

As More States Weigh Retail Electric Choice, Early Adopters Tighten the Bolts

Arizona and Virginia consider ending monopolies amid a slowdown in the retail electric choice market.

Industry Insight

Retail electric choice has garnered increased attention as **more states are weighing the prospects of opening their electricity markets to retail competition**. In states with retail choice programs, regulators continue to strengthen oversight, in a bid to ensure customer protection and satisfactory service from competitive suppliers. Recent actions range from Arizona regulators' efforts to implement customer choice, to New York's strengthening oversight of energy marketers, and the Florida Supreme Court's rejecting an energy choice ballot initiative.

Nineteen states and the District of Columbia allow some commercial and industrial customers to choose power marketers, according to the U.S. Energy Information Administration. Of these, sixteen (including DC) allow customers in all sectors to participate in retail choice programs.

More recently, **Arizona regulators proposed two sets of draft rules on Feb. 10**, paving the way for customers to participate in retail electric competition. The first draft would allow electric choice for all customers, while the second would include eligibility restrictions. Following the initial draft issued last July, the Corporation Commission Chairman Robert Burns and Commissioner Justin Olson collaborated on drafting rules to move the process in a more expeditious manner.

In New York, the Public Service Commission announced reforms in December to enhance the eligibility criteria of energy service companies, or ESCOs, and impose limitations on the types and prices of products offered to customers. The commission also adopted new cybersecurity and privacy protocols for third-party energy suppliers and companies that exchange utility housed customer data. Regulators said that the changes are intended to protect against a potential cyber incident, while maintaining the confidentiality of customer data and instilling customer confidence in retail and energy markets. **In May, the state's highest court confirmed the authority of New York utility regulators to restrict the ability of energy marketers to serve residential customers**, ending a three-year legal battle against an order that conditioned access to public utility infrastructure by ESCOs.





The **Florida Supreme Court, in a January ruling, rejected a proposed constitutional amendment that called for creating a competitive electricity market**. The move would have made dramatic changes in a regulated industry, where much of the state's electricity is supplied by Florida Power & Light, Duke Energy Florida, Tampa Electric Co. and Gulf Power.

The Massachusetts Department of Public Utilities is seeking input on a series of initiatives in connection with the department's investigation to promote and protect consumer interest in the retail electric competitive market. **The agency intends to increase customer awareness of the retail market and the value these markets can provide**, paving the way for a more proactive approach toward oversight of supplier performance rather than reacting to third-party complaints or reports about alleged violations. Connecticut regulators have proposed a decision to establish marketing standards and sales practices for electricity suppliers.

Virginia lawmakers have proposed a bill that would enable customers to purchase electricity from the retail provider of their choice, ending monopoly control over the state's energy system. Simultaneously, Massachusetts, Maine, and New York have introduced legislation to restrict retail choice or expand oversight of energy marketers.

As more customers gain access to the competitive retail market, regulators will be required to ensure the market operates efficiently and maximizes its value to customers. States like New York and Connecticut will inform other states seeking to move away from a system of regulated monopolies to a restructured industry where competition is expected to drive efficiencies, savings, and innovation.

Key Takeaways

-  New York Public Service has enhanced the eligibility criteria of energy service companies and adopted new cybersecurity and privacy requirements for third-party energy suppliers to protect customer data.
-  Arizona regulators are moving forward with draft rules that would potentially open the state's electricity market to full retail competition.
-  In Florida, the Supreme Court struck down a proposed constitutional amendment intended to deregulate the state's electric-utility industry.
-  Virginia lawmakers have proposed a bill that would enable customers to purchase electricity from the retail provider of their choice.

Key Statistics

Not So Fast

Retail Choice Power Market Growth Slowed Since 2013 Amid Higher Costs for Residential Customers: EIA

- The share of U.S. electricity sales by competitive suppliers increased slightly since 2013 after over a decade of steady growth, according to a November 2019 report from the U.S. Energy Information Administration.
- Suppliers are likely to offer more competitively priced contracts to large customers.
- In general, residential customers have spent more per kilowatt-hour to buy power from competitive suppliers than noncompetitive suppliers, but commercial and industrial customers paid less.
- Although residential and small commercial customers do not have the advantage of large users, they may form purchasing groups as in California, where community choice aggregators allow local governments to buy electricity and negotiate rates on behalf of their customers.

Percentage of U.S. retail electricity load sold by competitive suppliers



Recent Actions: Northeast



NY New York Bill Would Require Comparison of Prices Charged by ESCOs

Jan. 21, 2020 - Senator Brad Hoylman, a Democrat, introduced legislation ([S 7340](#)) that would require that a billing statement delivered to the customer by an ESCO include a side-by-side comparison showing both the price charged and delivery service during the prior billing period, and the price the customer would have paid had they taken commodity and delivery service from their local utility corporation or municipality. The bill would require each ESCO to provide customers with an annual statement providing a similar comparison.

New Bill Would Prevent New Supplier Contracts with Residential Customers

Jan. 8, 2020 - Senator Kevin Parker, a Democrat, introduced legislation ([S 3758](#)) that would prevent ESCOs from executing a new contract for generation services with any individual residential retail customer; the prohibition would not affect any government body that aggregates the load of residential retail customers as part of a community choice aggregation program.

Customer Protections Strengthened Amid Growing Complaints Against ESCOs

Dec. 12, 2019 - The New York Public Service Commission [announced](#) ([98-M-1343](#)) reforms to the retail energy market to strengthen customer protections and enhance price and operational transparency. The [changes](#) enhance the eligibility criteria of ESCOs and impose limitations on the types and prices of products offered to customers. The reforms are intended to empower customers by improving transparency of product and pricing information through on-bill comparison of ESCO-to-utility commodity price comparison and itemization of ESCO charges. ESCOs have been losing market share in the state amid unacceptably high complaint rate, with over 11,000 initial complaints received from 2014-2016. In 2018, about two million residential and small commercial customers received electricity or natural gas from an ESCO, down 12 percent from 2.3 million customers in 2017.

Regulator Adopts Cybersecurity, Privacy Protocols to Protect Customer Data

Oct. 17, 2019 - The New York State Public Service Commission adopted ([18-M-0376](#)) new cybersecurity and data privacy requirements for third-party energy suppliers and companies that electronically receive and exchange utility housed customer data with the utilities' information technology systems. The commission's [decision](#) is directed at the state's utilities and third-party energy suppliers with standards that ensure customer data remains protected and secured. The changes are designed to provide protection against a potential cyber incident targeting retail and energy markets while maintaining the confidentiality of customer data and instilling trust in the system. The measure intends to strike a balance between protecting utility IT systems and the privacy of customer data.

Court Affirms NY PSC Authority to Restrict Energy Service Companies

May 9, 2019 - The New York State Court of Appeals [affirmed](#) the Public Service Commission's February 2016 order restricting the ability of energy marketers to serve residential customers. That order conditioned access to public utility infrastructure by energy service companies (ESCOs) unless they charge no more for electricity than is charged by public utilities or derive at least 30 percent of their electricity from renewable sources. The commission issued the order after an investigative process in 2014, finding that ESCOs were generally charging their residential or small-scale customers higher prices than the prices charged by utilities.

CT Regulator Proposes to Implement Marketing Standards

Jan. 6, 2020 - The Connecticut Public Utilities Regulatory Authority [issued](#) ([14-07-20RE01](#)) a proposed decision to implement standards relating to abusive switching practices, solicitations and renewals by electric suppliers, the hiring and training of sales representatives, and door-to-door sales and telemarketing practices by electric suppliers. The decision also establishes a disclosure statement for all electric suppliers to use on all promotional materials that will direct residential customers where to find the supplier's highest and lowest rates.

ME Maine Bill Seeks to Eliminate Retail Competition for Residential Customers

Dec. 24, 2019 - Senator David Woodsome, a Republican, introduced legislation ([LD 1917](#)) that would eliminate retail-level competition for residential electricity customers and require a more robust competitive process for selecting standard-offer service providers for residential and small commercial electricity customers.

MA Bills Seek to Prevent New Supplier Contracts with Residential Customers

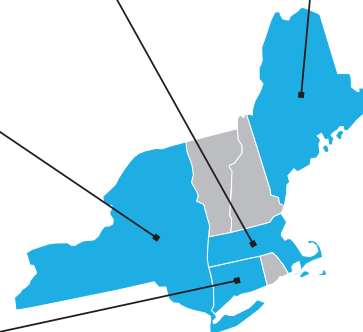
Feb. 6, 2020 - Attorney General Maura Healey, a Democrat, is backing a legislation ([SD 880, HD 1204](#)) that would prevent suppliers, energy marketers, or energy brokers from executing new contracts for generation services with individual residential retail customers. The provision would not apply to any government body that aggregates the load of residential retail customers as part of a municipal aggregation.

Massachusetts Regulator Seeks Input on Retail Market Rules

Feb. 5, 2020 - The Massachusetts Department of Public Utilities [issued](#) ([19-07](#)) a request seeking comments on the Tier One initiatives in connection with the department's investigation to promote and protect consumer interest in the retail electric competitive market. The agency intends to explore the initiatives in a tiered manner, with the first tier addressing those that can be resolved in the timeliest manner. These include license application review process, marketing-related activities, automatic renewal and reporting, enrolment reports, and display of municipal aggregation products on the Energy Switch website. About half a million residents in the state receive their electricity from a competitive supplier. Over two decades ago the Massachusetts Legislature restructured the electricity industry, creating a competitive market for the supply of electricity to cut costs.

Retail Choice Power Market Cost Consumers \$250 Million Over Three Years

Aug. 1, 2019 - Attorney General Maura Healey, a Democrat, [released](#) a report showing that Massachusetts electric customers who switched to a competitive electric supplier paid about \$76 million more on their bills from July 2017 to June 2018 than they would have if they remained with their utilities. Healey underscored the need for legislation to protect real competition and stop suppliers from making direct solicitations to residents. The report expands upon the initial study released in March 2018, adding new data that brings the total net losses to \$253 million for consumers over the three-year period from July 2015 to June 2018. Low-income households participate in the residential electric supply market at double the rate of non-low-income households, paying 25 percent higher rates on an average, the report found. These households lost an average of \$166 in the one-year period from 2017-2018.



Recent Actions: Mid-Atlantic, Southeast, Central, West



AZ Arizona Proposes Draft Rules for Retail Electric Choice

Feb. 10, 2020 - Arizona Corporation Commission Chairman Robert Burns and Commissioner Justin Olson [issued \(RE-00000A-18-0405\)](#) two sets of draft rules – Draft A and Draft B – allowing customers to participate in retail electric competition. The first set of rules do not have a definition for “eligible customer,” meaning all customers qualify for the program. The second permits customers that do not individually meet the 100-kilowatt threshold – specified in the [initial draft](#) – to aggregate their load up to 400 kilowatts, so as to allow all customers to participate. Among other differences, Draft A does not allow current utilities to take part while Draft B allows it. Draft A would have the competitive service providers to be the providers of last resort while Draft B would also allow affected utilities.

MI Power Consumption in Electric Choice Program Grew by 46 MW in 2019

Jan. 31, 2020 - Customers enrolled in Michigan’s electric choice program had about 2,016 megawatts of demand, up from 1,970 megawatts in 2018, while the number of consumers remained about the same at 5,187, according to the Public Service Commission’s annual [report](#). The state’s Customer Choice and Electricity Reliability Act of 2000, which opened the state’s utility service market to competition, limited the amount of electric load that could be designated through the choice program to 10 percent of the utility’s average retail sales for the preceding calendar year. As of December, about 6,447 customers remained interested in taking part in the program if space became available under the 10 percent cap.

DC Regulator Calls for Website to Provide Energy Supplier Information

Jan. 30, 2020 - The District of Columbia Public Service Commission [issued \(FC1130\)](#) the first of a series of orders in its grid modernization proceeding including approving a new retail choice website to provide information about third-party energy suppliers, as well as secure data sharing portal, and a pilot projects governance board. The Power Path DC was launched last August to advance the next phase of the agency’s grid modernization efforts.

VA Virginia Bill Seeks to Establish Competitive Retail Power Market

Jan. 23, 2020 - Virginia Delegates Mark Keam, a Democrat, and Lee Ware, a Republican, introduced legislation ([HB 1677](#)) that would enable customers to purchase electricity from the retail provider of their choice, ending monopoly control over the state’s energy system. The bill would require each incumbent investor-owned utility, electric cooperative, and municipal electric authority to separate its customer energy services business activities from its regulated utility activities. The legislation sets a Jan. 10, 2021 deadline for monopoly utilities to file plans with the state’s Corporation Commission to separate their retail services activities - that are already widely available in the competitive market - from regulated utility activities. Currently, monopolies including Dominion Energy and Appalachian Power own and operate the vertically integrated system.

MO Lawmakers Propose Measure to Study Retail Competition Implementation

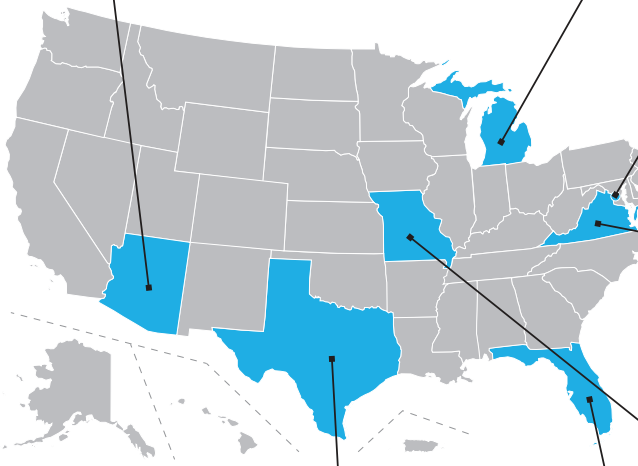
Jan. 27, 2020 - Senator Ed Emery, a Republican, introduced a concurrent resolution ([SCR 39](#)) to establish a task force on retail electric competition, and to make recommendations in a report to the General Assembly on the method, feasibility, and impact of implementing retail electric competition in Missouri.

FL Florida Supreme Court Rejects Ballot Initiative to Deregulate Electric Utilities

Jan. 9, 2020 - The Florida Supreme Court determined that a proposed amendment titled “Right to Competitive Energy Market for Customers of Investor-Owned Utilities; Allowing Energy Choice,” failed to meet a clear language standard for ballot initiatives and misleads voters. The court concluded that the initiative, sponsored by Citizens for Energy Choices, should not be placed on the 2020 ballot.

TX Retail Electric Complaints Made Up 34% of TX PUC’s Investigations in FY 2019

Nov. 7, 2019 - The Texas Public Utilities Commission’s Customer Protection Division [presented \(50019\)](#) a summary of customer complaints and enforcement actions for FY 2019, reflecting that the commission assessed \$2.96 million in administrative penalties and ordered nearly \$90,000 in refunds to customers through enforcement actions in FY 2019. Of the investigations that were opened in fiscal year 2019, 34% were electric retail, 26% were electric wholesale, 14% were electric service quality, 9% were telecommunications, and 17% were water. The percentage of total penalties assessed in was 20% electric retail, 54% electric wholesale, 24% electric service quality, and 2% telecommunications.



Upcoming Events



- Feb. 25, 2020** ● **AZ CC - Retail Choice Draft Rule Workshop**
The AZ CC will accept comments on the two draft rules on retail electric choice prior to the commission's Feb. 25 workshop. (RE-00000A-18-0405)
- March 5, 2020** ● **MA DPU - Retail Electric Market Investigation**
The MA DPU is scheduled to receive comments on the Tier One initiatives in connection with the department's investigation to promote and protect consumer interest in the retail electric competitive market. Comments on Tier Two initiatives and proposed license renewal process are due by March 19. (19-07)

Hot Policy Monitors



MA DPU
19-07

Jan. 2019

Initiatives to Promote and Protect Consumer Interests in the Retail Electric Competitive Supply Market



NY PSC
18-M-0376

June 2019

Cyber Security Protocols and Protections in the Energy Market Place



NY PSC
98-M-1343

April 1998

Retail Access Business Rules



CT PURA
14-07-20RE01

March 2015

Development and Implementation of Marketing Standards and Sales Practices by Electric Suppliers

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