew a contract for generation service without providing a residential consumer with notice of renewal in advance by mail;
- C. May not renew a contract for generation service at a fixed rate that is 20% or more above the contract rate in the expiring contract without the express consent of the residential consumer;
- D. May not renew a contract for generation service for a term that is longer than the term of the expiring contract or 12 months, whichever is shorter, without the express consent of the residential consumer; and

E. May not impose an early termination fee for any contract for generation service that was renewed without express consent from the residential consumer.

If a residential consumer does not provide the express consent required by paragraphs C and D, the residential consumer must be transferred to standard-offer service.

4-C. Residential consumer protection through transmission and distribution utility bill information. The monthly utility bill for a residential consumer that elects to receive generation service from a competitive electricity provider must contain the following:

A. A website address or other resource that residential consumers can access to obtain information that provides independent information as determined by the commission that allows residential consumers to compare terms, conditions and rates of electricity supply; and

B. A statement that directs the residential consumer to the competitive electricity provider for more information on the residential consumer's contract, including its terms, and that provides the telephone number of the competitive electricity provider.

5. Licensing renewals and revocations. Consistent with all applicable requirements of Title 5, chapter 375, the commission may limit the duration and effectiveness of a license to a specified term, may conduct proceedings for the renewal of licenses and may conduct proceedings for the revocation of a license when a requirement of this section has not been complied with by a competitive electricity provider. The commission shall adopt rules governing the procedures for issuing or revoking a license under this section and related matters.

6. Consumer protection standards; rules. The commission shall establish by rule consumer protection standards and standards to protect and promote market competition in order to protect retail consumers of electricity from fraud and other unfair and deceptive business practices. The commission shall prohibit, by rule, a competitive electricity provider or a 3rd-party sales agent from representing itself as being associated with in any way to an alternative to a transmission and distribution utility. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, the commission may provide by rule that a competitive electricity provider or a 3rd-party sales agent may satisfy the requirements of subsection 4-A, paragraph A by obtaining from the customer oral authorization obtained by an independent 3rd party.

7. Penalties. The commission may impose administrative penalties upon a competitive electricity provider or a 3rd-party sales agent in accordance with chapter 15.

8. Dispute resolution. The commission shall resolve disputes between competitive electricity providers and retail consumers and between 3rd-party sales agents and retail consumers of electricity concerning standards or requirements established by or pursuant to subsection 2-A, 4, 4-A, 4-B or 6.

9. Additional actions. 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.

10. Cease and desist orders. The commission may issue a cease and desist order:

A. Following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter ~~4~~ 4, if the commission finds that ~~any~~ a competitive electricity provider, 3rd-party sales agent or transmission and distribution utility has engaged or is engaging in any

act or practice in violation of any law or rule administered or enforced by the commission or any lawful order issued by the commission. A cease and desist order is effective when issued unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004; or

B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider, 3rd-party sales agent or a transmission and distribution utility is selling electricity to retail consumers without being duly licensed or is engaging in conduct that creates an immediate danger to the public safety or is reasonably expected to cause significant, imminent and irreparable public injury. An emergency cease and desist order is effective immediately and continues in force and effect until further order of the commission or until stayed by a court of competent jurisdiction. In a subsequent hearing the commission shall in a final order affirm, modify or set aside the emergency cease and desist order and may employ simultaneously or separately any other enforcement or penalty provisions available to the commission.

11. Restitution. The commission may order restitution for any party injured by a violation for which a penalty may be assessed pursuant to this section.

12. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before it.

13. Notice to Attorney General. If the commission has reason to believe that ~~any a~~ competitive electricity provider, 3rd-party sales agent or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

13-A. Investigation. The commission may investigate any matter relating to the provision of service by a competitive electricity provider or the actions of a 3rd-party sales agent pursuant to this chapter. In conducting an investigation under this subsection, the commission shall use the procedures established under section 1303, subsection 2.

14. Disconnection restricted. A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

15. Standard billing. The commission shall consider requiring standard billing information on bills for electric power service. If standard billing information is required, the commission shall investigate the possibility of adopting standards consistent with other New England states. The commission may not prohibit transmission and distribution utilities from contracting with generation service providers to include both entities' charges on a single bill. The commission may not preclude the inclusion of other information on bills for electric power service.

16. Access to load data. Upon request from a competitive electricity provider, the commission shall provide load data on a class basis that is in the possession of a transmission and distribution utility, subject to reasonable protective orders to protect confidentiality, if considered necessary by the commission.

16-A. Customer information. A transmission and distribution utility may not release any customer- specific information to a licensed competitive electricity provider unless the provider

produces sufficient evidence, as defined by the commission by rule, that the provider has obtained the customer's authorization.

17. Rules. Except as otherwise provided in this section, rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter ~~#A~~ 2-A.

18. Confidentiality of consumer information. Information concerning customers of a competitive electricity provider or a 3rd-party sales agent is subject to the same confidentiality protections afforded utility customer information under section 704, subsection 5.