

REGULATORY LAW ALERT  
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MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES ANNOUNCES  
NEW RULES FOR CUSTOMER ASSIGNMENTS

OVERVIEW

In mid-September 2016, the Massachusetts Department of Public Utilities (DPU) issued its final order on rules governing assignments of customers from one retail electric supplier to another, including reporting to the DPU and affected utilities and customer notice requirements (MA DPU Assignment Order). The MA DPU Assignment Order closes out a nearly two-year process beginning with an initial December 2014 Order and extending through multiple rounds of written comments and hearings.

SUMMARY OF MA DPU ASSIGNMENT ORDER

Key Aspects Include:

Notice to DPU

1. **Contents.** The Assigning Supplier files with the DPU a detailed "Notification of Assignment" (Notice) including:
  - a. names and DPU license numbers of the two Suppliers;
  - b. summary of the transaction;
  - c. statement of whether the Assigning Supplier is continuing to retain its Massachusetts license (and, if so, why);
  - d. attestation that the accounts are legally assignable;
  - e. statement confirming that the material contract terms will be retained through the end of contract by the Acquiring Supplier;
  - f. summaries of projected assignment dates, numbers of customers by residential/commercial classes and by affected utility, and numbers of customers with early termination fees or automatic renewal provisions by residential/commercial classes and by affected utility; and
  - g. statement confirming that the customer notice will meet DPU requirements (as outlined below).

Information in the Notice is presumptively public until a Motion for Protective Treatment is filed and granted. As the DPU retains rights to request copies of contracts and draft notices, the Acquiring Supplier must retain copies of contracts and notices for each customer for at least one year after contract cancellation/termination.

2. **Timing (Regular).** Except in a distress sale, the Notice must be filed with the DPU by five business days after execution of the final sales contract, and not less than five business days prior to customer notice letters being sent to customers. The goal of these timing requirements is to provide prompt advance information to DPU staff to enable them to prepare for any calls, complaints, or questions from the customers assigned to a new competitive supplier and to have an opportunity to vet the contents of the draft customer notice in appropriate cases.
3. **Timing (Emergency Distress Sale).** In an emergency distress sale, the Assigning Supplier must file the Notice within one day after contract execution and include a letter specifying: (1) nature of the distressed sale; (2) why the supplier could not provide a five-day notice; and (3) when affected customers will be notified.

#### Notice to Customers

1. **Contents.** The required notice to affected customers (Customer Notice) must include the following detailed information:
  - a. name of Assigning Supplier;
  - b. name of Acquiring Supplier;
  - c. expected date of customer assignment;
  - d. statement that the assignment will not interrupt the customer's electricity service;
  - e. statement that the assignment is allowed per the terms and conditions of the customer's contract;
  - f. statement that there will be no changes in the material terms and conditions, including price and duration, as set forth in the customer's contract;
  - g. statement that no action is required from the customer for the assignment to occur;
  - h. date by which customer inquiries should be made to the Acquiring Supplier;
  - i. contact information for the Acquiring Supplier if the customer has any questions about the assignment;
  - j. statement that a customer may decline to be assigned to the Acquiring Supplier in accordance with the cancellation provision of his/her contract (and the notice letter must include a contact phone number to decline the assignment);
  - k. amount of early termination fee, if applicable; and
  - l. statement that if a customer declines to have his/her contract assigned, the customer will be returned to utility basic service unless he/she signs a new contract with the Acquiring Supplier or move to another competitive supplier.

2. **Timing.** In a non-distress case, the Assigning Supplier must provide the above Customer Notice to customers at least 30 days prior to the effective date of the assignment. In the emergency case, the Customer Notice must be sent to customers not later than one business day following execution of the distress sale transaction.
3. **Delivery Method.** The Assigning Supplier may transmit the Customer Notice using any transmission method agreed upon with the customer, typically either first class mail or email. If there is no agreement, the Customer Notice must be sent via first class mail.

#### Notice to Utilities

1. **Content and Timing.** The MA DPU Assignment Order also calls for a slimmed down Notice to distribution utilities to help them plan in advance for the switchovers required by assignments of supplier customers. This utility notice must provide:
  - a. names and Massachusetts license numbers of the Assigning and Acquiring Suppliers;
  - b. number of customers that the Assigning Supplier seeks to assign in the distribution company's service territory, by customer type (i.e., residential, commercial, industrial, etc.); and
  - c. expected dates of the assignments. The timing of this Notice should follow the same time periods outlined above for Notices to the DPU.

#### Automatic Renewals – Special Notices

As noted above, suppliers must disclose upcoming automatic renewals to the DPU as part of the Notice. The MA DPU Assignment Order indicated that the DPU would, at a future date, have an informational label that would have to be given to all customers with upcoming automatic renewals but, absent that, reserved rights to work with suppliers to provide some sort of notice to customers on a case-by-case basis.

#### Customer Enrollment Dates

The MA DPU Assignment Order indicates that it expects utilities will execute assignments electronically on each customer's monthly meter read dates but states that it will permit alternative manual or off-cycle approaches being worked out in appropriate cases between the supplier and each utility. It does not address whether the DPU will step in if the supplier and utility cannot agree on such alternative approach.

### **EVALUATION AND CONCLUSION**

The DPU Order on Customer Assignments is, on balance, a strong piece of work that reflects substantial input from participating suppliers, utilities, public agencies, and non-profits over a nearly two year-process. It not only establishes reasonable guidelines for customer assignments in the Commonwealth, but it may also well serve as a model in other states reviewing assignment provisions and associated customer notices.

## CONTACT

If you have questions, please contact [Robert J. Munnely, Jr.](#), in our [Regulatory and Administrative Law Practice](#).

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