

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

KATHERINE VEILLEUX, and	)	
JENNIFER CHON, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiffs	)	
v.	)	Civil Action No. _____
	)	
ELECTRICITY MAINE, LLC,	)	
PROVIDER POWER, LLC,	)	
SPARK HOLDCO, LLC,	)	
KEVIN DEAN, and EMILE CLAVET,	)	
	)	
Defendants	)	

**CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND**

NOW COME the Plaintiffs, Katherine Veilleux and Jennifer Chon, individually and on behalf of all others similarly situated, and allege the following as their Complaint against Defendants Electricity Maine, LLC, Provider Power, LLC, Spark HoldCo, LLC, Kevin Dean, and Emile Clavet:

**INTRODUCTION**

1. Between 2011 and 2014, Defendant Electricity Maine, LLC, enrolled nearly 200,000 Maine households and small businesses in its electricity-supply services with the promise of substantial cost savings. Instead of decreasing consumers' electricity bills, however, Electricity Maine, through Defendants' fraud and deception, cost Maine ratepayers at least \$35 million. This civil action seeks to remedy the significant financial harm caused by Defendants' scheme.

## **PARTIES**

2. Plaintiff Kathleen Veilleux resides in Farmingdale, Maine.

3. Plaintiff Jennifer Chon resides in Scarborough, Maine.

4. Defendant Electricity Maine, LLC, is a Maine limited liability with a place of business in Auburn, Maine. Until May 3, 2016, Electricity Maine, LLC, was wholly owned by Defendant Provider Power, LLC.

5. Defendant Provider Power, LLC, is a Maine limited liability company with a place of business in Auburn, Maine. Although Provider Power, LLC, and Electricity Maine, LLC, are separate corporate entities, they operated as a cohesive unit under the name Electricity Maine until May 3, 2016. Throughout the Complaint, Defendants Electricity Maine, LLC, and Provider Power, LLC, are collectively referred to as Electricity Maine unless otherwise noted.

6. Defendant Spark Holdco, LLC, is a Delaware limited liability company with a principal place of business in Houston, Texas. On May 3, 2016, Spark HoldCo purchased all outstanding membership interests in Electricity Maine, LLC, from Provider Power, LLC.

7. Defendant Kevin Dean is an individual residing in Maine. Kevin Dean is a controlling member of Provider Power, LLC. Following Electricity Maine's sale to Spark HoldCo on May 3, 2016, Kevin Dean, who remains an Electricity Maine employee or consultant, shares control of Electricity Maine with Emile Clavet and Spark Holdco.

8. Defendant Emile Clavet is an individual residing in Maine. Emile Clavet is a controlling member of Provider Power, LLC. Following the sale of Electricity Maine, LLC, to Spark HoldCo on May 3, 2016, Emile Clavet, who remains an Electricity Maine employee or consultant, shares control of Electricity Maine with Kevin Dean and Spark Holdco.

## **JURISDICTION AND VENUE**

9. This Court has federal-question jurisdiction over Plaintiffs' and Class Members' claims made pursuant to 18 U.S.C. § 1961 et seq. Because the Plaintiffs' state law claims arise out of the same case or controversy, the Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(1).

10. Because all Defendants except Spark HoldCo, LLC, are residents of Maine and because a substantial portion of the events and omissions giving rise to Plaintiffs' and Class Members' claims occurred within the State of Maine, venue is appropriate in the United States District Court, District of Maine.

## **GENERAL ALLEGATIONS**

11. Prior to 2000, regulated utilities dominated Maine's electric power industry and enjoyed a complete vertical monopoly in the generation, transmission, and supply of electricity to Maine consumers and businesses.

12. In 2000, the Legislature, in enacting The Restructuring Act, 35-A M.R.S. § 3201 et seq., transformed the industry to permit private non-regulated firms to compete with utility providers in the electricity supply market. Under The Restructuring Act, utility suppliers continue to supply electricity to Maine consumers and businesses on terms known as standard-offer service. Standard-offer service guarantees that all Maine ratepayers can receive electricity service at a fair rate that is approved by the Maine Public Utilities Commission. At the same time, The Restructuring Act permits competitive electricity providers ("CEPs") to enter the market and supply power in competition with the utility-providers.

13. Following the enactment of 35-A M.R.S. § 3201, CEPs initially marketed their services only to industrial and commercial customers. Businesses with significant electricity

costs used the CEP market to hedge and negotiate fixed rates, resulting in more predictable long-term costs. The residential and small-business electricity market, however, was widely seen by CEPs as unprofitable—the margins too thin and the cost of transacting with each consumer too high. Entering the market, moreover, proved difficult. Electricity is a homogeneous good that consumers purchase for only one reason—price. Without the ability to significantly undercut utility-providers, whose power supply services are known as the “standard offer” and are set by the Maine Public Utilities Commission, CEPs struggled to gain market share in the residential and small-business electricity supply market.

14. Despite the economic challenges facing CEPs in the residential electricity market, Auburn-based Electricity Maine, led by Emile Clavet and Kevin Dean, entered the residential and small-business electricity supply market in 2011, with remarkable success. In 2011, for example, CEPs held only a sliver of the residential supply market—0.05% of all Maine residential and small-business customers. Less than two years later, however, Electricity Maine alone had converted almost 200,000 customers to its services.

15. Defendants credited Electricity Maine’s success to innovative marketing and a unique business model. They touted Electricity Maine’s ability to compete on price, promising to beat the utility providers’ standard-offer price under any circumstances and describing Electricity Maine’s business as simple and straightforward—representing to potential customers that “there is no catch, no gimmicks” and that its promised low rates were not “too good to be true.”

16. As a business, however, Electricity Maine succeeded only because of fraud and deception. And once Electricity Maine failed to deliver on its promise to “always beat the standard-offer,” the obvious flaws in its operations were exposed. Not only was Electricity

Maine's product "too good to be true"—contrary to its representations—but its remarkable success was possible only through a fraudulent scheme that has two components. First, Electricity Maine enrolls customers through the false and misleading promise of price savings compared to the utilities' standard-offer rate. Second, after enrolling residential electricity customers at artificially-low promotional rates, Electricity Maine transfers customers, with little or no notice, to significantly higher long-term rates that greatly exceed the standard-offer rate—and from which customers cannot escape without paying a \$100 early-termination fee.

**A. Fraudulent and Misleading Advertising and Promotion**

17. Over a less-than-two-year period—from mid-2011 through March 2013—Defendants, through radio, television, internet, print, and other forms of advertising and marketing, managed to capture nearly one-third of the Maine residential and small-business electricity supply market by representing that Electricity Maine's services offered consumers significant price savings compared to the standard-offer and encouraging consumers to abandon their utility-provided electricity supply services. The following are examples of Defendants' fraudulent and misleading advertising and promotional activities:

- a. In August 2011, Emile Clavet made statements to the Lewiston Sun Journal that were published on August 14, 2011. These statements represented that Electricity Maine offered electricity rates that "will always beat the standard offer. You'll never, ever pay more than the standard offer . . . ."
- b. In the same August 14, 2011 Lewiston Sun Journal article, Electricity Maine customer service project manager Danielle Beckwith represented that "there is no catch and no gimmicks," "[t]here's just a better rate."
- c. Emile Clavet and Kevin Dean appeared on television show 207TV in 2012 and represented that Electricity Maine's prices were lower than the standard offer, that Electricity Maine customers could save over \$130 a year, that Electricity Maine customers would be notified of any price increases, and that Electricity Maine's services did not come with a "catch,"—"there really isn't," Dean represented.

- d. Throughout 2012 and through March 2013, Electricity Maine ran a series of television advertisements on major network channels in which Electricity Maine spokeswoman Kiley Bennet represented that Electricity Maine's electricity supply services were lower than the standard-offer rate. The advertisements stated "if your electricity bill says standard offer, you're paying too much" and "[c]hange now and save every month."
- e. In late September or early October 2012, Kevin Dean made statements to the Bangor Daily News regarding Electricity Maine's prices that were published on October 2, 2012. He maintained that Electricity Maine will always offer the lowest price.
- f. On January 7, 2013, Electricity Maine distributed the following talking point to at least four Maine radio station syndicates—Cumulus Media, Blueberry Broadcasting, Portland Radio Group, and Town Square Media—for thirty-second on-air promotions: "Nearly 2 hundred thousand Mainers can't be wrong. Electricity Maine was the first and now the largest competitive electricity supplier provider in Maine. In 2013 Electricity Maine customers will combine to save 6 point 8 million dollars." Electricity Maine distributed the same talking point on January 18, 2013.
- g. On January 18, 2013, Electricity Maine distributed talking points to at least the same four Maine radio station groups representing that "In 2013 customers will combine to save 6.8 million!"
- h. On February 14, 2013, Electricity Maine distributed talking points to at least the same four Maine radio station groups, telling Maine residential electricity customers "[j]ust grab your power bill, if on page 2 it says 'Standard Offer' you're paying too much."
- i. Provider Power has represented on its website since at least August 5, 2016, and continues to represent, that it has "SAVED RESIDENTS MILLIONS OF DOLLARS."
- j. As of November 1, 2016, Provider Power represented on its YouTube channel that "200,000 customers have switched to Electricity Maine, saving over \$14 million in energy costs."

18. Lured to its website on the promise of bargain electricity prices, customers enrolled in Electricity Maine's services by entering personal and utility-provider information in a simple interactive form that contains no warnings, disclosures, or notices. To sign up, there is no component that actively requires consumers to agree or consent to a set of terms and

conditions—after entering the required information, soon-to-be Electricity Maine customers merely click “SUBMIT FORM.”

19. The combination of fraudulent and misleading marketing and promotion, and artificially low promotional rates, allowed Electricity Maine to rapidly gain significant market share in the Maine residential and small-business electricity supply market. These marketing practices were so effective that, in 2012, Electricity Maine became the fastest growing energy company in the country.

20. Based on Defendants’ misrepresentations, both Plaintiffs enrolled in Electricity Maine’s electricity supply services in 2012.

21. Electricity Maine’s promise of always beating the standard offer proved short lived, however. After enrolling nearly 190,000 customers through mid-2012, Electricity Maine began to significantly increase its rates in early 2013. When customers’ introductory-rates expired, they were automatically enrolled at substantially higher rates with little, or no, notice. These prices greatly exceeded, and later doubled, the standard-offer rate.

22. Because electricity is an extremely homogenous good, Electricity Maine’s business model is entirely dependent on its ability to compete on price and promise price saving compared to the standard-offer rate. For its business to succeed, therefore, Defendants were motivated to misrepresent the benefits of Electricity Maine’s product.

23. Because of Defendants’ intimate knowledge of the residential power industry and its economics, Defendants were aware that their representation of guaranteed price savings was false and that recouping Electricity Maine’s investment in customer recruitment was not possible without charging more than the standard offer. They were aware that Electricity Maine could not

possibly always beat the standard offer—or even beat the standard offer for a significant period of time.

24. Because of the economics that CEPs face, they can never compete with utility providers on a long-term basis. Electricity Maine borrows, or hedges, electricity from wholesale electricity providers, resells that electricity to residential and small-business customers, and finally repays the wholesalers. Without the ability to automatically reenroll customers—and reenroll them at higher rates when wholesale electricity prices are rising—Electricity Maine would quickly fail. Utility providers, on the other hand, do not rely on electricity supply to profit and cannot raise rates without Public Utilities Commission approval. Therefore, when power prices fluctuate, CEPs are distinctly disadvantaged when competing on price with utility providers.

25. Despite its inability to compete in the long term, Defendants proceeded to market Electricity Maine’s residential electricity services as providing significant cost savings compared to standard-offer service. In doing so, Defendants knew that, for Electricity Maine to succeed, it must reenroll customers at prices that greatly exceeded the standard offer. At the same time, Defendants’ advertising omitted any information regarding the risk of price increases.

#### **B. Reenrollment Scheme**

26. By late 2012 or early 2013, Electricity Maine had enrolled almost 200,000 residential and small-business electricity customers.

27. At that same time, Electricity Maine’s earliest-customers’ year-long or eighteen-month-long contracts began to expire.

28. Before Electricity Maine’s customers’ contracts expired, it was contractually obligated to inform its customers in a “Confirmation Letter” that they, pursuant to an auto



renewal provision, were being reenrolled in a long-term contract. Additionally, until January 26, 2015, Maine Public Utilities Commission regulations required that CEPs provide renewal notices between 30 and 60 days in advance of automatic renewal “in the customer’s bill or in a separate document issued with the customer’s bill.”

29. To conceal from customers that they were being reenrolled at astronomical rates, Defendants’ did not send letters warning customers of a change in service; instead, Defendants—if they sent any notice at all—provided notice by email. Defendants did not include the required notice in customers’ bills or in a document issued with customers’ bills.

30. To further confuse customers, moreover, email-renewal notices were sent from unrecognizable email addresses that went directly to customers’ spam folders. Defendants’ knew that their renewal emails were landing in customers’ spam folders and that customers were not receiving notice.

31. Aware that customers were not receiving auto renewal notices because email notices were going to customers’ spam folders; because renewal notices were sent from email addresses unaffiliated with Electricity Maine; or because customers could not understand the notices that they did receive, Defendants began reenrolling Electricity Maine’s initial group of nearly 200,000 residential electricity customers at rates that greatly exceeded the standard offer.

32. For example, on October 1, 2014, Electricity Maine sent Plaintiff Jennifer Chon an email stating that her contract would be renewed. The email stated: “To protect you from rising rates, we have secured a competitive, 24 month fixed contract for you at \$0.11394 (11.39 cts.)/kWh, ending on you meter date in December, 2016. There is no action required on your part.”

33. Electricity Maine's October 1, 2014, email never appeared in Plaintiff Chon's inbox. She recovered it from her spam folder in 2016. Electricity Maine was aware, and informed Plaintiff Chon, that its auto renewal notices consistently went directly to customers' spam folders. The standard-offer rate at the time was approximately 7.6 cts. /kWh or forty-three-percent lower than Electricity Maine's "competitive" rate, at which Plaintiff Chon was reenrolled in without her knowledge.

34. Defendants reenrolled Electricity Maine customers at significantly higher prices for two reasons: (1) to sustain Electricity Maine's business and recoup its promotional investment, Defendants needed sufficient aggregate value from Electricity Maine's residential customer contracts to provide collateral to wholesale electricity providers—who lend wholesale electricity to Electricity Maine using its customers' outstanding contractual obligations as security—and (2) because Defendants realized that they could significantly increase Electricity Maine's profits by gouging unsuspecting customers.

35. Because electricity is such a homogeneous good, a reenrollment system that actually informed customers that their new electricity supply rate would substantially exceed competitors' pricing—that is, the standard offer—would have put Electricity Maine out of business in 2013. Electricity Maine's continued operation is only feasible through deception and fraud.

36. As customers saw their bills skyrocket, Electricity Maine's growth faltered. But the damage had already been done. With at least twenty-percent of Maine's residential electricity consumers as current customers—who cannot escape without paying a \$100 termination fee—Defendants continue to charge prices greatly exceeding the standard offer.

And instead of saving Mainers money, Electricity Maine, through 2015, has increased its customers' electricity bills aggregately by at least \$35 million.

### **CLASS ACTION ALLEGATIONS**

37. Plaintiffs bring this action as a class action on behalf of themselves and all other persons and entities similarly situated (Class or Class Members).

38. The Class includes:

All Electricity Maine residential and small-business customers who enrolled in Electricity Maine's electricity supply services at any point in time before March 8, 2013.

Excluded from the Class are: (1) Defendants, their employees, officers, directors, assigns, successors, and any entity in which they have a controlling interest; (2) the United States District Court Judge to whom this case is assigned and any member of that Judge's immediate family; and (3) the Plaintiffs' and Class Members' law firm, Hallett, Zerillo & Whipple, P.A., its attorneys, staff, and their immediate family members.

39. The Class is comprised of over 100,000 residential electricity customers making joinder impractical. (Ex. A at 5). The disposition of Class Members' claims in a single class action will provide substantial benefits to all parties and to the Court.

40. There are numerous questions of law and fact common to the Plaintiffs and the Class, including:

- a. Whether Defendants are engaged in trade or commerce;
- b. Whether Defendants' advertising and business practices are fraudulent, misleading, unfair, or deceptive;
- c. Whether Defendants falsely represented, failed to disclose, or concealed, the cost of Electricity Maine's services;
- d. Whether Defendants withheld material information from consumers;
- e. Whether Defendants' misconduct provides any benefit to consumers;

- f. Whether Defendants' misconduct is reasonably avoidable by consumers;
- g. Whether Defendants' conduct caused, likely caused, or could reasonably be found to have caused, substantial injury to consumers;
- h. Whether RICO Defendants, through the conduct of an enterprise, engaged in a pattern of racketeering by repeatedly engaging in mail and wire fraud;
- i. Whether Electricity Maine and Provider Power constitute an enterprise within the meaning of 18 U.S.C. § 1961(4);
- j. Whether RICO Defendants committed mail and wire fraud in violation of 18 U.S.C. §§ 1341, 1343 by using interstate mail and wires to execute and further their fraudulent scheme;
- k. Whether RICO Defendants' misconduct constitutes a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5);
- l. Whether RICO Defendants' violations of 18 U.S.C. § 1961 et seq. caused Plaintiffs and Class Members to suffer economic harm;
- m. Whether Electricity Maine breached contractual obligations to Plaintiffs and Class Members by failing to send confirmation letters before auto enrolling customers for additional services;
- n. Whether Plaintiffs' and Class Members' contracts with Electricity Maine should be rescinded;
- o. Whether Defendants had a duty to the Plaintiffs and the Class not to engage in deceptive or unfair conduct;
- p. Whether Defendants acted negligently;
- q. Whether Defendants intentionally or recklessly misrepresented or omitted material information;
- r. Whether Defendants profited and benefited from Plaintiffs' and Class Members' payments for residential electricity services;
- s. Whether Defendants voluntarily accepted and retained Plaintiffs' and Class Members' payments;
- t. Whether Defendants were unjustly enriched by accepting Plaintiffs' and Class Members' payments;

- u. Whether Defendants' should make full restitution to Plaintiffs and all Class Members;

41. These common questions of law and fact predominate over any questions affecting only individual Class Members. The factual basis of Defendants' misconduct is common to all Class Members and represents a universal thread of deceptive, fraudulent, and unfair practices that resulted in a common injury to all Class Members, making class adjudication superior to any other available method of resolution.

42. Without class certification, prosecution of separate actions by individual members of the Plaintiff Class—who have not, to Plaintiffs' knowledge, commenced any litigation against Defendants—would be prohibitively expensive and would create the risk of inconsistent or varying adjudications with respect to individual members of the Class. Because of the cost of bringing individual actions, Class Members will, absent certification, continue to incur damages and Defendants' misconduct will continue unmitigated.

43. Similarly, the Plaintiffs' claims are typical of the claims of the Class, and common questions of law and fact predominate, because the Plaintiffs, like all Class Members:

- a. Were exposed to the same unfair, deceptive, fraudulent and misleading conduct and business practices;
- b. Purchased Electricity Maine's services because of Defendants' misconduct;
- c. Were automatically reenrolled in Defendants' services without proper notice;
- d. Have been damaged by Defendants' misconduct; and
- e. Seek redress under the same legal theories.

44. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained experienced counsel who are committed to prosecuting this action

vigorously and who have the financial resources to do so. Neither Plaintiffs nor their counsel have any interests that are materially adverse to those of the Class.

45. Because most Class Members reside in Maine and Defendants' wrongful conduct occurred primarily in Maine, it is desirable for the Class Members to concentrate all claims in the United States District Court, District of Maine.

46. WHEREFORE, the Plaintiffs, on behalf of themselves and all others similarly situated, request that the Court certify the proposed class.

**COUNT I  
VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT  
ORGANIZATIONS ACT ("RICO") – 18 U.S.C. § 1962(c)**

47. Plaintiffs repeat and reallege the allegations in every previous paragraph of this Complaint as if fully set forth herein.

48. Beginning in 2011 and continuing until the present, RICO persons and defendants Kevin Dean, Emile Clavet, and Spark Holdco (RICO Defendants), participated in, and conducted, the conduct of an enterprise, through pattern of racketeering, by repeatedly engaging in mail and wire fraud. RICO Defendants' violations of 18 U.S.C. § 1962(c) caused Plaintiffs and Class Members to suffer significant economic harm.

**A. Enterprise**

49. Electricity Maine, LLC and parent company Provider Power, LLC comprise the Electricity Maine Promotional Enterprise ("Enterprise"). Together, these entities constitute an enterprise or an association-in-fact within the meaning of 18 U.S.C. § 1961(4).

50. Both members of the Enterprise share the common purpose of conducting RICO Defendants' fraudulent, deceptive, and misleading advertising scheme to promote Electricity Maine's electricity supply services and induce Plaintiffs and Class Members to purchase those

services instead of standard-offer electricity services or the services of other CEPs. At the direction of the RICO Defendants, the Enterprise has endeavored to achieve the common purpose since 2011, and has succeeded in enrolling nearly 200,000 residential and small-business electricity customers in Electricity Maine's services.

51. Electricity Maine and Provider Power, as members of the Enterprise, are completely and systematically intertwined. Functioning as a single unit, they share employees, ownership, management, facilities, and infrastructure, to achieve the Enterprise's common purpose.

52. Under the direction of RICO Defendants, the Enterprise functions through a hierarchical corporate decision-making structure. The Enterprise does not make decisions on an ad-hoc basis and its members, similarly, do not operate at arms-length; instead, they function as a cohesive unit to achieve the Enterprise's common purpose.

53. The Enterprise is owned by, and structured to function under the direction and control of, the RICO Defendants. RICO Defendants participated in the Enterprise's affairs through a pattern of racketeering activity consisting of numerous and repeated uses of interstate wire and mail communications to execute a scheme to defraud Plaintiffs and Class Members—all in violation of 18 U.S.C. § 1962(c).

54. Beginning in 2011, and until May 3, 2016, RICO Defendants Emile Clavet and Kevin Dean exclusively controlled the Enterprise. On May 3, 2016, Spark HoldCo purchased the Enterprise from Clavet and Dean, who remain employees of, or consultants to, Electricity Maine. All three RICO Defendants currently share control of the Enterprise.

55. RICO Defendants are distinct from both members of the Enterprise and from the Enterprise itself. RICO Defendants Emile Clavet and Kevin Dean are natural persons distinct

from the Enterprise. RICO Defendant Spark HoldCo is a distinct corporate entity from either Enterprise member and from the Enterprise itself. Unlike the typical relationship between a parent corporate entity and its subsidiary, Spark HoldCo directly controls the Enterprise by providing multi-million-dollar incentives to Electricity Maine and Provider Power to ensure that the Enterprise succeeds in its scheme to enroll additional residential and small-business electricity customers. Specifically, Spark HoldCo promised the Enterprise a \$9-million-dollar success fee for enrolling a certain number of new electricity supply customers through the below-described racketeering activities.

56. Without RICO Defendants' fraudulent scheme, the Enterprise could stand alone as a legitimate—albeit unsuccessful—business.

**B. Specific Acts of Mail and Wire Fraud**

57. RICO Defendants, through the Enterprise's conduct, committed numerous acts of mail and wire fraud in violation of 18 U.S.C. § 1341 and 1343 by using interstate mail and wires with specific intent to execute their fraudulent scheme. RICO Defendants' scheme is reasonably calculated to deceive persons of ordinary prudence and comprehension in order to part Plaintiffs and Class Members from their money and to induce them to surrender their legal rights. The scheme departs from any known standard of fair play and honest dealing. The scheme includes nondisclosure, deliberate falsehoods and misleading communications. Each nondisclosure, misrepresentation, and misleading statement is embedded in a pattern of deception and fraud reasonably calculated to induce reliance.

58. Defendants' specific acts of mail and wire fraud include, but are not limited to, the following statements:

- a. On August 2011, Emile Clavet made statements to the Lewiston Sun Journal that were published on August 14, 2011. These statements represented that



Electricity Maine's electricity rates "will always beat the standard offer. You'll never, ever pay more than the standard offer . . . ." This statement was published using interstate mail and wire communications in that it was published on the Lewiston Sun Journal's website and mailed to Lewiston Sun Journal subscribers. In causing Electricity Maine to make these statements, RICO Defendants were aware, and intended, that the Lewiston Sun Journal would publish the fraudulent and misleading statement on or about August 14, 2011, on its website using interstate wires.

- b. In the same August 14, 2011, Lewiston Sun Journal article, Electricity Maine's customer service project manager represented that "there is no catch and no gimmicks," "[t]here's just a better rate." This statement was published using interstate mail and wire communications in that it was published on the Lewiston Sun Journal's website and mailed to Lewiston Sun Journal subscribers. In causing Electricity Maine to make these statements, RICO Defendants were aware, and intended, that the Lewiston Sun Journal would publish the fraudulent and misleading statement on or about August 14, 2011, on its website using interstate wires.
- c. Emile Clavet and Kevin Dean appeared on television show 207TV in early 2012 and represented that Electricity Maine's prices were lower than the standard offer; that Electricity Maine Customers could save over \$130 a year; that Electricity Maine customers would be notified of any price increases; and that Electricity Maine's services did not come with a "catch,"—"there really isn't" Dean represented. This statement was published using interstate wire communications in that it was televised. In making these statements on live television, RICO Defendants were aware, and intended, that Portland, Maine NBC affiliate WCSH Channel 6 would transmit the fraudulent and misleading statement in early 2012. RICO Defendants, through Electricity Maine, later used interstate wire communications on February 22, 2012, to publish a recording of Clavet's and Dean's appearances on 207TV on Electricity Maine's YouTube channel.
- d. Throughout 2012 and through March 2013, Electricity Maine ran a series of television advertisements on major network channels in which Electricity Maine spokeswoman Kiley Bennet represented that Electricity Maine's electricity services were lower than the standard-offer rate. The advertisements stated "if your electricity bill says standard offer, you're paying too much" and "[c]hange now and save every month." In causing Electricity Maine to make these fraudulent and misleading statements, RICO Defendants were aware and intended that Portland, Maine NBC affiliate WCSH Channel 6 and other Maine network television affiliates would use interstate wire communications to transmit Kiley Bennet's statements.
- e. In late September or early October 2012, Kevin Dean made statements to the Bangor Daily News regarding Electricity Maine's prices that were published

- on October 2, 2012. He maintained that Electricity Maine “will always offer the lowest price.” This statement was published using interstate mail and wire communications in that it was published on the Bangor Daily News website and mailed to Bangor Daily News subscribers. In causing Electricity Maine to make these statements, RICO Defendants were aware, and intended, that the Bangor Daily News publish the fraudulent and misleading statement on or about October 2, 2012, on its website using interstate wires.
- f. On January 7, 2013, Electricity Maine distributed the following talking point to at least four Maine radio station syndicates—Cumulus Media, Blueberry Broadcasting, Portland Radio Group, and Town Square Media—for a thirty-second on-air promotion: “Nearly 2 hundred thousand Mainers can’t be wrong. Electricity Maine was the first and now the largest competitive electricity supplier provider in Maine. In 2013 Electricity Maine customers will combine to save 6 point 8 million dollars.” Electricity Maine distributed the same talking point on January 18, 2013. These statements were transmitted using interstate wire communications and subsequently made part of radio broadcasts. In causing Electricity Maine to make these statements, RICO Defendants were aware, and explicitly instructed, that the radio groups transmit the fraudulent and misleading statements in thirty-second advertising clips using interstate wires.
  - g. On January 18, 2013, Electricity Maine used email to distribute talking points to at least the same four Maine radio station groups representing that “In 2013 customers will combine to save 6.8 million!” These statements were transmitted using interstate wire communications and subsequently transmitted as part of radio broadcasts. These statements were transmitted using interstate wire communications and subsequently made part of radio broadcasts. In making these statements, RICO Defendants were aware, and explicitly instructed, that the radio groups transmit the fraudulent and misleading statements in thirty-second advertising clips using interstate wires.
  - h. On February 14, 2013, Electricity Maine distributed talking points to at least the same four Maine radio station groups telling Maine residential electricity customers to “Just grab your power bill, if on page 2 it says ‘Standard Offer’ you’re paying too much.” These statements were published using interstate wire communications in that they were part of a radio broadcast. These statements were transmitted using interstate wire communications and subsequently made part of radio broadcasts. In making these statements, RICO Defendants were aware, and explicitly instructed, that the radio groups transmit the fraudulent and misleading statements in thirty-second advertising clips using interstate wires.
  - i. As of November 1, 2016, Provider Power represented on its website since at least August 5, 2016, and continues to represent, that it has “SAVED RESIDENTS MILLIONS OF DOLLARS.” This fraudulent and misleading

statement was published by Electricity Maine at RICO Defendants' direction using interstate wire communications.

- j. Since at least August 2016, Provider Power represented, and continues to represent, on its You Tube channel that "200,000 customers have switched to Electricity Maine, saving over \$14 million in energy costs." This fraudulent and misleading statement was published by Electricity Maine at RICO Defendants' direction using interstate wire communications.

59. These statements were fraudulent and deceptive because Electricity Maine, aggregately, has not saved customers money as it promised and represented; instead, Electricity Maine has increased its residential electricity customers' bills by at least \$35 million. These statements, further, omit information regarding material risks, consequences, and other negative aspects of Electricity Maine's services.

60. RICO Defendants, with intimate knowledge of the power industry, were aware of commodity markets' volatility at the time they caused Electricity Maine to publish the above statements and were aware that their promised power prices would not always be lower than the standard-offer rate.

61. RICO Defendants were aware at the time that they caused Electricity Maine to make these representations that Electricity Maine could only succeed as a business and recoup the promotional costs of recruiting each customer by raising Electricity Maine's rates above the standard offer.

62. RICO Defendants were aware at the time they caused Electricity Maine to make these representations that Electricity Maine could not possibly always beat the standard offer—or even beat the standard offer for any significant period of time. RICO Defendants deliberately misrepresented the price of Electricity Maine's residential electricity services as part of a scheme to deprive Plaintiffs and Class Members of their property.

63. RICO Defendants were incentivized to misrepresent the price of Electricity Maine's services and omit from their advertising and marketing the true cost of their services because RICO Defendants' business model is entirely dependent on its ability to (1) promise unrealistic price savings and (2) automatically reenroll customers into new contracts at rates that allow them to make a profit. Without engaging in fraudulent and misleading marketing and without the ability to deceptively reenroll customers—and reenroll them at higher rates when wholesale electricity prices are rising—Electricity Maine would quickly fail or, at a minimum, would not profit. For this reason, RICO Defendants actively concealed and withheld, and caused others to conceal or withhold, accurate information regarding the actual cost of Electricity Maine's electricity supply services.

64. Prior to December 9, 2014, Electricity Maine's "Terms and Conditions," explicitly stated that it would provide renewal notice by "Confirmation Letter" (*Exhibit B at I*)—representing that its customers would receive a renewal notice by interstate mail before their electricity rates increased. These "Terms and Conditions" were published on Electricity Maine's and Provider Power's websites continuously since at least April 18, 2014.

65. On at least 200,000 occasions between 2012 and 2015, RICO Defendants were required by contract and regulation to use interstate mail to provide notice to Plaintiffs and Class Members that material changes in their terms of service with Electricity Maine were imminent.

66. RICO Defendants' fraudulent promise of a "Confirmation Letter" constitutes mail fraud in violation of 18 U.S.C. § 1341. RICO Defendants intentionally did not disclose material changes in Electricity Maine's customers' terms of service by U.S. mail; instead, renewal notices were sent using deceptive emails and interstate wires. Because Plaintiffs and Class Members were expecting letters that informed them (1) that their Electricity Maine contracts would

automatically renew without action on their behalf and (2) of the terms of renewal, RICO Defendants' fraudulent representations caused Plaintiffs' and Class Members' auto-renewal at significantly increased electricity supply rates.

67. RICO Defendants failed to disclose to the Maine Public Utilities Commission that Electricity Maine sometimes reenrolled customers at rates that greatly exceeded the standard offer; that Electricity Maine was contractually obligated to send renewal notices by letter; and that Electricity Maine did not provide renewal notices in or with customers' monthly bills.

68. Defendants used interstate wires—through Electricity Maine's website or by telephone—to consummate their fraudulent scheme and enroll customers in their services.

### **C. Pattern of Racketeering**

69. RICO Defendants' repeated violations of the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, extend over a period of years from 2011 until the present, involve distinct and independent criminal acts and episodes, and constitute a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5).

70. The racketeering acts—wire and mail fraud—are described above in this Complaint.

71. The racketeering acts are related and amount to, or pose a threat of, continued criminal activity because RICO Defendants, through the Enterprise, have conducted their fraudulent scheme since 2011.

72. The racketeering acts are a regular way that the Enterprise conducts the RICO Defendants' ongoing illegitimate business.

73. The racketeering acts are performed at the direction, or the ultimate direction, of RICO Defendants.

74. The racketeering acts share common methods of fraudulent and misleading advertising and omissions to defraud victims who purchase residential and small-business electricity supply services from Electricity Maine.

75. The acts committed against Plaintiffs were not isolated, but are related to those committed against nearly 200,000 Maine residential and small-business electricity supply customers.

76. The acts described continue today and are an imminent and daily threat to Maine residential and small-business electricity supply customers.

### **C. Injury**

77. Plaintiffs have been harmed by reason of RICO Defendants' fraudulent scheme because RICO Defendants' misconduct and predicate acts are both the but-for and proximate cause of Plaintiffs' and Class Members' injuries. This harm was not discoverable to Plaintiffs and Class Members until at least early 2013, when Electricity Maine began reenrolling its customers' into new, higher-rate, contracts, without notice, and Plaintiffs' and Class Members' monthly power bills began to increase.

78. Plaintiffs and Class Members, by reason of RICO Defendants' misconduct and predicate acts, purchased residential and small-business electricity supply services from Electricity Maine instead of from utility providers at the standard-offer rate.

79. Without RICO Defendants' misconduct, Plaintiffs and Class Members would not have purchased Electricity Maine's electricity supply services. Because electricity is a homogenous good that requires its purveyors to compete entirely on price, if RICO Defendants disclosed the true cost of their residential electricity services, Electricity Maine would have failed to enroll any appreciable number of customers. Instead, because of RICO Defendants'

fraudulent scheme, Electricity Maine enrolled almost 200,000 residential electricity customers and charged at least \$35 million more than those customers would have paid for standard-offer service—the service that they would have received without RICO Defendants’ fraud.

80. WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly situated, respectfully request that the Court enter judgment jointly and severally against RICO Defendants; award Plaintiffs and Class Members three times their damages in an amount to be proven at trial, reasonable attorney fees, and costs; enjoin RICO Defendants from using the Enterprise to engage in illegal conduct; and grant Plaintiffs any other relief the Court deems just and proper.

**COUNT II**  
**VIOLATION OF THE MAINE UNFAIR TRADE PRACTICES ACT — 5 M.R.S. § 207**

81. Plaintiffs repeat and reallege the allegations in every previous paragraph of this Complaint as if fully set forth herein.

82. Defendants engaged in, and continue to engage in, false, unfair, and deceptive business practices, advertising, and marketing in violation of 5 M.R.S. § 207. These acts include but are not limited to:

- b. Advertising and marketing that Electricity Maine’s prices would always be lower than the standard offer;
- c. Advertising and marketing Electricity Maine’s prices as lower than the standard offer;
- d. Failing to disclose the risks associated with Electricity Maine’s product;
- e. Auto renewing Plaintiffs’ and Class Members’ contracts without notice;
- f. Advertising and marketing that Electricity Maine has saved customers millions of dollars;
- g. Advertising and marketing that Electricity Maine will save customers millions of dollars in the future;

- h. Providing teaser rates that automatically increase without notice;
- i. Otherwise increasing Plaintiffs' and Class Members' electricity rates without notice; and
- j. Refusing to allow Electricity Maine customers to terminate auto-enrolled contracts.

83. Defendants' business practices, advertising, and marketing, cause, or are likely to cause, substantial injury in that Plaintiffs and Class Members have suffered significant economic harm.

84. Because of the extremely deceptive nature of the Defendants' conduct—including Defendants' failure to provide Plaintiffs and Class Members with renewal notices—this harm is not reasonably avoidable by Plaintiffs and Class Members.

85. Defendants' fraudulent and misleading business practices provide little or no benefit to consumers. Despite its increased price, Electricity Maine's electricity supply services, are identical to, and provides no additional benefit over, its competitors' services.

86. On September 26, 2016, Plaintiff Katherine Veilleux, through counsel, demanded relief from Defendant Electricity Maine in writing pursuant to 5 M.R.S. § 213(1-A) (*Exhibit C*). Electricity Maine did not respond.

87. WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly situated, respectfully request that the Court enter judgment jointly and severally against all Defendants and award Plaintiffs and Class Members actual damages in an amount to be proven at trial, reasonable attorney fees, costs, restitution, and injunctive relief prohibiting Defendants from (a) engaging in unfair and deceptive trade practices, (b) charging electricity rates greater than the standard-offer, and (c) charging early termination fees; and any other relief that the Court deems just and proper.



**COUNT III  
NEGLIGENCE**

88. Plaintiffs repeat and reallege the allegations in every previous paragraph of this Complaint as if fully set forth herein.

89. Defendants owed Plaintiffs and Class Members a duty not to engage in fraudulent, misleading, or deceptive conduct, and not to misrepresent the cost of their services.

90. Defendants breached that duty by engaging in the conduct alleged above in this Complaint.

91. Defendants' negligent conduct proximately caused Plaintiffs and Class Members to incur significant economic harm in that Plaintiffs and Class Members have substantially overpaid for electricity supply services.

92. WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly situated, respectfully request that the Court enter judgment jointly and severally against all Defendants and award Plaintiffs and Class Members actual damages in an amount to be proven at trial, reasonable attorney fees, costs, punitive damages, and any other relief that the Court deems just and proper.

**COUNT IV  
NEGLIGENT MISREPRESENTATION**

93. Plaintiffs repeat and reallege the allegations in every previous paragraph of this Complaint as if fully set forth herein.

94. Defendants' misrepresentations were made in the course of Defendants' business and in transactions in which Defendants had a pecuniary interest.

95. Defendants knowingly, recklessly, or negligently, misrepresented or failed to disclose information to Maine residential and small-business electricity supply consumers who

relied upon that false and misleading information in the course of their business and in consumer transactions.

96. Defendants did not exercise reasonable care or competence in obtaining or communicating information.

97. Plaintiffs and Class Members suffered pecuniary losses by justifiably relying on Defendants' misrepresentations.

98. WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly situated, respectfully request that the Court enter judgment jointly and severally against all Defendants and award Plaintiffs and Class Members actual damages in an amount to be proven at trial, reasonable attorney fees, costs, punitive damages, and any other relief that the Court deems just and proper.

#### **COUNT V FRAUDULENT MISREPRESENTATION**

99. Plaintiffs repeat and reallege the allegations in every previous paragraph of this Complaint as if fully set forth herein.

100. Defendants intentionally or recklessly misrepresented or failed to disclose material facts to Maine residential and small-business electricity supply consumers regarding the cost of Electricity Maine's electricity supply services. Defendants' misrepresentations are described specifically in Count I. The misrepresented facts are material because they caused consumers to purchase Electricity Maine's services.

101. Defendants were aware of the falsity of their misrepresentations. They were aware that it was economically impossible for Electricity Maine to beat the standard-offer electricity rate.

102. Defendants misrepresented the cost of Electricity Maine's services for the purpose of enrolling residential and small-business electricity supply customers.

103. Customers, in enrolling in Electricity Maine's services, reasonably relied on Defendants' misrepresentations and have suffered significant financial harm because of that reliance.

104. WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly situated, respectfully request that the Court enter judgment jointly and severally against all Defendants and award Plaintiffs and Class Members actual damages in an amount to be proven at trial, reasonable attorney fees, costs, punitive damages; rescind Plaintiffs and Class Members contracts with Electricity Maine; and award any other relief that the Court deems just and proper.

**COUNT VI  
ENJUST ENRICHMENT**

105. Plaintiffs repeat and reallege the allegations in every previous paragraph of this Complaint as if fully set forth herein.

106. As the intended and expected result of their conscious wrongdoing, Defendants have profited and benefited from payments made by Plaintiffs and Class Members for residential electricity services at rates greater than standard-offer service.

107. Defendants have voluntarily accepted and retained these payments, with full knowledge and awareness that, as a result of their wrongdoing, Plaintiffs and Class Members were overpaying for residential electricity services.

108. By accepting payments for residential electricity services at rates greater than the standard-offer rate, Defendants are unjustly enriched.

109. WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly situated, respectfully request that the Court enter judgment jointly and severally against all

Defendants and award restitution of Defendants' wrongful profits, revenues, and benefits in an amount to be proven at trial and award any other relief that the Court deems just and proper.

**COUNT VII  
BREACH OF CONTRACT**

110. Plaintiffs repeat and reallege the allegations in every previous paragraph of this Complaint as if fully set forth herein.

111. Defendants were contractually obligated to provide Plaintiffs and Class Members with a "Confirmation Letter" before they were automatically renewed in Defendants' residential electricity services.

112. Defendants breached their contractual obligation to provide Plaintiffs and Class Members with a "Confirmation Letter" before renewal. Despite this breach, Defendants reenrolled Plaintiffs and Class Members in Defendants' residential electricity services at significantly increased rates without notice.

113. Plaintiffs and Class Members suffered significant economic loss as a result of Defendants' breach of contract.

114. WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly situated, respectfully request that the Court enter judgment jointly and severally against Defendant Electricity Maine, LLC, and award compensatory and consequential damages in an amount to be proven at trial, reasonable attorney fees, costs, punitive damages, and any other relief that the Court deems just and proper.

**JURY DEMAND**

115. Plaintiffs demand a trial by jury on each and every count so triable.

Dated November 18, 2016, at Portland, Maine.

Respectfully submitted,

/s/ Thomas F. Hallett

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Thomas F. Hallett, ME Bar No. 3142

/s/ Timothy E. Zerillo

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Timothy E. Zerillo, ME Bar No. 9108

/s/ David A. Weyrens

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David A. Weyrens, ME Bar No. 4035

/s/ Benjamin N. Donahue

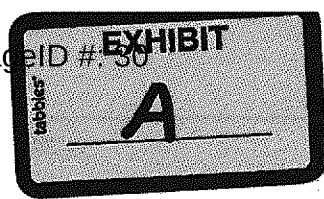
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/s/ Robert P. Cummins

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rpc@cumminlawfirm.com



**Annual Report for Licensed Competitive Electricity Providers Page 1**  
**Due July 1, 2013 – TO BE FILED IN CMS ANNUAL REPORT MODULE**

**Year: 2013**

**CEP Name: Electricity Maine, LLC**

CONTACT FOR THIS REPORT	
NAME:	Muriel LeClerc
Title	Regulatory and Compliance
Telephone:	207.440.5004
Email:	mleclerc@providerpower.com

**Aggregator/Brokers need to complete Questions 2, 3, 6, 8, 14, and 15 only**

- Chapter 305 (2)(E)(1)(a) For each service territory served complete the chart shown on Attachment A for both Standard Offer and Non-Standard Offer Sales.

See Attachment A

- Chapter 305 (2)(E)(1)(c) – enforcement actions: List, with identifying case reference numbers, any enforcement action initiated or concluded against the licensee or an affiliated interest by any federal, state or local agency with respect to the sale of electricity or other energy-related product or service.

None

- Chapter 305 (2)(E)(1)(d) – ownership or control: Report any changes in the licensee's ownership or control.

None

- Chapter 305 (2)(E)(1)(e), Chapter 306(2)(H)(3)(a) – below please list and attach copies of disclosure labels available to customers during the reporting period. Please indicate which class of customers and the time period the label is applicable to.

The following Disclosure Labels were provided to Residential, Small and Medium Customers during 2013:

Attachment I – CMP Customers – February 1, 2012 to January 31, 2013  
 Attachment J – BHE Customers – February 1, 2012 to January 31, 2013  
 Attachment K – CMP and BHE Customers – February 1, 2013 to January 31, 2014

**Annual Report for Licensed Competitive Electricity Providers      Page 2**  
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**CEP Name: Electricity Maine, LLC**

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5. During 2013, did you use anyone other than Company employees to market your product? If so, please provide detail of the entities marketing your product and a listing of such entities.

No

6. Do you offer or plan to offer a "green" (either green energy or RECs) product? If so, please provide a description of the product offered and copies of any materials promoting this product.

No

7. Chapter 305(2)(E)(1)(b and f), Chapter 306(2)(H)(3)(b and c) and Chapter 311 (6)(G)(1 to 4):

- a. Please provide reports from GIS Administrator for service in the ISO-NE control area that demonstrates compliance with Maine Class I and Class II RPS.<sup>1</sup>

See Attachment G and H

- b. A description of the resources used to serve customers in the Maritimes control area and information verifying the accuracy of the resource portfolio and the emission characteristics associated with the resource portfolio.

See Attachment G and H

- c. Complete Attachment C to show the actual source of energy supply used to serve customers in Maine.

See Attachment C

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<sup>1</sup> Entities that have contractual rights to the output of transmission and distribution utility qualifying facility entitlements that have not been provided associated GIS certificates may use the contractual rights to the output of the entitlements to demonstrate compliance with the portfolio requirement.

**Annual Report for Licensed Competitive Electricity Providers Page 3**  
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**Year: 2013**

**CEP Name: Electricity Maine, LLC**

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- d. Complete Attachment D to show the GIS certificates (RECs) (or energy) used to meet the Class I and Class II portfolio requirements, the average costs of the GIS certificates (RECs) (or energy) used, and any Alternative Compliance Payments made to meet the Class I Requirements.

See Attachment D

8. Chapter 305(4)(D) - During the year, did you provide or arrange for an electricity product in which the price to the customer varies with changes in energy prices or an energy price index? If so, please indicate whether you provided the market risk disclosure statement in the contract for service with the customer acknowledging the provision by signature or initials or on a document separate from the contract containing only the market risk disclosure statement.

No

9. Provide copies of all Terms of Service in effect during calendar year 2013, noting the effective date for each and the associated customer class.

Attachment L – 1-1-2013 to 4-18-2013 – Residential, Small Non-Residential and Medium-Non Residential Customers

Attachment M – 4-18-2013 to 6-26-2013 – Residential, Small Non-Residential and Medium-Non Residential Customers

Attachment N – 6-26-2013 to 12-31-2013\* – Residential, Small Non-Residential and Medium-Non Residential Customers (\*only until 9-1-2013 for Medium Non-Residential Customers)

Attachment O – 9-1-2013 to 12-31-2013 – Medium-Non Residential Customers

10. Chapter 306(2)(H)(3)(d) – if you disaggregate your portfolio, provide the table requested in Item #9 showing any disaggregation during the year.

No



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**Due July 1, 2013 – TO BE FILED IN CMS ANNUAL REPORT MODULE**

**Year: 2013**

**CEP Name: Electricity Maine, LLC**

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11. Chapter 311 (6)(G)(1 to 2) – provide the following information:

<b>Information required:</b>	<b>Total – Megawatt hours</b>
Total retail MWh sales in Maine	1,341,128
Total retail MWh load in Maine including line losses	
Class 1 Portfolio Requirements:	
Energy Purchases	80,469
GIS Certificate Purchases	80,469
MWhs met by Alternative Compliance Payment	
To be met in following year per cure period in Chapter 311 §7(A)	
Class II Portfolio Requirements:	
Energy Purchases	402,347
GIS Certificate Purchases	402,347
To be met in following year per cure period in Chapter 311 §7(A)	

12. Chapter 311 (6) (H) – Officer Certification – Each annual report must contain a certification by a corporate officer that the competitive energy provider has complied with the portfolio requirement and that all eligible GIS certificates or eligible resources used to satisfy the portfolio requirement in Maine have not been used by the competitive electricity provider to satisfy any load obligations in other jurisdictions.

Name: Kevin Dean

Title: Manager/Member

(By filing this report in the Commission's CMS, the CEP is certifying that the filing is true and complete and no additional certification is necessary)

**Annual Report for Licensed Competitive Electricity Providers Page 5**  
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**Year: 2013**

**CEP Name: Electricity Maine, LLC**

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13. Please complete the following tables with the number of customers in Maine during 2013. Average # of Customers per year should be calculated by taking the sum of the number of customers at the end of each month divided by number of months with customers. Respond "**None**" for service territories when licensed to serve but have had no customer contracts and "**N/A**" when not licensed to serve that customer class/territory.

<b>CMP</b>	<b>Residential</b>	<b>Small Non-Residential</b>	<b>Medium Non-Residential</b>	<b>Large Non-Residential</b>
No. of Months service was provided to Customers during Year	12	12	12	None
Average # of Customers during Year*	132,465	6,640	491	None
Number of Customers at Year-end	137,493	6,552	485	None

<b>BHE</b>	<b>Residential</b>	<b>Small Non-Residential</b>	<b>Medium Non-Residential</b>	<b>Large Non-Residential</b>
No. of Months service was provided to Customers during Year	12	12	12	None
Average # of Customers during Year*	4,331	432	10	None
Number of Customers at Year-end	4,496	426	10	None

**Annual Report for Licensed Competitive Electricity Providers**      **Page 6**  
**Due July 1, 2013 – TO BE FILED IN CMS ANNUAL REPORT MODULE**

**Year: 2013**

**CEP Name: Electricity Maine, LLC**

<b>MPS</b>	<b>Residential</b>	<b>Small Non-Residential</b>	<b>Medium Non-Residential</b>	<b>Large Non-Residential</b>
No. of Months service was provided to Customers during Year	None	None	None	None
Average # of Customers during Year*	None	None	None	None
Number of Customers at Year-end	None	None	None	None

<b>COUS Combined</b>	<b>Residential</b>	<b>Small Non-Residential</b>	<b>Medium Non-Residential</b>	<b>Large Non-Residential</b>
No. of Months service was provided to Customers during Year	None	None	None	None
Average # of Customers during Year*	None	None	None	None
Number of Customers at Year-end	None	None	None	None

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**Year: 2013**

**CEP Name: Electricity Maine, LLC**

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14. The MPUC's web page includes a listing of competitive electricity providers. [http://www.maine.gov/mpuc/electricity/list\\_of\\_suppliers.shtml](http://www.maine.gov/mpuc/electricity/list_of_suppliers.shtml) This listing includes a customer contact person with name, address and telephone number and is also separated by T&D territory and customer class. Please verify the information for your company.

- a. Provide the following information, which will be used to update our web page. (Contact should be appropriate for customers seeking service or information about service)

Contact Name: Sandra Nadeau  
 Title: Director of Operations  
 Address: 306 Rodman Rd  
Auburn, ME 04240  
 Telephone: 866-573-2674  
 FAX: 855-558-8480  
 E-mail: customerservice@electricityme.com

Please indicate if this information has changed from the current listing:

  X   Yes                 No

- b. Complete the following chart providing information on the territories and customer classes served:

Customer classes as defined in Ch. 305 §1(B), CEP markets to:

Customer Class	Currently Serving	Not Serving but plan to in next 12 months	Licensed to serve but no immediate plans to provide service and not accepting calls or marketing to class
Residential (§1(B)(20))	X		
Small Non-Residential (§1(B)(21))	X		
Medium Non-Residential (§1(B)(17))	X		
Large Non-Residential (§1(B)(14))			X

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**CEP Name: Electricity Maine, LLC**

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**T&D utility territories in which the applicant will do business:**

- ☒ Central Maine Power Company
- ☒ EMERA Maine - Bangor Division
- ☐ EMERA Maine - Maine Public Division
- ☐ Eastern Maine Electric Cooperative
- ☐ Fox Island Electric Cooperative
- ☐ Houlton Water Company
- ☐ Kennebunk Light and Power District
- ☐ Madison Department of Electric Works
- ☐ Swans Island Electric Cooperative
- ☐ Van Buren Light & Power District

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**Year: 2013**

**CEP Name: Electricity Maine, LLC**

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15. Maine PUC General Listing – The MPUC maintains an internal listing with contacts who will receive general and specific mailings from the Commission related to it and its specific industry. Provide the following information which will be used to update that information:

Regulatory Contact Name:	<u>Muriel LeClerc</u>
Title:	<u>Regulatory and Compliance</u>
Address:	<u>PO Box 1150</u>
	<u>Auburn, ME 04210</u>
Telephone:	<u>207-440-5004</u>
FAX:	<u>855-558-8480</u>
E-mail:	<u>mleclerc@providerpower.com</u>

If this information has changed, please email the revised information to Maine.PUC@maine.gov.

## TERMS OF SERVICE

## Electricity Maine, LLC ("Electricity Maine")

## Terms of Service

Last Updated 4/18/13: Version 10

**Purchase of Electric Generation Service.** Electricity Maine agrees to sell and you agree to buy, your full requirements for electric generation service (measured in kilowatt hours) at the price and on the terms and conditions specified in this agreement (the "Supply Contract") throughout the term of this Supply Contract. The purchase and sale of energy hereunder shall commence at 00:00:01 EST on the first day that Electricity Maine provides physical delivery to your facilities and shall end at 24:00:00 EST on the last day of the term.

**1. Price Structures.** You will be billed at the fixed rate in cents per kilowatt hour set forth in your Confirmation Letter for your actual consumption of electricity. The Price Structures do not include any applicable taxes. In addition, you are responsible for paying your local utility distribution and transmission charges as well as any other applicable charges.

**2. Duration and kind of contract.** This Supply Contract is a contract for your supply of electric generation service. The term of this Supply Contract is set forth in your Confirmation Letter. For new customers, service shall commence on the next meter read date after the Utility processes your enrollment with Electricity Maine. Service commencement lead-time may vary depending on utility enrollment requirements, your specific meter-reading schedule, time-of-year pricing, and market conditions. For renewal customers, service shall continue uninterrupted. This Supply Contract will renew automatically until terminated by you or Electricity Maine per the Terminations Provisions set forth below. Between thirty (30) and sixty (60) calendar days prior to the end of the term of service of your Supply Contract, Electricity Maine will send you a new Confirmation Letter for the renewal period, which notifies you of the existence and operation of this automatic renewal provision and that sets forth the electricity price and term that will apply to the renewal period. You will have ten (10) days from receipt of a new Confirmation Letter to decline the auto renewal notice and terminate the Supply Contract effective at the end of the then-current term. If you do not notify Electricity Maine within ten (10) days of such intent to decline the auto renewal notice then the auto renewal period shall be in effect and through the term stated in the renewal Confirmation Letter. For the MaineStrong charitable contribution/cash back program: Customers on the 18 month MaineStrong rate that are in good standing and current on their balance with Electricity Maine have the option of 2% of monthly supply charges for donation to a charity of their choice, or as cash back for the term of their contract.

**3. Termination Provisions.** Electricity Maine may terminate this Supply Contract upon not less than thirty (30) days written notice to you, with such termination to be effective at the end of the current Supply Contract. You may terminate this Supply Contract by written notice to Electricity Maine delivered no later than ten (10) days from your receipt of a renewal Confirmation Letter from Electricity Maine, with such termination to be effective at the end of the current Supply Contract. Upon termination, service will be discontinued on the next utility meter read date for your account that is at least thirty (30) days after the notice of termination. If you terminate the Supply Contract prior to the end of the term in effect, you may be subject to a "Cost Recovery Fee" outlined in Section 8.

**4. Payment of Bills.** The cost of your electric generation service will be included on your bill from the Utility, and is due and payable when your Utility bill is due and payable. You agree to accept the measurements as determined by the Utility for purposes of accounting for the electric power supplied under this Supply contract. You will be billed additional charges, including charges to transmit and distribute the electricity to you, from the Utility consistent with its filed tariffs. Electricity Maine reserves the right to change billing methods. When the Utility issues you a consolidated bill that includes charges for electric generation service supplied by Electricity Maine, all invoiced balances not paid in full by the due date are subject to the Utility's late payment policies and procedures, including assessment by the Utility of late payment fees and interest. In the event you default in your payment or other obligations under this Supply Contract, Electricity Maine has the right to cancel this Supply Contract upon thirty (30) days written notice, at which subsequent time you will automatically be transferred to the Utility's Standard Offer rate plan. You will remain

responsible for balances owed to Electricity Maine for generation service and Electricity Maine's actual out-of-pocket expenses incurred in enforcing its rights under this Supply Contract, including reasonable attorney fees and actual court costs. If at any time you enter into a payment plan with the Utility while you have an outstanding balance owed to Electricity Maine, you must notify Electricity Maine within fifteen (15) days. Outstanding balances owed to Electricity Maine may not be accounted for by the Utility payment plan, may appear as a separate balance on your bill, and will remain your responsibility..

**5. Credit Reporting.** When you first apply for service and during the term of the Supply Contract with Electricity Maine we may contact a credit reporting agency to obtain utility credit history and credit score. Once enrolled, Electricity Maine reserves the right to report your payment history to a credit reporting agency.

**6. Customer Deposits.** Electricity Maine does not require a customer deposit to enroll.

**7. Warranty Disclaimer; Damages; Force Majeure.**

ALL ELECTRIC GENERATION SERVICE IS PROVIDED BY ELECTRICITY MAINE ON AN "AS IS" BASIS. ELECTRICITY MAINE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE ELECTRIC GENERATION SERVICE PROVIDED THEREBY. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, ELECTRICITY MAINE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE WITH RESPECT TO THE ELECTRIC GENERATION SERVICE PROVIDED THEREBY.

You agree that Electricity Maine shall not be liable for any damages or claims for matters within the control of the Utility or the ISO-New England controlled electricity grid, which include maintenance of electric lines and systems, service interruptions, loss or termination of service, deterioration of electric services, meter readings or injury to persons or damage to property caused by the delivery or supply of electricity. Electricity Maine shall not be responsible for any failure to commence or terminate electric generation service on the date specified due to any failure or delay in enrolling you with the Utility. Electricity Maine's liability shall be limited to direct actual damages only, which will not exceed the amount of your single largest monthly invoice during the preceding 12 months. In no event shall Electricity Maine be liable for any punitive, incidental, consequential, exemplary, indirect, third-party claims or other damages whether based on contract, warranty, tort, negligence, strict liability or otherwise, or for lost profits arising from any breach or nonperformance of this Supply Contract. Electricity Maine will make commercially reasonable efforts to supply electricity but does not guarantee a continuous supply of electricity. Customer acknowledges that certain causes and events outside of Electricity Maine's control (Force Majeure events) may result in interruptions in service and Electricity Maine shall not be liable for any such interruptions. Electricity Maine does not generate electricity nor does it transmit or distribute electricity. Therefore, Customer agrees that Electricity Maine shall not be liable for damages caused by electricity or Force Majeure events, including acts of God, acts of any governmental authority, acts of terrorists or enemies of the state, accidents, strikes or lock outs, labor troubles, required maintenance work, inability to access the Utility's system, non-performance by the Utility, or any cause beyond Electricity Maine's control.

**8. Charges, Fees and Penalties.** You will be charged for electric generation service supplied at the contract rate. No additional fees will be assessed to you by Electricity Maine unless you choose to cancel this Supply Contract prior to its renewal date. You understand and agree that in order for Electricity Maine to offer and fulfill its fixed rate obligation to you, it has to purchase electric power in advance of usage in amounts needed to cover the full term of this Supply Contract. If you cancel this Supply Contract early, you will be responsible for paying a "Cost Recovery Fee" of \$100.00 and any cost associated with the cost of selling the unused portion of your electricity to others as well as estimated lost revenue that Electricity Maine may incur from such a sale. In the event you default in your payment or other obligations under this Supply Contract, Electricity Maine has the right to cancel this Supply Contract upon thirty (30) days written notice. Electricity Maine reserves the right to charge interest on any outstanding balances more than thirty (30) days overdue at the Utility's maximum allowed default interest rate. You are responsible for settlement of any balances for generation service, late payment or interest charges owed to your Utility as per paragraph 3 of this agreement. In the event there is a change (including a change in interpretation) in law, regulation, rule, ordinance, order, directive, filed tariff, decision, writ, judgment or decree by a governmental authority (including the Maine PUC or ISO-NE), including, without limitation, changes in Utility tariffs and ISO-NE rules, including those changes affecting fees, costs, or charges imposed by ISO-NE or the Maine PUC, changes in market rules, changes in load profiles or changes in nodal and zonal definitions, and such change results in Electricity Maine incurring additional costs and expenses in providing your electricity service, these additional costs and expenses shall be your responsibility and they will be assessed in your monthly bill as a pass-through charge.



**9. Estimated Bills.** In the event the Utility is unable to read your electric meter, the Utility will estimate your usage and your charges will be calculated accordingly and adjusted on a future bill.

Electricity Maine reserves the right to use third party billing services in performance of the Terms and Conditions of this Supply Agreement.

**10. Disclosure of Risks and Costs Associated With Real-Time or Indexed Electricity Products.** Maine regulations require that electricity suppliers, brokers and aggregators provide the following disclosure to customers regarding electricity products in which the prices paid by consumers vary with changes in wholesale electricity prices, other energy prices, or an energy price index.

**Volatility Risk:** Electricity prices may be subject to substantial volatility based on economic conditions, fuel prices, seasonal electricity demands, generator outages, weather and other factors.

**Future Performance:** Past results regarding particular electricity products are not necessarily an indication of future results.

**11. Right to Rescind.** YOU HAVE A RIGHT TO RESCIND THIS CONTRACT FOR ELECTRICITY SUPPLY WITHOUT PENALTY WITHIN FIVE BUSINESS DAYS OF YOUR SUBSCRIPTION. IN ORDER TO EXERCISE YOUR RIGHT TO RESCIND THIS CONTRACT, YOU MUST CONTACT US BY ONE OF THE FOLLOWING THREE MEANS:

1. By telephone at: 866-573-2674;

2. By mailing us a written notice to rescind at:

Electricity Maine, LLC

PO Box 1150

Auburn, Maine 04211-1150; or

3. Electronically through Electricity Maine's website at [www.electricityme.com](http://www.electricityme.com).

**12. Questions and Complaints.** If you have a question or complaint about your electricity supply, you can contact Electricity Maine by phone, toll-free by calling 1-866-573-2674 during the following hours: Monday through Friday, 8:00 a.m. to 5:00 p.m. You can also contact us through our website at [www.electricityme.com](http://www.electricityme.com).

**13. Standard Offer Generation Service.** All retail electricity customers in Maine are entitled to purchase their electricity supply from a competitive supplier or through standard offer service. Standard offer service is provided automatically to customers who do not sign a contract with a supplier for their electricity supply.

**14. Changes in Terms of Service.** In the event of any material changes in these Terms of Service, we will notify you in writing by your email address on record between 30 and 60 calendar days in advance of such material change.

**15. Assignment.** This contract may be assigned or transferred by Electricity Maine without your consent with thirty (30) days prior written notice to your e-mail address on record. You may not assign this contract, in whole or part, or any of your rights or obligations hereunder, without prior written consent from Electricity Maine. Nothing in this contract shall create, or be construed to create, any express or implied rights in any person or entity other than Electricity Maine and Customer.

**16. Do-Not-Call List.** The Federal Trade Commission maintains a national Do Not Call List. You may be able to place your home or cell phone number on this list to stop unwanted telemarketing calls from businesses with which you do not have an established business relationship. You can register online at [www.donotcall.gov](http://www.donotcall.gov), or by telephone at 1-888-382-1222. For TTY, call 1-866-290-4236.

**17. Consumer Protection Rights.** You may contact the Maine Public Utilities Commission to obtain information on consumer protection rights by calling the Commission's Consumer Assistance Division Hotline at 1-800-452-4699, Monday through Friday, 8:30 a.m. to 4:30 p.m. or by writing to the Commission at:

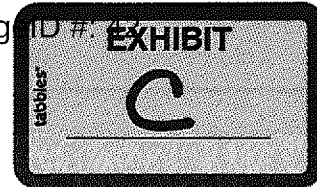
Maine Public Utilities Commission

Consumer Assistance Division

18 State House Station

Augusta, ME 04333-0018

**18. Net Metering.** If your account is subject to Net Metering under Chapter 313 (CNEBA) it requires an additional contract to be signed with Electricity Maine to cover specific payment arrangements for excess payment of power purchased over historical account usages at the time of enrollment. In addition to these terms, and ACH agreement for automatic drafting of these amounts will be required. This additional agreement must be signed prior to enrollment of this account. Failure to sign this agreement may result in immediate return to Standard Offer of your account. Please call Electricity Maine at 866-573-2674 to set up this arrangement.



September 26, 2016

Electricity Maine, LLC  
306 Rodman Road  
Auburn, Maine 04210-3830

RE: *Unfair Trade Practices Claim*

Dear Madam/Sir:

Please consider this letter a written demand made on behalf of my client, Kathleen Veilleux, pursuant to the Maine Unfair Trade Practices Act. *See* 5 M.R.S. § 213 (2015). Ms. Veilleux agreed to purchase Electricity Maine's services based on the representation that your electricity prices would never exceed the utility's standard offer rate. Since 2011, however, she has paid significantly more than the utility rate on numerous occasions.

Because your marketing of electricity to Ms. Veilleux at a deceptively high rate for household purposes has caused her to suffer significant financial harm, your business practices are actionable under Section 213(1). On behalf of Ms. Veilleux, I make the following demands for relief:

1. Electricity Maine provide monetary relief in an amount equal to the sum of all amounts that she has paid exceeding the standard offer utility rate;
2. Electricity Maine cease and desist all marketing practices in the state of Maine that in any way indicate that your services will save retail electricity consumers money.

If I do not receive a written response within thirty days, Ms. Veilleux will commence a civil proceeding seeking the requested, and other, relief.

Truly yours,



Benjamin N. Donahue, Esq.  
HALLETT, ZERILLO & WHIPPLE, P.A.  
[bdonahue@hzwlaw.com](mailto:bdonahue@hzwlaw.com)

BND