

§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.

[PL 1997, c. 316, §3 (NEW).]

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; [PL 1997, c. 316, §3 (NEW).]

B. Evidence of the ability to enter into binding interconnection arrangements with transmission and distribution utilities; [PL 1997, c. 316, §3 (NEW).]

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; [PL 1997, c. 316, §3 (NEW).]

D. Evidence of the ability to satisfy the renewable resource portfolio requirement established under section 3210; [PL 1999, c. 398, Pt. J, §1 (AMD).]

E. Disclosure of the names and corporate addresses of all affiliates of the applicant; and [PL 1999, c. 398, Pt. J, §1 (AMD).]

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. [PL 1999, c. 398, Pt. J, §2 (NEW).]

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. [PL 1999, c. 398, Pt. J, §§1, 2 (AMD).]

3. Informational 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.

[PL 2011, c. 284, §1 (AMD).]

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; [PL 1999, c. 657, §18 (AMD).]
- B. Must offer service to the consumer for a minimum period of 30 days; [PL 1999, c. 657, §18 (AMD).]
- C. Must allow the consumer to rescind selection of the competitive electricity provider orally or in writing within 5 days of initial selection; [PL 1999, c. 657, §18 (AMD).]
- D. Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; [PL 2003, c. 558, §1 (AMD).]
- E. Must 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 [PL 2011, c. 284, §2 (AMD).]
- F. Must comply with any other applicable standards or requirements adopted by the commission by rule or order. [PL 2011, c. 284, §3 (AMD).]
- G. [PL 2011, c. 284, §4 (RP).]

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.

[PL 2011, c. 284, §§2-4 (AMD).]

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; [PL 1999, c. 657, §19 (NEW).]
- 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; [PL 1999, c. 657, §19 (NEW).]
- C. Must comply with the provisions of the Maine Unfair Trade Practices Act, Title 5, chapter 10; [PL 1999, c. 657, §19 (NEW).]
- D. May not collect or seek to collect unreasonable costs from a customer who is in default; [PL 1999, c. 657, §19 (NEW).]
- E. Must comply with all applicable provisions of the federal Equal Credit Opportunity Act, 15 United States Code, Sections 1691 to 1691f; [PL 1999, c. 657, §19 (NEW).]
- F. Must comply with all federal and state laws, federal regulations and state rules regarding the prohibition or limitation of telemarketing; and [PL 2003, c. 558, §4 (AMD).]
- G. [PL 2003, c. 558, §5 (RP).]
- H. Must comply with any other applicable standards or requirements established by the commission by rule. [PL 1999, c. 657, §19 (NEW).]

[PL 2003, c. 558, §§4, 5 (AMD).]

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; [PL 2017, c. 74, §1 (NEW).]

B. May not renew a contract for generation service without providing a residential consumer with notice of renewal in advance by mail; [PL 2017, c. 74, §1 (NEW).]

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; [PL 2017, c. 74, §1 (NEW).]

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 [PL 2017, c. 74, §1 (NEW).]

E. May not impose an early termination fee for any contract for generation service that was renewed without express consent from the residential consumer. [PL 2017, c. 74, §1 (NEW).]

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. [PL 2017, c. 74, §1 (NEW).]

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 [PL 2017, c. 74, §1 (NEW).]

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. [PL 2017, c. 74, §1 (NEW).]

[PL 2017, c. 74, §1 (NEW).]

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.

[PL 1997, c. 316, §3 (NEW).]

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. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, the commission may provide by rule that a competitive electricity provider may satisfy the requirements of subsection 4-A, paragraph A by obtaining from the customer oral authorization obtained by an independent 3rd party.

[RR 2003, c. 2, §112 (COR).]

7. Penalties. The commission may impose administrative penalties upon a competitive electricity provider in accordance with chapter 15.

[PL 2003, c. 505, §29 (RPR).]

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

[PL 1999, c. 657, §20 (AMD).]

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.

[PL 1997, c. 316, §3 (NEW).]

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 IV, if the commission finds that any competitive electricity provider 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 [PL 1997, c. 316, §3 (NEW).]

B. In an emergency, without hearing or notice, if the commission receives a written, verified complaint or affidavit showing that a competitive electricity provider 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. [PL 1997, c. 316, §3 (NEW).]

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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.

[PL 1997, c. 316, §3 (NEW).]

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.

[PL 1997, c. 316, §3 (NEW).]

13. Notice to Attorney General. If the commission has reason to believe that any competitive electricity provider 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.

[PL 1997, c. 316, §3 (NEW).]

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

[PL 1999, c. 398, Pt. A, §74 (NEW); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

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.

[PL 1997, c. 316, §3 (NEW).]

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.

[PL 1997, c. 316, §3 (NEW).]

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.

[PL 1997, c. 316, §3 (NEW).]

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.

[PL 1999, c. 237, §1 (NEW).]

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 II-A.

[PL 1997, c. 316, §3 (NEW).]

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

[PL 1999, c. 398, Pt. A, §75 (NEW); PL 1999, c. 398, Pt. A, §§104, 105 (AFF).]

SECTION HISTORY

PL 1997, c. 316, §3 (NEW). PL 1999, c. 237, §1 (AMD). PL 1999, c. 398, §§A74,75,J1, 2 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 1999, c. 657, §§18-20 (AMD). PL 2001, c. 71, §1 (AMD). RR 2003, c. 2, §112 (COR). PL 2003, c. 505, §29 (AMD). PL 2003, c. 558, §§1-5 (AMD). PL 2011, c. 284, §§1-4 (AMD). PL 2017, c. 74, §1 (AMD).

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