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2014 Energy Legislation in the New England States

By Harold M. Blinderman, Jennifer E. Galiette, and James B. Blackburn IV

This article highlights noteworthy energy legislation passed by each New England state during this past legislative session, and notes where significant energy legislation was vetoed by a state's governor.

The 2014 legislative sessions in each of the six New England states produced significant energy legislation, much of which centered around increasing renewable energy in each state's resource mix through long-term contracts, strategic investments, and modified siting rules. A number of the states passed new laws regarding natural gas facilities, and one state passed a significant electric customer consumer protection law aimed at competitive electric suppliers.

The Connecticut legislature passed legislation impacting renewable and clean energy goals, as well as the significant consumer protection law implementing new rules for the state's competitive suppliers. In Maine, two new laws were passed addressing long-term energy contracts and supporting the development of solar resources in the state. In New Hampshire, new energy laws are aimed at increasing the development of new renewable energy sources in the state, improving energy efficiency measures and increasing the transparency of information provided to electric utility customers. The Rhode Island legislature enacted legislation involving renewable energy distributed generation projects, transmission infrastructure and strategic investments in the state. And the Vermont legislature increased the state's net metering cap because existing net metering goals had already been met.

This article highlights noteworthy energy legislation passed by each New England state during this past legislative session, and notes where significant energy legislation was vetoed by a state's governor. All six states have concluded their formal legislative sessions for 2014.¹

CONNECTICUT

The state of Connecticut enacted two significant energy laws this year, one aimed at protecting residential competitive supply customers, and the other designed to make several changes to the existing energy statutes, including creating the Connecticut Green Bank.

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¹ Connecticut, Maine, New Hampshire, Rhode Island and Vermont have concluded their 2014 legislative sessions. The Massachusetts legislature is in session year-round; however, the legislature went into information session on July 31, so no new legislation was expected until the 2015 session began on January 7, 2015.

New Requirements for Competitive Electric Suppliers

Signed by the governor on June 3, and taking effect as set forth in the Act,² *An Act Concerning Electric Customer Consumer Protection*³ contains a host of new consumer protection measures for residential and small commercial competitive supply customers, including immediate requirements for the state's competitive electric suppliers and instructions to the Public Utilities Regulatory Authority ("PURA").

The Act contained a number of immediate requirements for competitive electric suppliers in the state, which have already taken effect. These requirements include five significant changes to competitive suppliers' practices regarding:

- (1) teaser rates;
- (2) rate change notifications;
- (3) switching service;
- (4) termination fees; and
- (5) quarterly notices.

First, competitive suppliers are now prohibited from offering residential customers so-called teaser rates, low introductory rates which increase during the first three months of service. All residential customer contracts entered into after this new law became effective must provide for the same (or a lower) rate for the first three months of service.

Second, competitive suppliers are required under the Act to send rate change notices to residential customers in three circumstances. Prior notice must be sent 30 to 60 days before the expiration of a fixed-price term, including the expiration of a teaser rate. Prior notice must be sent 45 days before the expiration of a contract and the commencement of month-to-month variable rates. And prior notice must be sent 15 days before the competitive supplier's rate can increase 25 percent over the rate in the last notice sent to the customer.

Third, competitive suppliers are now required by the Act to switch residential customers back to standard service within 72 hours after receiving a customer request. Competitive suppliers are required to switch residential customers to the supplier within 45 days following a customer's successful enrollment with the supplier.

Fourth, the Act caps termination fees for residential customers at \$50. Previously, termination fees were capped at the lower of \$100 or twice the customer's estimated bill in an average month. Additionally, pursuant to the new law, suppliers are not permitted to charge any termination fee if a residential customer is on a month-to-month variable rate outside of a contract with a supplier, or moves to another dwelling in the state and remains with the same supplier.

² All provisions in the Act became effective from passage, except the provisions regarding teaser rates and rates posted on the state's rate board, which became effective on July 1, and the provisions regarding treatment of "hardship cases" which became effective on September 1.

³ *An Act Concerning Electric Customer Consumer Protection*, Public Act No. 14-75.

Finally, suppliers must send quarterly notices to each residential customer receiving supplier service while a PURA docket to redesign the rate board Web site is ongoing. Notices must contain information such as the supplier's rate, the term and expiration date of that rate, and any change to the rate effective for the next billing cycle, as well as the dollar amount that would have been billed for the electric generation services if the customer were receiving standard service.

The Act includes instructions to PURA to redesign the standard billing format and the rate board Web site. PURA was directed to initiate a docket by July 1 to redesign the standard billing format for residential customers to better enable them to compare pricing policies among suppliers. In that proceeding, PURA is also directed to redesign the account summary page residential customers will see when the log on to each supplier's Web site. PURA opened this docket on July 22, and is directed by the Act to issue a final decision not later than six months after the docket is initiated, so a final decision was anticipated by January 2015.

The Act also directs PURA to redesign the rate board Web site⁴ based on best practices in other states to allow customers to easily compare and select competitive suppliers. Starting July 1, 2017, and every two years thereafter, PURA will review the rate board Web site to ensure that it continues to be an effective tool for customers.

Amendments to Existing Energy Statutes

Signed by the governor on June 6, *An Act Concerning Connecticut's Recycling and Materials Management Strategy, the Underground Damage Prevention Program, and Revisions to the Energy and Environmental Statutes*⁵ makes several changes to modernize the state's recycling and waste management system, and also revises several existing energy statutes. The changes summarized below all became effective from passage of the Act.

The Act created the Connecticut Green Bank as a successor to the Clean Energy Finance and Investment Authority. The Connecticut Green Bank is in charge of administering the Clean Energy Fund to promote investment in clean energy in accordance with a comprehensive plan it develops to foster the growth, development, and commercialization of clean energy sources and to stimulate demand for and deployment of clean energy that serve end users in the state.

The Act also requires 60 percent of the energy purchased by the Department of Energy and Environmental Protection ("DEEP") commissioner for state operations to be from Class II renewable energy sources that originate from trash-to-energy facilities. This requirement applies to proposals received in response to any DEEP solicitation for up to 370,000 megawatt hours per year, for a total period of at least five consecutive years.

⁴ EnergizeCT.com.

⁵ *An Act Concerning Connecticut's Recycling and Materials Management Strategy, the Underground Damage Prevention Program, and Revisions to the Energy and Environmental Statutes*, Public Act No. 14-94.

Additional changes were also made to existing state energy statutes by the Act, including permitting electric distribution companies to recover any reasonable costs they incur as a result of long-term power purchase agreements they are directed to enter into by the DEEP commissioner pursuant to state statutes, and permission for PURA to grant up to a 36-month extension of the required in-service date for Project 150 projects of less than five MWs in capacity. Project 150 is a program sponsored by the state and supported by the Connecticut Green Bank to increase renewable and clean energy projects in Connecticut by 150 megawatts. Prior to the Act, PURA could grant up to a 24-month extension of the required in-service date.

MAINE

The Maine legislature passed two new laws addressing long-term energy contracts and supporting the development of solar resources in the state, both of which became law without the governor's signature. Maine's governor also vetoed several other energy bills passed by the legislature, and the legislature was unable to garner the votes necessary to overturn those vetoes.

Legislation Passed Without Governor Signature

Passed without the governor's signature, *An Act to Ensure Equitable Support for Long-Term Energy Contracts*,⁶ became effective upon passage on March 9. The Act provides that consumers of investor-owned utilities and local distribution companies in the state will share the costs and benefits of long-term energy contracts and community-based renewable energy projects. The Act directs the Maine Public Utilities Commission ("PUC") to determine annually the costs and benefits of long-term contracts and allocate to each entity its appropriate share on a pro rata basis. The allocation must be based on each utility's total retail kWh energy sales to ratepayers that receive the benefits and pay the costs of long-term energy contracts.

Also becoming law without the governor's signature, *An Act to Support Solar Energy Development in Maine*,⁷ became effective upon passage on April 24. The Act states that developing renewable energy, including solar energy, is in the public interest, and should provide economic benefits to communities, ratepayers, and the overall state economy. In addition to establishing goals related to statewide solar investment, the Act directs the PUC to monitor solar development in the state and to evaluate important trends including the likely costs and benefits to ratepayers from solar energy development. The PUC must file with the legislature's Joint Standing Committee on Energy by February 15, 2015 a report on the costs and benefits of solar energy generation in the state, including distribution and transmission costs, as well as environmental impacts. The Act also directs several state programs and resources to seek opportunities to promote investment in solar development, generation, and manufacturing.

⁶ *An Act to Ensure Equitable Support for Long-Term Energy Contracts*, Public Law No. 2014, ch. 454.

⁷ *An Act to Support Solar Energy Development in Maine*, Public Law No. 2014, ch. 562.

Energy Bills Vetoed by the Governor

The governor vetoed three energy bills during the 2014 session. The first of these, *An Act to Address Rising Electric Transmission Rates*,⁸ would have made adjustments to the net energy billing program in the state. Specifically, the bill would have adjusted the capacity limit of eligible net metering facilities from 660 kW to 1 MW and would have required a report to be submitted to the legislature by the PUC, the state's electric distribution utilities, and Efficiency Maine Trust identifying deficiencies in the state's transmission and distribution system. The bill also directed the PUC to adopt a rule that would require investor-owned utilities compensate distributed generation according to the wholesale energy prices. The bill also would have augmented the criteria necessary for the PUC to issue a Certificate of Public Convenience and Necessity for new transmission lines. The governor's veto letter explained that, in his view, the bill would result in higher rates for many customers, as the transmission and distribution costs would be borne by businesses and residential ratepayers.⁹

The governor also vetoed *An Act to Improve Maine's Economy and Energy Security With Solar and Wind Energy*.¹⁰ The bill would have re-established funding for the expired Maine Solar and Wind Rebate Program, which provided rebates for the purchase of certain solar and wind equipment. The program had expired in 2012 and the new bill would have provided additional funding through 2018. Funding for the new law would have been provided through a tax of .011 cents per kWh. Vetoing the bill, Maine's governor expressed his concern that the bill would impose a tax on customers at a time when the state's electricity rates are already high.¹¹

The third bill the governor vetoed, *An Act to Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws*,¹² would have changed siting considerations for wind developments in the state. Specifically, the bill would have required the siting authority, when considering the visual impacts of a proposed wind project, also to consider the energy- and emission-related benefits of expedited wind energy development. Additionally, the bill would have required the Maine Department of Environmental Protection ("DEP") to conduct a routine technical rulemaking to establish the submission requirements for permit applications for wind energy developments. The governor vetoed the bill citing his concerns that it would unnecessarily limit the DEP in requesting additional information from wind developers when siting new wind projects.¹³

⁸ *An Act to Address Rising Electric Transmission Rates*, LD 1060.

⁹ See Governor's Veto Letter regarding LD 1060 dated April 7, 2014, available at http://www.maine.gov/tools/whatsnew/index.php?topic=Gov_Bills&cid=619477&v=article2013.

¹⁰ *An Act to Improve Maine's Economy and Energy Security With Solar and Wind Energy*, LD 1252.

¹¹ See Governor's Veto Letter regarding LD 1252 dated April 11, 2014, available at http://www.maine.gov/tools/whatsnew/index.php?topic=Gov_Bills&cid=619483&v=article2013.

¹² *An Act to Amend the Maine Administrative Procedure Act and Clarify Wind Energy Laws*, LD 1750.

¹³ See Governor's Veto Letter regarding LD 1750 dated April 29, 2014, available at http://www.maine.gov/tools/whatsnew/index.php?topic=Gov_Bills&cid=619483&v=article2013.

MASSACHUSETTS

While the Massachusetts legislature is in session year-round, the legislature went into informal session on July 31 and is now unlikely to consider any further material legislation before year end. Towards the conclusion of this year's formal legislative session, Massachusetts enacted a significant energy law regarding both the state's Alternative Energy Portfolio Standard ("APS") and its net metering caps. Signed into law on August 6, *An Act Relative to Credit for Thermal Energy Generated with Renewable Fuels*¹⁴ initially addressed only the state's APS, but was later amended to increase net metering caps after a separate bill regarding net metering failed to pass. The Act became effective on November 4.

The Act adds "useful thermal energy" resources to the list of technologies eligible for APS and removes from that list gasification with capture and permanent sequestration of carbon dioxide and paper-derived fuel sources. Under the Act, technologies are deemed eligible for APS when they help meet the state's clean energy goals by increasing energy efficiency and reducing the need for fossil fuel-fired generation.

This Act increases the public net energy metering cap to five percent from three percent, and increases the private net energy metering cap to four percent from three percent. The Act also creates a 17-member Net Metering Task Force to develop alternative structures and make recommendations to the legislature to support the governor's goal of developing 1,600 MW of new solar generation in the state.

NEW HAMPSHIRE

During an active legislative session for energy matters, New Hampshire enacted several new energy laws this year primarily aimed at increasing the development of new renewable energy sources in the state, improving the use of energy efficiency measures, and enhancing transparency for consumers.

Developing New Renewable Energy Sources

To improve recordkeeping for New Hampshire's progress towards achieving its Renewable Portfolio Standard, the legislature passed *An Act Relative to Reporting of Energy Production for Net Metering*,¹⁵ which was signed into law on June 16 and became effective upon passage. This Act requires the New Hampshire Public Utilities Commission ("PUC") to permit owners of small renewable energy generation, under 15 kWh, to report production electronically to an independent monitor.

An Act Establishing a Committee to Study Offshore Wind Energy and the Development

maine.gov/tools/whatsnew/index.php?topic=Gov_Bills&id=619786&v=article2013.

¹⁴ *An Act Relative to Credit for Thermal Energy Generated with Renewable Fuels*, Ch. 251, the Acts of 2014.

¹⁵ *An Act Relative to Reporting of Energy Production for Net Metering*, Public Act No. 14-0130.

of *Other Ocean Power Technology*¹⁶ was signed into law on July 11 and became effective upon passage. The Act establishes a committee, composed of three members from each chamber, to study offshore wind energy and other ocean power technology development. The committee is directed to study the potential for generation capacity offshore in New Hampshire, possible facilities to support ocean power development, potential regulatory and jurisdictional challenges to such offshore development, and likely projected benefits from offshore energy development. The Act also directed the committee to submit a report to the legislature describing its findings.

Improving Energy Efficiency Measures

Signed into law on July 29, and effective upon passage, *An Act Requiring the Development of an Energy Efficiency Implementation Plan*¹⁷ directs the Office of Energy and Planning, in consultation with the Department of Environmental Services and the PUC, to coordinate development of an implementation plan for maximizing cost-effective energy efficiency across all energy sectors in the state. The Act requires OEP to develop recommendations for short- and long-term state energy efficiency goals, will develop a plan for the state to achieve cost-effective energy efficiency opportunities that are less expensive than energy supply, and will make recommendations to implement this plan.

An Act Relative to Funding for Certain Energy Efficiency Programs,¹⁸ signed into law on August 4 and effective beginning October 3, permits the PUC to allocate a small portion of the funds raised through the sale of Regional Greenhouse Gas Initiative (“RGGI”) allowances to entities managing certain comprehensive energy efficiency audit and rebate programs. This Act also required entities receiving such proceeds to file annual updates with the PUC.

Increasing Transparency

Signed into law on June 16, and effective commencing August 15, *An Act Relative to Least-Cost Integrated Resource Plans Filed by an Electric Utility*¹⁹ was legislation requested by the PUC. The Act clarifies the existing requirement for every electric and gas utility to file with the PUC a least-cost integrated resource plan every two years. The Act also includes a requirement that each utility must file a plan within every five years of the filing date of the prior plan. The Act also makes minor adjustments to the information that must be included in each utility’s plan.

Also signed into law on June 16, and effective upon passage, *An Act Relative to*

¹⁶ *An Act Establishing a Committee to Study Offshore Wind Energy and the Development of Other Ocean Power Technology*, Public Act No. 14-2457.

¹⁷ *An Act Requiring the Development of an Energy Efficiency Implementation Plan*, Public Act No. 14-2183.

¹⁸ *An Act Relative to Funding for Certain Energy Efficiency Programs*, Public Act No. 14-2703.

¹⁹ *An Act Relative to Least-Cost Integrated Resource Plans Filed by an Electric Utility*, Public Act No. 14-0129.

*Information Provided to Electric Utility Customers*²⁰ requires the PUC to convene the electric utilities to determine the most effective and appropriate means to provide customers with information explaining the system benefits charge, the renewable portfolio standard requirements and RGGI. The Act also directs the PUC to work with the utilities to determine the best way to help customers understand the administration of these programs. The Act further directed the PUC to present its findings and recommendations to the legislature in a report by November 1.

Signed into law on July 11, and effective July 1, *An Act Relative to the Siting of Energy Facilities*²¹ overhauls the state's Site Evaluation Committee ("SEC"), which oversees transmission project siting. The Act reduced the overall size of the SEC. Instead of being comprised of representatives from eight different state agencies, the SEC will now consist of gubernatorial appointees, regional representatives, and members chosen based on expertise. The Act also provided funding for a staff for the SEC and additional time and opportunities for public comments on new energy projects, both before such projects are proposed and after an application has been accepted.

RHODE ISLAND

Rhode Island enacted two significant new energy laws this year, with a focus on increasing the development of renewable energy generation in the state. One of these laws created the Renewable Energy Growth Program, a tariff-based renewable energy distributed generation financing program, and the other created the Affordable Clean Energy Security Act designed to establish a framework for the state, in coordination with other New England states, to make strategic investments in resources and infrastructure to achieve a clean, reliable future.

The Renewable Energy Growth Program

The Renewable Energy Growth Program was created by *An Act Relating to Public Utilities and Carriers—The Distributed Generation Growth Program*,²² which was signed into law on June 30 and became effective from passage. Pursuant to the Act, this program aims to install a total of 160 megawatts of renewable energy distributed generation during its five year term by financing the development, construction and operation of such projects. The program will use a competitive, performance-based incentive system designed to meet specified megawatt targets at reasonable costs. Under the Program, the state's electric distribution companies will propose tariffs for different solar distributed generation classes and for onshore wind and other distributed generation technologies. All projects under the Program will be five megawatts or less in size. Selected renewable energy distributed generation projects will be compensated pursuant to the tariff provisions. The state's electric distribution

²⁰ *An Act Relative to Information Provided to Electric Utility Customers*, Public Act No. 14-0149.

²¹ *An Act Relative to the Siting of Energy Facilities*, Public Act No. 14-2666.

²² *An Act Relating to Public Utilities and Carriers—The Distributed Generation Growth Program*, Public Law 2014, ch. 200 and ch. 216.

companies will be responsible for implementing the Program, guided by the distributed generation board in consultation with the Office of Energy Resources, and subject to the review and supervision of the Rhode Island Public Utilities Commission (“PUC”).

The Affordable Clean Energy Security Act

An Act Relating to Public Utilities and Carriers,²³ signed into law on July 3 and effective from passage, created the Affordable Clean Energy Security Act. The Act authorizes the state’s public utilities, in consultation with the Office of Energy Resources (“OER”), to participate voluntarily in multistate efforts to procure hydroelectric power, power from renewable resources, and natural gas pipeline capacity.

The Act authorizes the OER, in coordination with the other New England states, to participate in the development and issuance of multistate competitive solicitations for the development and construction of regional electric transmission projects. The Act provides that these projects must allow for the reliable transmission of eligible renewable energy resources and hydroelectric power into New England load centers to benefit the state of Rhode Island. The Act also authorizes the state’s participation in multistate solicitations for the development and construction of regional natural gas pipeline infrastructure and capacity that would benefit Rhode Island ratepayers. Before the OER makes any binding commitments as a result of these solicitations, this Act requires approval by the PUC. The Act provides that a potential project would be evaluated to ensure that the project is commercially reasonable, consistent with greenhouse gas reduction goals in the state and the New England region, and to confirm that the total benefits the project confers on the state exceed the costs of that project.

VERMONT

The Vermont legislature increased the state’s net metering cap because existing net metering goals had already been met. *An Act Relating to Self-generation and Net Metering*²⁴ raises the state’s net metering cap from four percent of a utility’s peak load to 15 percent. The net metering law applies to renewable energy resources generating less than 500 kW that are connected to the electric grid and used primarily to offset the customer’s own electric consumption. The Act also directs the Vermont Public Service Board (“PSB”) to take over the state’s net metering program in 2017 and develop a new set of rules. The Act was signed into law on April 1, and became effective from passage, except for the PSC provision, which will take effect on January 1, 2017.

²³ *An Act Relating to Public Utilities and Carriers*, Public Law 2014, ch. 424.

²⁴ *An Act Relating to Self-generation and Net Metering*, 2014 Act No. 99.