

**STATE OF NEW HAMPSHIRE**

Inter-Department Communication

**DATE:** October 1, 2014**AT (OFFICE):** NHPUC**FROM:** *David*  
David Goyette *RF***SUBJECT:** DM 12-295 PNE Energy Supply, LLC D/B/A Power New England  
Request for Review of Certain Tariff Charges of PSNH**TO:** Commission**Issue**

In Order No. 25,699, issued on July 31, 2014, the Commission directed Staff to investigate what systems other states have put in place to allow electric distribution utilities to recover incremental costs when a competitive supplier defaults at ISO New England or another regional transmission organization.

**Methodology**

Staff focused its research on other retail access states and jurisdictions in New England and in the Mid-Atlantic region: Connecticut, Maine, Massachusetts, District of Columbia, Maryland, New York, and Pennsylvania. Staff sent an inquiry to each state's commission to ask if it had any statutes, rules, or orders, or if it has approved any electric distribution utility tariffs to recover incremental costs associated with receiving a customer back from a competitive electricity supplier upon its suspension from the regional wholesale market as a result of a financial default.

Staff also researched to find other cases similar to those of PNE Energy Supply, LLC d/b/a Power New England, and People's Power and Gas, LLC, in which a supplier's default at a regional transmission organization led to the transfer of customers to utility default service. Staff found only one such instance, that of Clean Currents, Inc., a provider of renewable energy.

**Findings**

Based on this limited research, Staff identified no other state or jurisdiction that had approved, evaluated or even considered a specific mechanism for recovery of utility incremental costs incurred in connection with a competitive supplier's default and suspension from the applicable regional wholesale market. It therefore appears that New Hampshire may be alone in directly addressing these cost recovery issues.

A detailed summary of Staff's research is set forth below. As noted above, Staff sent an e-mail inquiry to the public utility regulatory commissions of several New England and Mid-Atlantic jurisdictions.

A staff member from the Maine PUC responded as follows<sup>1</sup>:

*The utilities do not actually provide default service, so the customer would default to standard offer service and the SOS provider (a retail supplier we select pursuant to an RFP process) would have to cover the incremental supply costs at the existing SOS rate (which is set based on the winning bid in our RFP process). We assume SOS bids/prices include a risk premium to cover this sort of thing. The administrative costs the utility incurs, e.g., metering, billing, effecting the transfer, etc., are recovered through charges that all suppliers are assessed as a general matter, on a per-customer-bill basis.*

A staff member with the Massachusetts DPU responded to Staff's inquiry as follows:

*In MA, we do not allow the utilities to receive any money as a result of a customer being transferred from a competitive supplier to basic service in the situation that you describe (where the competitive supplier is suspended from ISO-NE). This issue has never been brought up to us by utilities in the state.*

An attorney with the Connecticut PURA responded as follows (note that the default of People's Power and Gas affected customers in Connecticut):

*We don't have any statutes, regs or rules specifically requiring electric suppliers to repay the EDCs. But pursuant to our general authority, we were going to issue an order requiring People's Power and Gas to repay the EDCs for the same costs you mentioned when PPG defaulted at ISO. However, as you know, PPG is in bankruptcy, and such cost recovery would probably violate the automatic stay, so we decided not to issue an order regarding recovery of (1) EDCs' costs or (2) PPG's outstanding RPS obligations. We did, however, pursue with civil penalties against PPG for slandering and violations of notice regulations (see attached Notice of Violation and Civil Penalty), as we believe civil penalties would not violate the bankruptcy automatic stay.*

*CT does not have any statutes, rules, or orders that specifically require a supplier to repay an EDC.*

Staff received a response from a senior staff member with the New York PSC, as follows:

*New York does not allow customer selection charges nor are the utilities allowed to recover the costs of transferring customers back to the utility upon an ESCO (energy services company) default. We have not reviewed the costs associated with an ESCO default. It is actually an infrequent occurrence. There have been a couple of incidents in recent history but the actual numbers of customers were very small.*

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<sup>1</sup> In limited instances responses were edited for clarity and may not be verbatim.

As referenced above, Staff has learned of Clean Currents, Inc., a supplier registered in Maryland, Pennsylvania, and the District of Columbia, that defaulted at PJM in January 2014. According to news accounts of this event, Clean Currents had 12,000 residential and 1,500 commercial customers as of September 2013. In late-January of 2014, Clean Currents suffered financial losses as a result of extremely high wholesale energy prices and went into collateral default with PJM. As a result, customers of Clean Currents were transferred back to utility default service in each of the three states: in Maryland, to Potomac Electric Power Company (PEPCO) and Baltimore Gas and Electric (BGE); in the District of Columbia, to PEPCO; and in Pennsylvania, to Philadelphia Electric Company (PECO) and Pennsylvania Power and Light (PPL).

Staff researched the electric section web page of the commissions of the three jurisdictions affected by the default of Clean Currents to determine where customers obtain electricity when a competitive supplier defaults. In Maryland and in the District of Columbia, customers that do not choose a supplier, or are no longer served by a supplier, are transferred to standard offer service (SOS). According to the response Staff received from an inquiry to the Maryland PSC:

*In general, defaulting retail suppliers would not cause utilities to incur costs when dropping customers back to default service, called standard offer service or SOS in Md. SOS is procured with full requirements contracts and the utility does not have risk associated with returning customers.*

Staff reviewed the Maryland tariffs of PEPCO and BGE, but did not see any provision in either tariff regarding the recovery of incremental costs associated with the transfer of customers from a defaulting competitive supplier to SOS.

Staff researched the District of Columbia tariffs of PEPCO and sent an inquiry to the staff at the District of Columbia PSC. Staff did not find any provision in PEPCO's tariffs that described terms or rates for the recovery of administrative costs associated with the transfer of customers from a defaulting competitive supplier to SOS. A staff member at the District of Columbia PSC responded to Staff's inquiry as follows:

*The District does not have any statutes, rules, or orders, nor has it approved or accepted any electric distribution utility tariffs, that allow an electric distribution utility to recover incremental costs associated with receiving a customer back from a competitive supplier upon its suspension from the PJM regional wholesale market as a result of a financial default. All such costs would be includable in incremental costs for the default standard service within the administrative charge. But again, we have not addressed this issue as a Commission to date.*

Staff reviewed the Pennsylvania tariffs of PECO and PPL, and sent inquiries to staff at the Pennsylvania PUC. PPL's tariff does not contain any provision for the recovery of incremental costs associated with a supplier default at PJM. However, one section in PECO's tariff, which became effective in 1998, included the following terms:

*An EGS (electric generation supplier) that withdraws from retail service and fails to provide at least ninety (90) days written notice of said withdrawal shall reimburse the Company for any of the following costs associated with the withdrawal:*

*(a) mailings by the Company to the EGS's Customers to inform them of the withdrawal and their options;*

*(b) non-standard/manual bill calculation and production performed by the Company;*

*(c) EGS data transfer responsibilities that must be performed by the Company; and*

*(d) charges or penalties imposed on the Company by PJM or other third parties resulting from EGS non-performance.*

Staff received a response to its inquiry from a senior staff member at the Pennsylvania PUC, as follows:

*The customer is, by definition, a distribution customer of the electric distribution company (EDC). Accordingly, there would be no "incremental" distribution charges upon a return to default. To the extent there may be additional commodity charges upon a return to default, those are recouped in accordance with the utility's default service plan which provides that the default service price (PTC) is adjusted on a quarterly basis to reflect increases and decreases in the cost of providing default service. But there is no "special" provision relating to a large number of returning customers due to a defaulting supplier. Those customers will return to default service and any associated costs will either be normal distribution costs recovered in distribution base rates or default service costs recouped as noted above.*

### **Conclusions**

None of the jurisdictions reviewed currently have a mechanism for the recovery of such incremental costs. Staff acknowledges that its research has been limited and by no means exhaustive. However, Staff believes that its report should at least inform the Commission that, at this time, it appears New Hampshire may be alone in directly addressing these incremental cost recovery issues.

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