

New England Retail Supply Update

In the New England states open to competition, the second half of 2013 and the first half of 2014 have seen important developments for competitive retail electric suppliers. These significant regulatory changes create both new opportunities and challenges for suppliers. Our summer [2013 retail supply update](#) provided a preview of many of these changes that have now entered the implementation stage.

Connecticut

In Connecticut, retail supply issues have moved quickly. The following summarize the key developments, including three new Public Utilities Regulatory Authority (“CT PURA”) dockets opened in late May and more likely to come in June:

- **New Statutory Changes.** Public Act 14-75, An Act Concerning Electric Customer Consumer Protection (the “Act”), makes significant changes to CT regulatory requirements and requires several PURA implementation proceedings. The CT PURA has yet to issue details on implementation.
- **Existing CT PURA Supplier Docket.** CT PURA has remained opaque in expressing how it plans to address its existing retail supplier investigation in light of the many changes required by the Act. It has scheduled a technical meeting for June 30 to discuss reconciling statutory changes with proposed changes in an April 2014 Interim Decision. It remains unclear how the CT PURA will conclude the investigation. In any event, it will need to focus on new dockets to be opened that will implement the Act and, separately, several new compliance/enforcement dockets (discussed below).
- **New Compliance/Enforcement Docket – Notice Before End of Fixed Term.** In late May, the CT PURA opened a new docket to investigate and/or impose sanctions relative to compliance with 2013 statutory changes that mandated a before the end of term notice. The CT PURA propounded interrogatories to all suppliers seeking detailed compliance-related facts.
- **New Compliance/Enforcement Docket – Provision of Written Terms to Customers.** Also in late May, the CT PURA opened a new docket to investigate and/or impose sanctions relative to compliance with the 2013 statutory changes that mandated provision of written terms and conditions at sign up. No details are available yet.
- **License Renewal Gaps.** Insofar as CT PURA does not send out reminder notices as a company nears

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its date for seeking renewal of an existing supplier license, several suppliers have failed to make timely review applications. One supplier has been advised that its request to submit a belated license review is too late and the CT PURA plans to require return of all customers to the utility service. The supplier has contested this result and the case remains ongoing.

- **2011 RECs Compliance.** The CT PURA issued a mid-May 2014 Draft Decision that found more than a dozen suppliers out of compliance with one element or another of the renewable energy certificate (“RECs”) process. After oral arguments, the CT PURA Final Decision gave one-time only relief to several suppliers but made clear that full compliance will be expected thereafter.
- **2012 RECs Compliance.** In the 2011 compliance year Draft Decision (discussed above), the CT PURA required that 2012 RECs compliance year filings be completed by May 30 unless materials already have been filed with the PURA. The 2011 Final Decision established a separate new process for when to pay alternative compliance payments (“ACP”). The new rule is that ACP must be made by October 15 each year except for the 2012 compliance year. Since that date has already passed, 2012 compliance year ACP must be paid by August 1, 2014.
- **New RECs Compliance Working Group.** As suggested by several suppliers during the 2011 RECs compliance year oral argument, the CT PURA in late May opened a docket to commence a working group process intended to improve supplier compliance with CT RPS regulations and other requirements. No details are available yet.
- **Energy Plus Fine.** The Attorney General just announced an agreed upon resolution of a longstanding CT PURA docket alleging Energy Plus consumer issues that would involve a settlement of approximately \$4.5 million. The CT PURA approved the fine in June.
- **Other Enforcement Dockets.** The CT PURA has a half dozen other enforcement dockets pending. The CT Attorney General recently announced an intention to push for settlement talks to resolve at least some of the pending dockets.

Maine

In Maine, recent activity centers around a Maine Public Utilities Commission (“ME PUC”) docket investigating the terms and conditions for procuring standard offer service and changes to the ME PUC’s retail supplier rules.

- **Standard Offer Process Changes.** Relative to standard offer, the ME PUC agreed to shorten substantially the previously applicable three year procurement cycles for standard offer service but otherwise declined suggestions to change payment hierarchy rules or amend the longstanding standard offer procurement process.
- **Upcoming Changes to ME PUC Retail Supplier Rules.** Additionally, the ME PUC announced that it would initiate a new round of proceedings focused on changes to consumer rules, concentrating on the following:
 - A requirement that any comparison with standard offer include the term length for both standard offer and the competitive supplier offer;
 - A prohibition in promotional or marketing activities on any suggestion that the supplier is associated with a utility, as well as a requirement for clear identification of an entity as a competitive provider of electricity not associated with the utility;
 - A prohibition on automatic renewals without affirmative customer consent if the price or other significant terms (e.g., length of contract term) are changed;
 - A prohibition of the transfer of customer accounts to another supplier unless the previous terms are honored, and customers are given the option to change suppliers; and
 - A requirement that any contract that binds customers for a particular term also binds the supplier for a same term (e.g., contract cannot

obligate customers for a 12 month term, while simultaneously allowing the supplier to terminate at any time).

This specific docket relating to both standard offer and retail supplier changes is now closed, and suppliers are waiting for ME PUC action in a new docket or dockets.

Massachusetts

The principal recent Massachusetts development is substantial progress by the Department of Public Utilities (“MA DPU”) in implementing a Purchase of Receivables (“POR”) program that had been required by statute in the 2008 Green Communities Act but has been stalled for four years in a lengthy MA DPU implementation docket. Late in 2013 the MA DPU also changed its processes for licensing and renewing licenses for retail suppliers and brokers.

- **Purchase of Receivable Program Implementation.** Massachusetts has long been behind similar restructured states in terms of residential market share of retail competitors. Even though commercial competition is well over 50%, residential market share for most communities open to competition (excluding communities with municipal light plants or participating in the Cape Light Compact or other aggregations) has remained at less than 10%. A few trailblazing suppliers have achieved marketplace successes but, for the rest, the major barrier has been the high collections costs associated with non-pay or late pay accounts. Until this issue is addressed, many suppliers remain unwilling to enter the Massachusetts market out of concern that collections costs will exceed the slim profit margins on mass market accounts.

Under POR, the local distribution utility also handles retail supplier collections for the same accounts. In exchange, the utility receives a cost-based fee that adjusts annually based on program experience. POR programs enable suppliers to bring the benefits of competition to all consumers in eligible communities and reduce overall costs through scale efficiencies. Most major states have implemented POR successfully and achieved a significant uptick in competition. For example, residential market shares have increased to above 25% in New York, well above 30% in Pennsylvania and above 40% in Connecticut and portions of Illinois.

The good news is that POR is coming to Massachusetts. The four-year-old POR process at the MA DPU is virtually complete, with implementation scheduled to occur starting this summer for National Grid and Western Massachusetts Electric and starting this fall for NSTAR. (The MA DPU is handling the final utility, Unitil, separately due to the implementation of changes to Unitil’s billing system.) Certain final terms and conditions and discount rates are available and the rest are expected shortly. With POR on the horizon, prospects are strong for widespread residential competition in the Commonwealth.

- **Initial/Renewal License Changes.** In contrast to many other restructured states, Massachusetts issues retail supplier and broker licenses based on an initial application that is reviewed without a docketed proceeding and requires an annual renewal process due on dates that differ for individual companies. After several years of internal discussion, the MA DPU issued new application forms for initial and renewal licenses as of late November 2013 and is currently engaged in informing suppliers and brokers of the new forms. The new initial and renewal forms for suppliers and brokers are available at the following link: <http://www.mass.gov/eea/energy-utilities-clean-tech/electric-power/electric-market-info/electric-competitive-suppliers/license-applications.html>.

One additional change is that the MA DPU renewal application provided in past years that a supplier or broker could submit a letter in lieu of application if its business had not materially changed in the preceding year. The new renewal applications discontinue that practice and require submission of a full application form, with substantial supporting materials, each year.

New Hampshire

Sparked by above-market default service prices in the Public Service Company of New Hampshire (“PSNH”) territory and favorable rates in the smaller utility territories, competitive share in the State of New Hampshire has increased from virtually nothing in 2010 to well above 40% by 2013 year end.

These favorable market conditions have drawn attention away from legacy New Hampshire policies and practices that have harmed new retail supplier entrants, including:

- **Excessive PSNH Fees.** PSNH has imposed significant fees that totaled more than \$1 million in 2013, including a \$5.00 per occurrence switching charge, a \$0.50/ month billing charge and a monthly collections fee of 0.252 % on receivables balances (more than 3% per year).
- **Unfavorable Payment Hierarchy.** PSNH and a small utility have hierarchies that prioritize all utility charges, current or past due, over supplier charges in calculating net payments to the supplier under consolidated billing arrangements. Suppliers have faced payment delays every time a customer makes a partial payment or agrees on a utility payment or budget billing plan.
- **Lack of Billing Communication.** The absence of any utility communication relative to signing customers up for payment or budget plans exacerbated these adverse payment impacts. To determine whether customers were truly non- or late-pays in the absence of information from the utilities, suppliers were forced to contact customers, who in turn, complained to regulators of excessive supplier collections-related letters and calls.

Regulators at the New Hampshire Public Utilities Commission (“NH PUC”) have corrected, or are about to correct, each of these problems. Following lengthy regulatory dockets, two of the disputed PSNH supplier fees are about to be eliminated, and the third will be reduced by 85%. PSNH and the other utility also have agreed to prioritize supplier aged receivables over current utility charges. Finally, all four New Hampshire utilities have agreed to improve communications by issuing monthly “synch” reports or EDI transactions.

These positive developments are offset somewhat by some new obligations imposed on retail suppliers, including: (1) a new one-time fee to pay for development of the monthly “synch reports” or EDI changes; (2) limits on supplier ability to contact consumers identified in synch reports or EDI as being on approved utility payment and budget plans; (3) a potential new fee for suppliers defaulting on ISO-NE obligations; and (4) a likely NH PUC effort to expand supplier consumer protection rules. On balance, the recent changes have strongly favored competitive retailers and – more importantly – consumers. The high default service prices and hard-earned pro-market reforms should help ensure that New Hampshire remains a competitive “hot spot” for years to come.

Rhode Island

In late May, the Rhode Island Public Utilities Commission (“RI PUC”) opened a docket to consider changes to its longstanding (15-plus years old) retail supplier rules – specifically referred to as the “Consumer Protection Requirements for Nonregulated Power Producers.” The RI PUC circulated proposed rules for comment that cleaned up outdated text and included some enhanced consumer disclosures. A link to the new rules is available at: <http://www.ripuc.org/eventsactions/docket/4503-Proposed-NPP-Rules-Notice.pdf>.

Comments by several parties were filed in mid-June 2014 and all are waiting for a final order approving new rules. Suppliers will need to update their terms of service and operational practices to conform to the new rules, once finalized.

We can help you with your New England Needs

The New England retail market is dynamic and challenging, with opportunities and risks. The Murtha Cullina Energy Practice Group has extensive experience representing retail electric suppliers and supplier interests in all five restructured New England states, including licensing, ongoing regulatory compliance, and representation in industry dockets and supplier-specific investigations.

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