



## Implementation of the Full Liberalization of Japan's Electricity Retail Market

On April 1, 2016, amendments to the Electricity Business Act (“Act”) liberalizing entry into the Japanese electricity retail market became effective. All electricity consumers, including households and small businesses, now may freely select and subscribe to service plans offered by any registered electric power company. This liberalization is part of the second stage of reforms (“Stage 2 Reforms”) to the electric power market in Japan, initiated in 2011 with the goal of promoting competition through the entry of new market participants and lowering electricity retail prices.

Last year, we provided an overview of these reforms under the proposed amendments to the Act.<sup>1</sup> This *Commentary* provides an update on the implementation of the reforms, including the Stage 2 Reforms.

### Rapid Increase in Number of Registered Retailers

The number of electricity retailers has increased rapidly since April 1, 2016. Prior to market liberalization, only 10 vertically integrated utilities with regional monopolies (“Former Regional Utilities”) supplied electricity to consumers. Now individual households may choose

to purchase power from any registered electricity retailer<sup>2</sup> in lieu of the Former Regional Utilities, and, under the amended Act, registered electricity retailers (excluding the Former Regional Utilities) may determine freely the retail price of electricity offered to consumers with no approval or permission required. As of September 13, 2016, there were more than 340 registered electricity retailers.<sup>3</sup>

However, the number of households changing electricity providers has not matched the rate of increase seen in registered electricity retailers. According to [data published](#) (source document in Japanese) by the Organization for Cross-regional Coordination of Transmission Operators (“OCCTO”), an independent institution established as part of the energy market reforms, only 1,675,000 households, or 2.8 percent of all households, have changed electricity providers as of August 31, 2016. There are two primary reasons for the small number of households that so far have opted to change providers: (i) a general lack of awareness of the liberalization of the market; and (ii) general uncertainty regarding the cost benefits and risks of changing providers.

Many households appear to be waiting to see the effects on other households of changing electricity providers before switching themselves. As a result, the decrease in electricity costs that was expected to result from the increase in competition has not yet materialized to a significant degree.

## Improvements in the Electricity Retail Market

The recent amendments to the Act also called for certain improvements to market practices in order to strengthen consumer protection. These directives are reflected in amendments to the Guidelines Concerning the Management of the Electricity Retail Business (“Retail Business Guidelines”) and the Guidelines for Proper Electric Power Trade (“Fair Trade Guidelines”).

The Retail Business Guidelines, issued in January 2016 by the Electricity and Gas Market Surveillance Commission (“EGMSC”) established under the Ministry of Economy, Trade and Industry (“METI”),<sup>4</sup> were amended as of July 22, 2016, with respect to certain conduct by electricity providers and the appropriate methods through which electricity providers should provide information to consumers.

The Retail Business Guidelines are intended to encourage the healthy development of the electricity business and enhance protection of electricity consumers, ensuring a secure source of electricity for consumers. The Retail Business Guidelines provide best practices, presented in the form of “desirable actions” and “problematic actions,” for providing information to consumers and using agreements with fair terms. Through the amendments, EGMSC sought to strengthen consumer protection in the context of the full liberalization of the electricity retail market.

The Retail Business Guidelines provide examples of “desirable actions” and “problematic actions” regarding the following five aspects of the business operation of an electricity retailer:

- Providing appropriate information to customers;
- Optimizing business procedures and contracts;
- Optimizing retail electricity contracts;
- Optimizing systems for handling consumer complaints and inquiries; and
- Optimizing service cancellation procedures.

The Retail Business Guidelines do not provide any clear-cut rules for identifying violations of the Act, but the problematic actions identified would constitute actions that could result in the issuance of an order for business improvement by the Minister of METI, and/or a recommendation by EGMSC for such an order.

**Providing Appropriate Information to Customers.** Desirable actions for providing appropriate information to customers include providing or clarifying: (i) standard pricing menus, (ii) samples of monthly billing, (iii) sources of power for the electricity supply, (iv) possible penalties on customers that change to another electricity provider, and (v) conditions for cancellation of set sales (combinations of electricity and other products or services, such as gas or phone). Conversely, the Retail Business Guidelines state that not providing accurate information would be deemed to be a problematic action, including: (i) not disclosing the basis of billing; (ii) providing misleading information; (iii) failing to comply with the requirement to provide information or to deliver documents under the Act; and (iv) inaccurately disclosing the source of power for electricity.

**Optimizing Business Procedures and Contracts.** The Retail Business Guidelines illustrate as a problematic action a case in which an electricity provider enters into an electricity supply contract with another electricity provider and then provides that electricity to its retail customer, preventing the retail customer from having a contractual relationship with the actual supplier of electricity. While the Act allows electricity providers to use intermediaries, brokers, and agents in its business, it also requires that providers adequately supervise and instruct such intermediaries, brokers, and agents.

**Optimizing Retail Electricity Contracts.** Under the Retail Business Guidelines, not providing a clear calculation method for electricity charges and inappropriately restricting the ability of customers to cancel contracts constitute problematic actions. Conversely, allowing customers to cancel contracts without penalty when they move to a place outside the service area of the electricity provider is a desirable action under the Retail Business Guidelines.

**Optimizing Systems for Handling Consumer Complaints and Inquiries.** The Act provides that an electricity provider must address complaints and inquiries from existing or potential

customers quickly and appropriately. The failure of an electricity provider to take reasonable action to address inquiries or complaints from customers in the event of a power failure whose cause is unknown would be a problematic action under the Retail Business Guidelines. A desirable action would be an electricity provider providing, to the extent reasonably possible, advice to its customers, such as how to operate circuit breakers, and contact information for the distribution/transmission company that may be in a position to rectify the power failure.

**Optimizing Service Cancellation Procedures.** Certain measures that would harm the interests of the consumer upon cancellation of the contract are deemed to be problematic actions under the Retail Business Guidelines, including not confirming the identity of the cancelling customer and not properly responding to requests for a cancellation or for a cooling-off period. In addition, abrupt cancellation of a contract by the electricity provider without any remedial process (such as a 15-day prior notice with a detailed explanation on stoppage of electricity) is a problematic action under the Retail Business Guidelines.

In addition to the Retail Business Guidelines, the Fair Trade Guidelines<sup>5</sup> were amended for the seventh time as of March 7, 2016. The Fair Trade Guidelines promote fair and effective competition in the retail and wholesale electricity business and the electricity distribution and transmission business in Japan by describing specific desirable and problematic actions for the Former Regional Utilities that possess dominant market shares, large facilities, and extensive region-wide transmission networks. For instance, the Fair Trade Guidelines provide that, in their retail business, the Former Regional Utilities should not provide electricity to customers of another electricity retailer at a price below cost. In their wholesale business, the Former Regional Utilities should not provide electricity to other retailers at unfairly high prices when compared to their affiliated retailers. Finally, in their distribution and transmission business, the Former Regional

Utilities should provide equal access to their electricity networks to their affiliated retailers and to third-party retailers.

## Improvements in Interregional Transmission Lines

The Japanese government recently announced its intention to overhaul the rules for providing electricity across regional lines, aiming to promote fair competition among electricity retailers and to lower costs. Access to interregional transmission lines currently is granted on a first-come, first-served basis; once granted, it continues for 10 years and is easily renewable. Accordingly, existing utilities, such as the Former Regional Utilities, have been granted access under this first-come, first-served system and have taken advantage of their renewal rights. As a result, new entrants have limited access to interregional transmission lines where there is limited capacity. In order to address this disparity, in September 2016, the OCCTO established a committee to consider rules to facilitate access to interregional transmission lines by new market entrants.

## Conclusion

Implementation of electricity retail market reforms has resulted in a material increase in the number of market participants, and market liberalization provides participants freedom to establish electricity retail prices and solicit customers previously reliant upon the Former Regional Utilities for electricity. At the same time, consumers continue to be cautious about changing electricity providers, due in part to confusion over the benefits and risks associated with such change. The Japanese government, while encouraging competition, has also focused on measures intended to strengthen consumer protection and is continuing to explore measures to address any undue advantages held by the Former Regional Utilities over new market entrants. Participants in the Japanese electricity retail market therefore should consider carefully the new requirements and market standards that have been or are being implemented pursuant to new rules and guidelines, and continue to monitor further action by the Japanese government.

## Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at [www.jonesday.com/contactus/](http://www.jonesday.com/contactus/).

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## Endnotes

- 1 Jones Day, “Japan Approves Final Set of Power Market Reforms” (August 2015).
- 2 Under the Act, power providers wishing to engage in the electricity retail business are required to register as electricity retailers.
- 3 Agency for Natural Resources and Energy, [List of Electric Retailers](#) (source document in Japanese).
- 4 The role of the EGMSC is to strengthen the monitoring of the power, gas, and heat power trading market in order to implement energy market reforms. EGMSC conducts on-site inspections and makes recommendations to METI for certain actions relating to electricity providers.
- 5 Originally issued in 1999 by METI in conjunction with the Japan Fair Trade Commission.