

NEW ENGLAND ELECTRIC RETAIL REPORT | JULY 2015
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ATTORNEYS AT LAW

New England has been a hotbed of legislative and regulatory activity involving retail electric suppliers. Key recent developments in each New England state are outlined below.

Davis Malm represents national supplier clients in each of the five restructured states and can meet all of your competitive entry and regulatory support needs.

Connecticut

Activity is high on many fronts. The Connecticut General Assembly enacted a new law prohibiting use of variable rates in new residential contracts effective on October 1, 2015. The Public Utilities Regulatory Authority (CT PURA) continues to implement the complex regulatory requirements established in its November 2014 Retail Markets Order docket and is actively investigating and sanctioning suppliers for alleged misdeeds.

Legislative Prohibition on New or Automatically Renewed Variable Rate Contracts for Residential Customers.

A new Public Act, enacted in June 2015, prohibits electric suppliers from entering into new variable-rate contracts with residential customers on or after October 1, 2015. The Act also bars automatic renewal of a residential customer's contract when the customer would be charged variable rates under the renewed contract. CT PURA has been directed to investigate benefits of and potential limitations applicable to contracts where residential customers are automatically switched to a month-to-month contract at the expiration of their fixed-rate contract. The docket is now open. Written comments are due by late July and a technical session is planned for early August.

Revising Rules Governing Abusive Marketing Practices.

Following issuance of an early 2015 Order defining a variety of abusive marketing practices, CT PURA granted a joint suppliers-Office of Consumer Counsel (OCC) request to stay the Order and propose modifications to many of the new requirements. Waiting on CT PURA hearings to review the changes proposed by the supplier group and OCC.

Refining Policies Applicable to Annual Renewable Portfolio Standard Filings.

In issuing an early 2015 final Order applicable to the 2012 compliance period, CT PURA has articulated in its clearest terms to date its refusal to accept renewable energy certificates (RECs) held in Generation Information System reserve accounts or to permit suppliers to correct errors in renewable portfolio standards filings, even if CT PURA's rejection results in waste of substantial supplier investments in RECs. In view of the hard line taken by CT PURA, and the current rough equivalence in price as between Class I REC prices and the alternative compliance payment (ACP) rate, suppliers should consider whether to minimize risk of loss by relying on the ACP rather than on Connecticut RECs purchases. Suppliers should advocate for a "safety valve" for honest errors.

Partial Reconsideration of Retail Markets Order.

In mid-June 2015, CT PURA issued an order to reconsider and reopen several issues raised by the Retail Energy Supply Association, Choice, and Starion in December 2014/January 2015 reconsideration motions. Most importantly, the reopener stays implementation of a requirement that customers be able to receive notice via all alternative methods (including smartphone "apps" and third-party notification processes) by July 31. CT PURA rejected reconsideration of two issues, namely:

- renewable only products cannot refer to 100% only products but may say 100% plus the RPS percentage; and
- the requirement of naming each individual employee or sales agent rather than the names of employee and the third party contracting agency.

Continued Supervision of Compliance with Retail Markets Order.

CT PURA is closely supervising compliance with the ongoing regulatory requirements mandated by the November 2014 Order, including clarifying the intent of new requirements governing mandatory contract summaries, form of renewal notices, and website disclosures. CT PURA is also holding monthly technical sessions to discuss additional implementation issues.

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Investigations and Enforcement Proceedings.

CT PURA has opened numerous investigations against individual suppliers related to alleged noncompliance, including against Choice, Constellation, Direct, Discount, Liberty, Verde, and Viridian.

Maine

Activity is settling down in Maine after completion of two Public Utilities Commission (ME PUC) rulemakings devoted to consideration of retail markets changes.

Completion of Retail Rulemaking.

In mid-January 2015, the ME PUC completed the final Retail Markets Order that made significant changes to the Sections 305 and 306 Rules governing retail suppliers. New mandatory contract summary and notice formats were approved via order in late April 2015. Suppliers should be focused on implementing operations, forms and notice changes to meet all of the revised requirements.

New Commissioners Appointed.

In January and June 2015, Governor LePage received legislative approval to fill vacant ME PUC Commissioner positions. Carlisle McLean, the Governor's Chief Legal Counsel, and Bruce Williamson, an Economist from the Institute for Nuclear Studies at Howard Baker Center at the University of Tennessee, were both sworn in. Holdover Commissioner Mark Vannoy remains serving as the new ME PUC Chair.

Massachusetts

Retail supplier activity has increased markedly over the past year following implementation of a purchase of receivables program and historically high post-polar vortex default/basic service rates at all of the Massachusetts utilities. Activity by regulators has increased at the same time.

MA DPU Retail Market Proceeding.

Since December 2014, the Department of Public Utilities (MA DPU) has been actively engaged in a working group and briefing process seeking to change its longstanding retail supplier rules at Sections 11.05 and 11.06. The MA DPU is managing the proceeding on several tracks and, to date, has:

- ordered elimination of the anti-competitive fixed to variable true up for residential and small commercial customers;
- established a limited carve out of the new true up for municipal aggregations; and
- discussed in technical sessions and solicited briefing on key issues such as assignment rules, contract summaries, and information labels.

Shopping Website.

As part of the above proceeding, the MA DPU has made substantial progress in developing the specific elements of a new Massachusetts shopping website, including that it is intended to be voluntary and applicable initially only to fixed-rate offerings, and that it also include robust price and terms comparison functionality. Funding mechanisms are still to be determined.

Attorney General Position on Variable Rates.

In a March 2015 filing on the MA DPU Retail Market Proceeding, the Massachusetts Attorney General's Office (AG Office), which serves as the consumer counsel at MA DPU proceedings, filed written comments asserting that variable rate offerings not tied to a market price may constitute a violation of consumer protection regulations. To date, the Attorney General has not opened a proceeding to solicit supplier input on this potential interpretation, which is contrary to current regulatory practice in nearly every restructured state. Suppliers should be aware of the potential regulatory risks associated with variable-rate offerings in the Commonwealth under this interpretation.

AG Office Investigations.

In early June 2015, the AG Office stepped up potential enforcement by issuing investigative demands for broad discovery from several electric suppliers, with responses due in June unless individual suppliers secured extensions.

New Chair and Commissioner Appointed.

In January 2015, new Governor Charles Baker appointed long-time generation and power marketer representative Angela O'Connor as MA DPU Chair, and MA DPU staffer Bobby Hayden as a new Commissioner. Jollette Westbrook continues as the remaining holdover Commissioner.

New Hampshire

During the 2012–2014 period, New Hampshire saw spectacular growth in competitive supply due to high PSNH pricing. Since then, growth has slowed. The New Hampshire Public Utilities Commission (NH PUC) issued orders reducing excessive supplier fees and addressing an outdated and unfair payment hierarchy. It is now poised to update its supplier rules and address details regarding potential divestiture of PSNH-owned generation that could affect suppliers.

New Supplier Rules Investigation.

In April 2015, the NH PUC finally took action in its longstanding docket to consider updates and other changes to the PUC 2000 retail supplier rules. The NH PUC circulated a set of updates and held a late April 2015 technical session. A more refined draft is expected to be issued soon, either informally or as part of a formal rulemaking process.

PSNH Divestiture.

PSNH reached a deal with key interest groups, supported by the legislature, to divest its remaining generation assets, which would be divested in return for some concessions (such as partial cost recovery of scrubber investments at the PSNH Merrimack facility that have been subject to significant challenge since the investments were made). Divestiture, if and when it is completed, should help address potential competitive issues in the PSNH territories in New Hampshire. The divestiture docket commenced in July 2015 with active litigation expected through year end.

General—New Commission Chairman and Commissioner.

Commissioner Martin Honigberg moved over to become NH PUC Chairman, replacing outgoing Chairman Amy Ignatius, who left the Commission to become a judge in late 2014. Longtime Commissioner staffer Kate Bailey was named in June 2015 to fill the open Ignatius seat with Commissioner Robert Scott remaining as the third Commissioner.

Rhode Island

Rhode Island has seen somewhat lower supplier growth than other New England states, but activity is ramping up due to recent increases in standard offer pricing.

Elimination of Standard Offer Billing Adjustment.

In early March 2015, National Grid made its annual filing on its proposed methodologies for procuring Standard Offer and Renewable Electric service for periods beginning July 1, 2015. During the course of the ensuing Rhode Island Public Utilities Commission (RI PUC) regulatory proceeding, National Grid changed position and recommended elimination of the fixed to variable true up adjustment that had been in place in Rhode Island for many years (and had been in place in Massachusetts as well, until eliminated this Spring). Elimination of the adjustment was supported by several of the intervening parties, including the Attorney General and the Lieutenant Governor, and was approved by the RI PUC by voice vote in early July. The Commission did not accept recommendations from public officials to issue refunds for past adjustment payments.

New Draft Retail Supply Regulation.

Taking the lead from legislative efforts in Connecticut over the past two years, the Rhode Island legislature has proposed bills to increase regulatory requirements for local suppliers. The “Electric Supplier Consumer Bill of Rights” unanimously passed the House vote in mid-June and is now under consideration by the State Senate. The bill would also seek to redesign utility bills to make them more consumer friendly. **DMD**

REGULATORY AND ADMINISTRATIVE LAW GROUP AT DAVIS MALM

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