

Energy

Legislation

Legislative sessions in six New England states—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont—produced significant energy laws addressing a variety of topics, including renewable energy and retail markets. Harold Blinderman, Jennifer Galiette and James Blackburn, of Day Pitney LLP, examine energy legislation passed in each of the six states in 2015 and now in effect.

BNA Insights: 2015 State Energy Legislation in New England



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New England Energy Legislation Roundup

The 2015 legislative sessions across New England produced varied energy legislation addressing such areas as renewable energy, retail markets, energy diversity and fuel security.

Of the six New England states, Connecticut enacted the greatest number of energy bills in 2015, including a law prohibiting retail electric suppliers from charging residential customers variable rates and a number of initiatives aimed at promoting and financing renewable energy in the state. In Maine, two significant energy laws were enacted—one amending the state’s existing

community-based renewable energy pilot program and another seeking to develop an alternative to net energy billing for distributed energy. Massachusetts considered, but deferred for further consideration in 2016, a bill designed to lift the cap on net metering. Several new energy laws were passed in New Hampshire, including legislation aimed at protecting ratepayers that switch to competitive energy suppliers. Rhode Island enacted a new law creating a state infrastructure bank to aid in upgrading energy-efficient and renewable energy measures in public buildings. Vermont created a renewable energy standard for the state’s retail electricity providers that allows the state to participate in the New England renewable energy credit (REC) marketplace.

All of the energy legislation discussed in this article is currently in effect.

Connecticut

During a regular legislative session and a special session, both of which were active for energy matters, Connecticut enacted several significant energy laws aimed at increasing investment in residential solar, developing opportunities for shared clean energy facilities, soliciting long-term contracts to acquire energy from certain sources, establishing new rules prohibiting retail electric suppliers from charging residential customers variable rates, creating a distributed energy resources pilot program, providing municipal property tax abatements for certain renewable and natural gas projects, and defining fixed charges for residential electric customers. Legislative initiatives in 2015 included:

Increasing Investment in Residential Solar

An Act Concerning the Encouragement of Local Economic Development and Access to Residential Renewable Energy (Public Act No. 15-194) expanded the Connecticut Green Bank's residential solar investment program in several significant respects, including the expansion of resources that are eligible to become qualifying residential solar photovoltaic (PV) projects and the creation of solar home renewable energy credits (SHRECs).

Before this new law was passed, the solar investment program offered financial incentives for purchasing or leasing certain residential solar PV systems. Those incentives were either performance-based incentives paid on a kilowatt-hour (kWh) basis for electricity produced or expected performance-based buydowns that are a one-time upfront payment based on the system's expected performance. This act expanded "qualifying residential solar PV projects" under the incentive program to include solar PV projects that receive funding from the Green Bank, are certified by the Connecticut Public Utilities Regulatory Authority (PURA) as Class I renewable energy sources, emit no pollutants, generate less than 20 kWhs, are on the customer side of a one- to four-family home's revenue meter, and serve as a utility's distribution system.

The new law required the solar investment program to support the deployment of up to 300 megawatts (MW) of systems by the end of 2022. The program will terminate at that time or when it reaches the 300 MW cap, whichever occurs first. Incentives for more than 100 MW of new systems may not be approved between the date of the act's passage and April 1, 2016.

The act established SHRECs, which are Class I renewable energy credits created for each MWh of electricity produced by qualifying residential solar PV systems that receive approved incentives from the Green Bank on or after Jan. 1, 2015. The act directed the Green Bank to set the purchase price for SHRECs, within certain guidelines.

The act also required the Green Bank, within 180 days after July 1, 2015, to negotiate and develop a 15-year master purchase agreement with each electric distribution company (EDC), requiring the EDC to purchase the Green Bank's SHRECs. By Jan. 1, 2016, the Green Bank and each EDC must jointly file each agree-

ment with PURA for approval. The act did not specify the criteria PURA must use in evaluating these agreements.

The act removed the previously existing rule prohibiting customers that received the program's performance-based buydown from also receiving net metering credits. The act directed the Green Bank to publish on its website a proposed schedule for offering the solar investment program's incentives. The incentives must be designed to meet customers' reasonable payback expectations and must provide customers with a competitive electricity price and include the cost of various factors, including financing the system, and the availability and value of other incentives. Following the enactment of this law, the Green Bank may now modify an incentive schedule if changes in federal or state law or the solar market would affect a typical residential solar PV system's expected return on investment by 20 percent or more. The act lowered this threshold to 10 percent and required that any such modification be approved by the Department of Energy and Environmental Protection (DEEP).

The act required each municipality, by Jan. 1, 2016, to incorporate residential solar PV systems into its building permit application process or to supplement its application process with a residential solar PV system permit application.

Developing Opportunities for Shared Clean Energy Facilities

An Act Establishing a Shared Clean Energy Facilities Pilot Program (Public Act No. 15-113) established a two-year shared clean energy facility pilot program. The act defines "shared clean energy facilities" (SCEF) as Class I renewable energy sources that are served by an EDC, have a nameplate capacity of 4 MW or less and have at least two subscribers. The act is designed to allow for the creation of solar power arrays to serve groups of households.

The act directs DEEP, by Jan. 1, 2016, to issue a request for proposals from subscriber organizations seeking to develop a SCEF. A "subscriber organization" is defined in the act as "any for-profit or not-for-profit entity permitted by Connecticut law that (A) owns or operates one or more shared clean energy facilities for the benefit of the subscribers, or (B) contracts with a third-party entity to build, own or operate one or more shared clean energy facilities."

The act requires DEEP to select a proposal or proposals that: (1) do not exceed a nameplate capacity rating of 2 MW in the service territory of The United Illuminating Co., and (2) do not exceed a nameplate capacity rating of 4 MW in the service territory of Eversource Energy.

By Jan. 1, 2018, DEEP must file a report with the Energy and Technology Committee that analyzes the pilot program's success, identifies and analyzes the success of similar programs in other states, and recommends whether a permanent program should be established and, if so, any necessary legislation.

Soliciting Long-Term Contracts

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An Act Concerning Affordable and Reliable Energy (Public Act No. 15-107) authorized the DEEP, in coordination with other states in the ISO-NE region or on its own, to issue multiple Requests for Proposals (RFPs) for long-term contracts to acquire (1) natural gas transportation capacity, (2) liquefied natural gas, (3) liquefied natural gas storage, (4) natural gas storage, (5) Class I renewable energy sources of 20 MW or more and associated transmission, (6) passive demand response resources, (7) Class I renewable energy sources and Class III sources between 2 MW and 20 MW, and (8) verifiable large-scale hydropower and associated transmission. DEEP may acquire energy storage systems up to 20 MW or Class II renewable energy sources and existing hydropower resources for the purpose of balancing Class I renewable energy sources. The act authorizes DEEP to select any combination of proposals in the best interests of ratepayers to meet up to 375 million cubic feet per day of natural gas capacity or the MW equivalent of non-natural gas resources up to 10 percent of the load distributed by the state's EDCs.

The act includes factors the DEEP must consider in evaluating proposals, including reliability improvements, economic benefits to the state, fuel diversity, greenhouse gas emissions reductions and air quality goals, and a cost-benefit analysis. Finally, the act allows EDCs to seek cost recovery for the costs of entering into any long-term agreement selected by DEEP and approved by PURA.

Eliminating Variable Rates for Residential Retail Electric Customers

An Act Concerning Variable Electric Rates (Public Act No. 15-90) created a number of new rules for residential retail electric providers. The law prohibits electric suppliers from entering into a new residential customer contract for variable rates on or after Oct. 1, 2015, and prohibits any supplier from automatically renewing a residential customer's contract when the customer would be charged variable rates under the renewed contract. The act also directs PURA to initiate a proceeding to develop recommendations regarding what type of rate structure is best for residential customers that are automatically switched to a variable rate contract at the expiration of their fixed rate contract with an electric supplier. PURA is also directed to develop a recommendation on what rate increase would be just and reasonable when a customer transitions from a fixed rate contract to month-to-month rates.

Developing Distributed Energy Resources and Other Matters

Finally, *An Act Implementing Provisions of the State Budget for the Biennium Ending June 30, 2017, Concerning General Government, Education, Health and Human Services and Bonds of the State* (Public Act No. 15-5) is a budget implementation law with numerous provisions passed during the Legislature's special session at the end of June. First, this new law creates a distributed energy resources pilot program, which directs each EDC to submit one or more proposals to DEEP for a pilot program to build, own or operate grid-side system enhancements, including energy storage systems, for the purpose of demonstrating and investigating how distributed energy resources can be reliably and efficiently integrated into the operation of the electric distribution system. Second, this law establishes a clear definition of what can be considered a "residential fixed charge" for electric customers in the state. Specifically,

a "residential fixed charge" is defined as (1) a fixed charge for distribution basic service, (2) a distribution customer service charge, (3) a customer charge, or (4) a basic service fee separate and distinct from any distribution charge per kilowatt hour. Finally, the law devises two new municipal tax abatement provisions, one related to Class I renewable energy projects and another to natural gas expansion projects.

Maine

The Maine Legislature passed two significant new energy laws during the 2015 legislative session—one amending certain provisions of the existing renewable energy pilot program in Maine and the other supporting distributed energy efforts by directing the Maine Public Utilities Commission (PUC) to develop an alternative to net energy billing. Both were initially vetoed by the governor, but in each case, the veto was subsequently overturned by the Legislature. Three energy bills involving liquefied natural gas (LNG) storage and transportation, public-private infrastructure projects and utility ownership of generation assets were proposed in the 2015 legislative session but were carried over to the next session and are likely to be considered by the Legislature in 2016. With respect to enacted legislation:

Amendments to Existing Renewable Energy Pilot Program

Vetoed by the governor, but with that veto subsequently overturned by the Legislature by a vote of 107-40 in the House and 24-10 in the Senate,¹ *An Act to Amend the Community-based Renewable Energy Program* (Public Law No. 2015, ch. 232) amended the community-based renewable energy pilot program in Maine. The new law extends the length of the program and broadens eligibility, with the goals of ensuring program participant viability, eliminating the incentive of renewable energy multipliers and requiring the Maine PUC to institute a competitive bidding process for projects that would receive long-term contracts. The act also places certain limitations on the program, including: (1) providing that the Maine PUC may not issue an order after Dec. 31, 2015, directing utilities to enter into any long-term contracts under this program; (2) stipulating projects selected must become operational by Dec. 31, 2018; and (3) requiring the PUC to review all certified projects that have not reached commercial operation, to determine whether they are likely to do so within a three-year period. Projects that ultimately are determined not to be viable will maintain their certification, but any issued contracts will be revoked. The PUC has the authority to conduct an expedited RFP process to select additional projects if capacity is remaining. Finally, the act prohibits a project from choosing the REC multiplier incentive and stipulates that operational projects that have selected the REC multiplier do not count toward the program's 50 MW cap on net generating capacity.

Development of an Alternative Net Energy Billing

Also vetoed by the governor with the veto overturned by the Legislature, by a vote of 119-28 in the House and 32-3 in the Senate, was the *Resolve to Create Sustainable Growth in Maine's Distributed Energy Sector that Uses Market Forces to Fairly Compensate Energy Producers* (Publication No. 2015, ch. 37). It directs the

¹ A two-thirds vote of each chamber is needed to overturn a governor's veto.

Maine PUC to develop an alternative to net energy billing, Maine's current form of net metering, through a stakeholder process. The act also directs the Maine PUC to submit a report to the Joint Standing Committee on Energy, Utilities and Technology by Jan. 30, 2016, which is to include an overview of the alternative proposal, areas in which stakeholders were unable to reach a consensus, technical specifications, rules or policies needed to carry out the program, a proposed timeline for implementation, any technical or legal barriers to implementation, and any other recommendations.

Massachusetts

The Massachusetts Legislature considered a number of energy bills covering a broad spectrum of topics including developing a microgrid pilot program, increasing the amounts of solar energy sold to consumers by retail electricity suppliers, adjusting the rules surrounding the net metering cap in effect, establishing a bank for energy development projects, establishing renewable energy procurement requirements for competitive retail sellers, and increasing the financing authority of the Massachusetts Clean Energy Center. Ultimately, none of the bills proposed was passed by both chambers in 2015. They will be considered again by the Legislature in 2016.

New Hampshire

During an active legislative session for energy matters, New Hampshire enacted several energy laws during the 2015 session, including rules for switching a residential retail electric customer between a utility and a competitive electric supplier (a company licensed to provide energy to customers as an alternative to receiving energy from the local electric utility), rules regarding natural gas infrastructure, and an act implementing certain goals in the state's existing 10-year energy strategy:

Developing New Rules for Residential Retail Electric Supply Customers

An Act Requiring the Public Utilities Commission to Ensure Ratepayer Protections with Electric Power Suppliers and Extending the Time for the Site Evaluation Committee to Adopt Certain Rules (Public Act No. 15-0607) implements additional requirements for public utilities and electric power suppliers regarding switching residential retail electric customers between a utility and an electric power supplier. Specifically, the New Hampshire Public Utilities Commission is required to develop a summary of terms and conditions that electric power suppliers will be required to include in electric generation service contracts for residential customers. The act also extended to Nov. 1, 2015, the time for the Site Evaluation Committee to adopt rules relative to criteria for the siting of energy facilities.

Developing Rules for Natural Gas Siting

An Act Relative to Taking Land by Eminent Domain for High Pressure Gas Pipelines and Relative to the Siting of High Pressure Gas Pipelines (Public Act No. 15-0034) requires the Site Evaluation Committee to adopt rules on gas siting within 12 months. The act also states the Site Evaluation Committee "shall consider intervention in [Federal Energy Regulatory Commission] proceedings involving the siting of high pressure gas pipelines in order to protect the interest of the state of New Hampshire."

Implementing the State's Energy Strategy

An Act Implementing Goals of the State 10-Year Energy Strategy, Modifying Uses of the Site Evaluation Committee Fund, Establishing Fees for Energy Facility Evaluation, and Relative to Public Information Sessions on Proposed Energy Siting (Public Act No. 15-0674) began as an effort to implement certain recommendations from the 2014 State Energy Strategy, and the Senate subsequently added to it the Site Evaluation Committee funding proposal that was originally part of a state budget bill. As passed, this act implements goals of the state's 10-year energy strategy by modifying authorized uses of the site evaluation fund, such as no longer allowing certain support staff hiring to be funded by the site evaluation committee fund. Furthermore, this act establishes fees for energy facility evaluations.

Investigating Decoupling for Utilities

An Act Establishing a Commission to Investigate Implementation of Decoupling for New Hampshire Utilities (Public Act No. 15-0513) established a commission to investigate the possibility of decoupling for New Hampshire gas and electric utilities. Under the law, the scope of the commission's review includes a review of other states' policies regarding decoupling, a review of past dockets related to decoupling and a determination of whether decoupling would increase energy efficiency. Members include state agencies, utilities, the Business Industry Association of New Hampshire and a member of the public.

Rhode Island

Rhode Island enacted legislation creating a state infrastructure bank to assist local governments in energy efficient and renewable energy upgrades to public buildings and infrastructure. *An Act Making Appropriations for the Support of the State for the Fiscal Year Ending June 30, 2016* (Public Law 2015, ch. 141) includes a section that turned the Rhode Island Clean Water Finance Agency into the Rhode Island Infrastructure Bank, effective Sept. 1, 2015. The Infrastructure Bank is created to expand the financing authority of the former finance agency. The act further established an efficient buildings fund within the Infrastructure Bank for the purpose of providing technical, administrative and financial assistance to local government units for energy efficient and renewable energy upgrades to public buildings and infrastructure. The Infrastructure Bank is in charge of reviewing and approving all applications for projects to be financed through the efficient buildings fund.

Vermont

The Vermont legislature enacted a landmark energy law. *An Act Relating to Establishing a Renewable Energy Standard* (2015 Act No. 56) created a renewable energy standard in Vermont that allows the state to participate in the New England REC marketplace on the same terms as other states for the first time.

Beginning Jan. 1, 2017, Vermont will require electric suppliers to own RECs or to provide renewable electricity equivalent to 55 percent of a supplier's total annual electricity sales. This standard will increase by an additional 4 percent each third January 1 thereafter, until reaching a requirement of 75 percent on and after Jan. 1, 2032.

To encourage the use of distributed generation in the state, the new law creates the category of "distributed

renewable generation” resources for renewable energy plants with a capacity of 5 MW or less that are directly connected to the distribution system of a retail electricity provider. Beginning Jan. 1, 2017, the act requires electric suppliers to own RECs from new distributed renewable generation equivalent to 1 percent of the supplier’s total annual electricity sales. This standard will increase by an additional 0.6 percent per year until reaching a requirement of 10 percent on and after Jan. 1, 2032. This requirement is “carved out” within the total renewable requirement.

The act also establishes an “energy transformation” requirement for electric utilities to develop partnerships to reduce their customers’ use of fossil fuels by a specified amount each year, tied to retail electric sales. The obligation rises from the equivalent of 2 percent of sales in 2017 to 12 percent of sales in 2032. The act lists po-

tential energy transformation actions as examples — “home weatherization or other thermal energy efficiency measures; air source or geothermal heat pumps; high-efficiency heating systems; increased use of biofuels; biomass heating systems; support for transportation demand management strategies; support for electric vehicles or related infrastructure; and infrastructure for the storage of renewable energy on the electric grid.” Additional new distributed generation is also an eligible resource for the energy transformation tier.

Finally, the act also directs the Vermont Public Service Board to adopt the rules necessary to implement this renewable energy standard program. Additionally, the act provides that electric suppliers may make alternative compliance payments to the Vermont Clean Energy Development Fund in lieu of satisfying the renewable energy standard requirements in a given year.

