

**Testimony of NRG Energy, Inc.**  
**Before the Joint Standing Committee on Energy Utilities & Technology**  
**In support of**  
**L.D. 508, *An Act to Improve Regulation of Door-to-door Marketing of Retail Energy Supply***  
March 9, 2021

Senator Lawrence, Representative Berry and distinguished members of the Maine Legislature's Joint Standing Committee on Energy Utilities and Technology. My name is Kandi Terry and I am Director of Government Affairs for NRG Energy, Inc., here to testify in support, with a proposed amendment, of L.D. 508, *An Act To Improve Regulation of Door-to-door Marketing of Retail Energy Supply*. NRG Energy Inc. is a Fortune 500 company - one of America's leading energy companies with 23,000 MW of generation in our portfolio and with approximately six million retail electricity customers nationwide. NRG's affiliates XOOM Energy and Direct Energy Business are regulated Competitive Electricity Providers (CEPs) in Maine.

Members who served on the Committee last session may remember that NRG testified in opposition to L.D. 1853 which sought to prohibit door to door marketing of competitive electricity supply. We appreciated the amount of time that the committee spent on this issue last session, and the efforts of the Commission and the Public Advocate to engage with us. We further appreciate the Public Advocate's effort to develop L.D 508 in light of the time and effort spent on this issue last session. It is those efforts that cause us to be here today to express support for the bill, although with an amendment that we recommend to reflect our belief that the key to proper regulation of retail marketing of electricity, and the use of third-party sales agents, is through the CEP, who has the long-term vested financial interest in the customer that is necessary to ensure proper accountability to the customer, and the State's agencies. That amendment is attached for your review.

To be clear, we support the intent of L.D. 508 to provide comprehensive disclosure to customers and prompt and effective enforcement for violations of Maine's laws and regulations. We believe that the best way to do so is to make it clear that CEPs are responsible for ensuring such compliance and remain answerable to the State on behalf of its citizens. Where we differ with the approach in L.D. 508 is that while the bill as-drafted focuses on regulating the third-party sales agents, our proposed amendment folds that regulation into the regulation of the CEP and requires the CEP to ensure actions on its behalf comply with Maine's regulatory requirements.

My testimony also provides a summary of the strict regulatory scheme already applicable to door to door sales by CEPs in Maine, NRG's continuing support for such regulation, and the extraordinary importance of face to face retail electricity marketing in developing renewable electricity retail growth and meeting carbon reduction goals in Maine and the nation. Due to limited time, I will be happy to discuss NRG's support of the competitive retail electricity market and summarize retail choice best practices nationally either at the work session or in response to questions.

**Maine's Regulation of CEPs**

In Maine, all CEPs must have a license before serving customers and must comply with Chapter 305 of the PUC's rules, which includes provisions for consumer protection. As part of the application process for a license from the PUC, a CEP is required to provide the PUC with documentation to demonstrate financial capability, including the ability to refund deposits to any retail customers in the case of bankruptcy or non-

performance or for any other reason.<sup>1</sup> Any CEP applicant “who knowingly submits misleading, incomplete or inaccurate information may be penalized in accordance with perjury statutes and pursuant to 35-A M.R.S.A. § 3203 and the provisions of this chapter.”<sup>2</sup> The reference to “perjury statutes” means that applicants who knowingly submit misleading information may be charged with either a criminal or civil violation.

CEPs are required to provide detailed information to consumers regarding the standard offer, the bill information, and the CEP’s Terms of Service. Before entering into an agreement to provide service to residential or small non-residential customers, CEPs must disclose in writing to those customers where they can obtain information about standard offer rates so they can compare the CEP’s rates to the standard offer rate. The Terms of Service document must be written in plain language, contain all contractual obligations between the CEP and the customer, and be readily available to customers on the CEP’s website. The Terms of Service document must contain information on, among other items, the pricing structure, the length of service, the due date of bills and information on late payments, fees associated with early termination, and a disclosure regarding the customer’s right to rescind the contract.

CEPs must provide customers with a minimum of five days from the provision of the Terms of Service document to exercise the right to rescind the contract. CEPs are also required to retain evidence that a customer has selected the CEP for service, such as a customer-signed letter, a third-party verification, or an electronic authorization from the customer.

The PUC rules require that CEPs must not use fraudulent, coercive, or deceptive promotional practices, and also specifically require that CEPs shall not engage in any unfair or deceptive act or practice that creates a likelihood of confusion or misunderstanding in connection with the offer for sale or the sale of electricity.

In addition, CEPs providing service to residential or small non-residential customers must also comply with the PUC’s rules for in-person solicitations of potential customers at the customer’s premises. These rules apply when the CEP is initiating the solicitation. All CEPs soliciting a potential customer in-person at the customer’s premises shall, among other things: (1) create and maintain for at least 12 months a written log that includes the name and identification number of the employee or agent and the street address of each visited premises; (2) have employees or agents prominently display their name and the name of the CEP to customers; (3) provide written materials with identifying information upon request of potential customers so they may make inquires, verification, and complaints; and (4) terminate the in-person contact with the potential customer when it is apparent that the potential customer’s language skills are insufficient to understand the information being conveyed.

If a CEP violates any of the rules that aim to protect consumers, the PUC has existing broad authority to (1) sanction a CEP, (2) require that the CEP reimburse or pay restitution to the consumer, or (3) revoke the CEP’s license. In addition, the PUC has an obligation to refer all potential criminal violations to the Attorney General, and CEPs are liable to consumers for violations of Maine’s Unfair Trade Practices Act. CEPs are subject to sanctions for violations of PUC rules and orders and of Chapter 32 of Title 35-A (setting forth the statutes regarding Electric Industry Restructuring and CEPs). The PUC may impose a penalty not to exceed \$5,000 for each violation for each day that the violation persists. The PUC may order that the CEP pay restitution to any party injured by a violation for which a penalty may be assessed and may also revoke or

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<sup>1</sup> PUC Regulations Ch. 305 § 2(B)(1)(a)-(b).

<sup>2</sup> *Id.* at § 2(D)(12).

suspend the license of a CEP. It is also important to note that the PUC is required to notify the Attorney General if it has reason to believe that any CEP has violated any law for which criminal prosecution is provided.

### **NRG Supports Best Practice Regulation and Active Enforcement**

NRG supports adoption of best practices, such as those adopted in Maine, to regulate door to door marketing to protect consumers and preserve the market for responsible companies. Beyond supporting best practice regulation, NRG also supports active enforcement by state agencies to deter assure consumers that their interests are protected.

Nationally, the evidence shows that greater retail choice produces the results sought by electric competition: more price competition, more retail electricity products, greater consumer reliance on renewables, more renewable projects coming online. Both logic and experience teach the opposite as well: less or no retail choice entrenches the status quo of utility generation monopoly, higher prices, fewer or just one retail product and less progress on renewables and carbon reduction. In fact later this session, the committee will hear a proposal for leveraging retail choice to empower Maine's consumers and support Maine's climate goals.

In conclusion, NRG thanks the bill sponsor and the Public Advocate for continuing the work from last session in L.D. 508. NRG believes that the State of Maine has an exemplary regulatory approach to its current hybrid version of retail choice and NRG urges the committee to consider adoption of our suggested amendment to this legislation. If electricity deregulation is to fulfill its great potential, face to face interaction with consumers is essential, and we agree with the Public Advocate that additional consumer protections are appropriate to allow such interaction to continue. For these reasons we urge an Ought To Pass As Amended report on L.D. 508.

I would be happy to answer questions now or at the work session.