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MARKET LIBERALIZATION – ELECTRICITY MARKET COMPETITION (RETAIL)

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PUC's Role in Regulation of the Retail Market

- As a result of restructuring, retail competitive generation no longer economically regulated
- However, as part of the Restructuring Act, the Maine Legislature provided:
 - “In order to provide effective competition in the market for the generation and sale of electricity in the State and to provide an orderly transition from the current form of regulation to retail access, the commission shall license competitive electricity providers in accordance with this section.”

PUC's Role - Consumer Protections

- Commission rules focus on consumer protection for residential and small non-residential customer classes
- Large non-residential classes seen to have the experience and knowledge to interpret the market and offers from CEPs
- Licensing requirements and consumer protection provisions can be seen as a deviation from general American market rules of free entry and “let the buyer beware”

PUC's Role – Competitive Electricity Providers

- The PUC's role in the regulation of Competitive Electricity Providers (CEPs) can be split into the following categories:
 - Licensing Requirements
 - Informational Filing Requirements
 - Consumer Protection Provisions
 - Enforcement

Chapter 305, Licensing Requirements, Annual Reporting, Enforcement and Consumer Protection Provisions for Competitive Provision of Electricity

- Initially drafted in 1999, with three amendments since then.
- Latest amendment proposed in 2014 and made effective in late January 2015
- Amendment focused on incorporating stronger consumer protections in part by clarifying existing rule and incorporating new formats for terms and conditions

Licensing Requirements

- To receive a license the applicant must provide:
 - Evidence of financial capability to refund deposits to retail customers
 - Disclosure of pending legal actions and customer complaints by other regulatory bodies in the last 12 months
 - Names and addresses of all corporate affiliates
- Commission may require CEP to file a bond as evidence of ability to withstand market disturbances or to provide for uninterrupted service if CEP discontinues service

Licensing Requirements of the Commission’s Rule

- Financial Capability-
 - Applicant must include its most recent financial statements
Applicant must include a description of its industry experience
 - Applicants who intend to serve residential and small commercial customers must submit financial security
 - Initial financial security shall be \$100,000 or Irrevocable Letter of Credit

Commission Licensing Requirements (cont'd)

- Evidence of Technical Capability:
 - Applicant must include a description of industry experience
 - Must demonstrate that it is a participant in relevant regional market (ISO-NE or NMISA) or has a contractual arrangement with a market participant
 - Must demonstrate ability to enter into binding interconnection agreements with T&D utilities

Issuance of Licenses

- Commission shall issue a license, deny the license or initiate a formal investigation within 60 days (can be extended by an additional 60 day period)
- Commission will issue a license unless it finds that:
 - Applicant has not complied with licensing requirements
 - Applicant does not have financial or technical capability
 - Sufficient reason exists to conclude that the issuance of a license is not in the public interest
- Commission may place reasonable conditions on the issuance of a license

Commission Licensing Requirements (cont'd)

- Disclosure of Enforcement Actions and Customer Complaints:
 - Must disclose actions against Applicant and Associated Entities
 - Must disclose all civil court actions, regulatory enforcement proceedings and criminal prosecutions
 - Must disclose customer complaints related to retail sale of electricity or natural gas

Licensing Conditions

- By obtaining a license a CEP agrees to:
 - Comply with all applicable Maine laws and regulations
 - Provide updated information if there are substantial changes in circumstances
 - Submit to jurisdiction of Maine PUC and state courts
 - Avoid doing business with other CEPs who are not licensed
 - Have contracts interpreted in accordance with Maine law

Informational Filing Requirements

- Statute requires that CEPs file their generally available rates, terms and conditions with the Commission

Commission Reporting Requirements

- CEPs must file an annual report on July 1 which reports:
 - Average prices, revenues, sales and number of customers
 - Resource Mix
 - Enforcement Actions
 - Changes in Ownership or Control
 - Information on Compliance with Portfolio Requirements
 - Terms of Service Documents
 - Marketing Attribute Compliance
 - Enforcement Proceedings and Customer Complaints

Consumer Protection Provisions

- The statute provides that as a condition of licensing a CEP shall:
 - Obtain customer authorization before serving
 - Must allow consumer 5 days to rescind
 - Must offer service for at least 30 days
 - Must not terminate service without 30 day notice
 - Must provide disclosure information required by Commission
 - Must comply with federal and state laws on telemarketing
- Commission to establish rules to protect consumers from fraud and unfair trade practices

Consumer Protection Provisions Continued

- Unfair and Deceptive Acts and Practices have been defined by the courts in Maine to be:
 - Material misrepresentations or omissions that mislead consumers regarding choice or conduct related to product
 - Fact specific and determinations to be made on case by case by fact finder

Sanctions and Enforcement Tools

- After notice and an opportunity for hearing the Commission may impose the following sanctions for violations of statutes, Commission rules or orders:
 - Penalties of up to \$5,000 per violation per day
 - Issue cease and desist order
 - Restitution
 - License revocation or suspension
- Commission may apply the amounts paid as financial security by CEP to customers for refunds or restitution or for payment of penalties

Individual Dispute Resolution Procedures

- CEP must have a dispute resolution procedure in place to resolve complaints
- CEP must respond to customer inquiries within 48 hours. If contact rec'd on a Friday, CEP must respond no later than the following business day by noon.
- If CEP cannot resolve the complaint, customer must be advised of right to file a complaint with the Commission's Consumer Assistance Division (CAD)
- CAD complaints are processed in accordance with Commission's utility complaint procedure

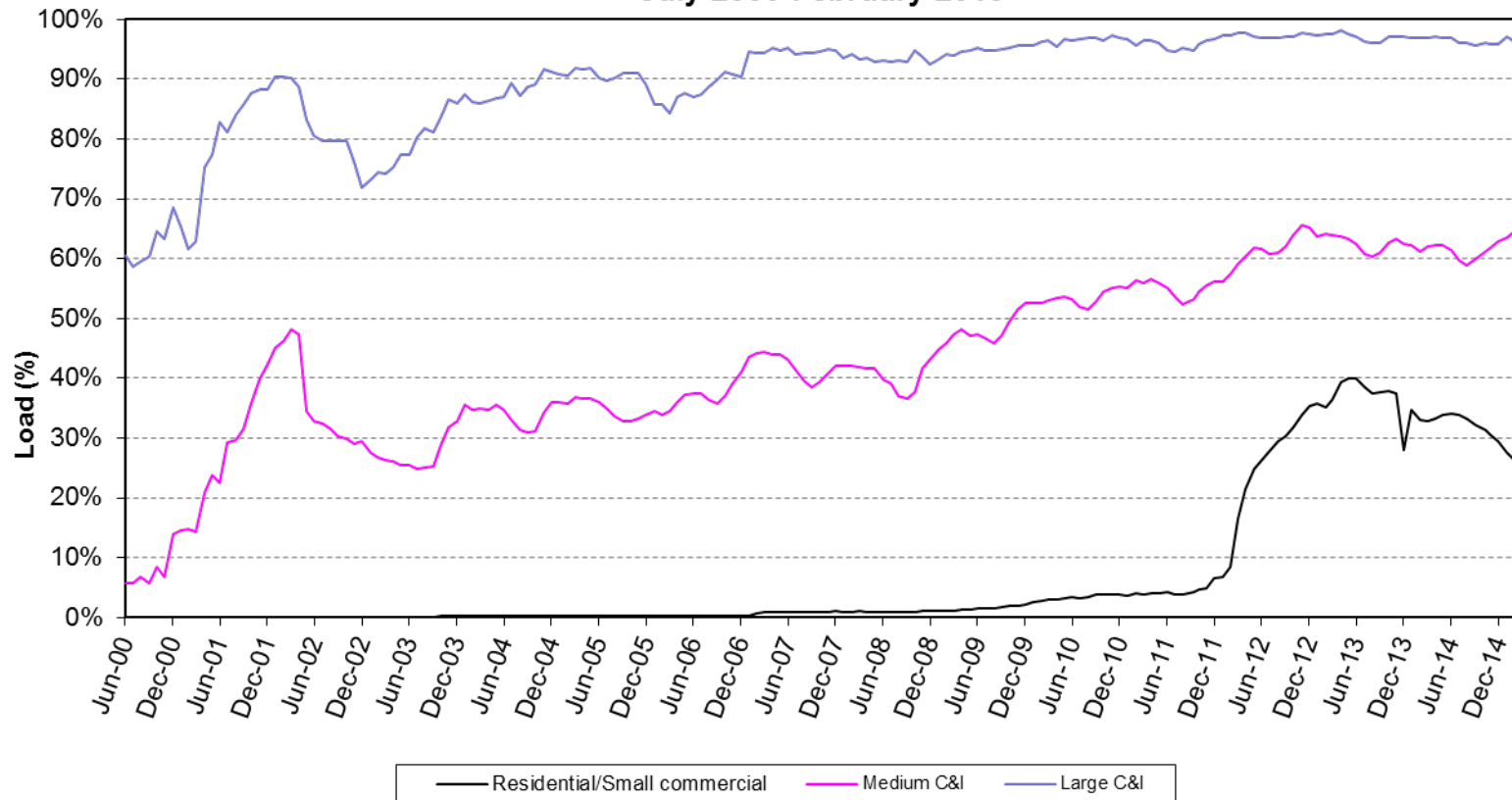
How have CEPs done in the market?

Factors Affecting CEP Penetration In the Market

- CEPs compete not only against other CEPs but against Standard Offer Service
- CEPs ability to attract customers is largely driven by relation of Standard Offer Service price to wholesale market price
- Under the terms of Standard Offer rule, Standard Offer Providers do not bear the cost of bad debt expense
- T&D utilities cannot terminate service for non-payment of CEP service

CEP Penetration Rates

**Load Served by Competitive Electric Providers
Central Maine Power Company
July 2000-February 2015**



CEP Case Studies

People's Power and Gas (PPG)

- PPG changed its terms of service (TOS) to add monthly customer charge on bills
- Commission investigation determined that PPG failed to provide proper notice of TOS change, ordered PPG to refund charge
- Chapter 305 allows Commission use the financial security for restitution to customers of amounts paid in error or unlawfully obtained.

PPG continued

- PPG filed bankruptcy during investigation, and was not in a financial position to refund the improperly collected charges
- Commission ordered that financial security be used to compensate customers
- Over \$128,000 was refunded to approximately 2,800 customers

North American Power and Gas (NAPG)

- NAPG marketed and enrolled customers in 6-month fixed rate plan, that changed to variable rate plan at month 7
- Multiple customers called Commission to report NAPG terminated their fixed rate plan at month 5 and instituted variable rate (much higher) at month 6
- CASD investigation found that NAPG failed to honor its 6 month fixed rate contract with customers, directed NAPG to refund any amount charged for month 6 over the fixed rate
- NAPG refunded over \$190,000 to 5,801 customers

Misleading Advertising Example

- Largest CEP serving residential customers stated in its marketing materials that its rate “is lower than standard offer”
- Problem: the SO rate was scheduled to decrease within the next month or so to a level below that being marketed by the CEP
- Commission sent letter to CEP requesting that it cease marketing its rate as “lower than SO”

Unfair Trade Practices

- Examples of unfair or deceptive acts include:
 - Failure to make clear and conspicuous disclosure of information required by Terms of Service Document
 - Making statements that are susceptible to both a truthful or misleading interpretation
 - Making deceptive statements even though true facts are subsequently disclosed

Rulemaking Issues

- Changes in rule proposed in part because of increased participation in the market by CEPs serving residential and small non-residential customers (Small Customers)
- Increased market activity resulted in complaints that provided antidotal evidence that the Small Customers did not have a full understanding of the contracts that were being signed
- Specifically there were indications that these customers either did not know the contracts were being renewed at variable rates or did not understand what variable rates were and the extent of variability
- Also indications that customers may not have understood that the contracts contained clauses for automatic extensions or missed the notice because it was not clearly stated

Rulemaking Issues (cont'd)

- The Commission's Notice of Investigation noted the following major concerns that had arisen with increased residential competition:
 - Misleading or inaccurate comparisons with standard offer prices
 - Misrepresentation of association with the utility
 - Automatic renewals at different terms
 - Transfer of customer accounts among CEPs
 - Disparate supplier/customer obligation regarding fixed terms

Rulemaking Issues (con't)

- After comment period and hearing Chapter 305 was amended to:
 - Provide definitions of Indexed Variable Rate or Charge and Non-indexed Variable Rate or Charge
 - Modify the level of financial security required from CEPs who serve Small Customers to 10% of previous year's revenues or \$1,000,000 whichever is less and required specific annual reporting and changes in security to reflect previous year's sales
 - Require that all CEPs prepare Terms of Service documents in plain language and contain all contractual obligations and responsibilities and be provided to customers within 7 calendar days

The Terms of Service Document

- Each CEP must provide each customer a “Term of Service” Document
- CEP cannot enroll a customer until Term of Services Document has been provided and customer's right of rescission has expired
- CEP must also provide the Term of Services Document on it web page
- The Term of Services Document is intended to standardize and make more transparent the CEPs terms of service

Terms of Service Document (cont'd.)

- The Terms of Service Document must contain:
 - Pricing structure including whether rates are variable or fixed
 - The length of the service obligation including whether obligation will automatically renew
 - Due dates of payment and late payment fees
 - Fees associated with early termination
 - Market risk disclosure

Renewals of Service

- CEP must provide two written notices of renewal between 30 and 60 days before renewal
- Renewal must contain Terms of Service notice form
- Fixed price contracts may be renewed for longer of original term or 18 months
- Indexed variable rate may be renewed for longer of term of service or 18 months
- Variable rate may only renew on a month to month basis

Variable Rates and Charges

- Terms of Service Document or webpage must clearly specify:
 - The formula or index for the variable rate calculation
 - Any limit on how high rate can go
 - Rate that would have been produced by formula or index during last 12 months
 - For non-indexed variable rates, the applicable rates over last 12 months

Unfair Trade and Promotional Practices

- Any comparison to customer savings relative to standard offer service must be based upon the period that CEP will providing service to the customer
- CEP may not suggest or imply affiliation with T&D utility and must clearly state its name and purpose of the call when contacting customer by phone
- CEPs may not engage in in any unfair or deceptive act that creates a likelihood of confusion or misunderstanding

Misleading Advertising Example

- This led to the change to Chapter 305 that requires any comparison to customer savings relative to standard offer service be based upon the period that CEP will providing service to the customer

Termination and Cancellation

- Termination fees must be fixed dollar amounts
- Termination fees may not apply to customers whose Terms of Service provide for month-to-month Indexed Variable Rate or Non-indexed Variable Rate
- CEP must provide 30 day written notice of cancellation
- Customer may cancel at any time subject to termination fees
- Customer whose service is cancelled and doesn't select another CEP is transferred to standard offer service

Deposits

- Commission rules do not specify terms regarding the assessment of deposits by CEPs
- Chapter 305 requires license applicants to include documentation to demonstrate financial capability sufficient to refund deposits to retail customers in the case of bankruptcy or for any other reason
- T&D Utilities collect deposits that include two months worth of delivery service and standard offer service

Questions Going Forward

- Was the goal of restructuring competition or lower rates for consumers?
- How should these sometimes competing objectives be balanced?
- To what extent should the licensing and consumer protection requirements be seen as transitional?
- If so, how and when should the requirements be eased?

For samples of the license application and annual report form you can go to:

<http://www.maine.gov/mpuc/online/forms.shtml>

We have also sent the License Application and Report Forms separately.

QUESTIONS?

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