

## REPORT OF THE RENEWABLE ENERGY SUBCOMMITTEE

This report covers critical renewable energy developments in Colorado, Connecticut, Kentucky, Ohio, Pennsylvania, and West Virginia in 2019.\*

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### I. COLORADO

In May 2019, Governor Jared Polis signed several clean energy bills into law.<sup>1</sup> These bills included legislation reauthorizing the Colorado Public Utilities Commission (Colorado PUC) and putting in place several clean energy directives.<sup>2</sup> Under this law, the Colorado PUC will require jurisdictional utilities to consider the cost of carbon dioxide emissions – based on the most recent assessment of the social cost of carbon developed by the federal government and not less than \$46 per short ton beginning in 2020 – when determining the cost, benefit, or net present value of their proposals.<sup>3</sup> The legislation also establishes a process for distribution system planning that will include a method to evaluate costs and net benefits of distributed energy resources.<sup>4</sup> After January 1, 2020, retail utilities filing their first electric resource plan with the PUC must include a clean energy plan showing how they will make progress towards Colorado’s clean energy goal.<sup>5</sup> The utility must consider safety, reliability, and renewable integration, as well as workforce and community impacts.<sup>6</sup>

The Colorado PUC reauthorization also requires wholesale electric cooperatives to submit an integrated or electric resource plan to the Colorado PUC, and the Colorado PUC must consider these plans in the context of the state’s energy

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\* The Renewable Energy Subcommittee sincerely thanks the following contributors, in alphabetical order, for their assistance in compiling this report: Jessica Bell, Lynn M. Fountain, Gillian Giannetti, Zachary Ramirez, and Kara Cunningham Williams.

1. Christina Van Winkle, *Regulatory Framework for Greenhouse Gas Emissions Reductions*, LEGIS. COUNCIL STAFF (Oct. 16, 2019), [https://leg.colorado.gov/sites/default/files/r19-775\\_regulatory\\_framework\\_for\\_greenhouse\\_gas\\_emissions.pdf](https://leg.colorado.gov/sites/default/files/r19-775_regulatory_framework_for_greenhouse_gas_emissions.pdf); *see also* S.B. 236, 72nd Gen. Assemb., Reg. Sess. (Colo. 2019).

2. Van Winkle, *supra* note 1; *see also* Colo. S.B. 236 § 2, 24-34-104(27)(a)(XVI).

3. Van Winkle, *supra* note 1, at 8; *see also* Colo. S.B. 236 § 13, 40-3.2-106(1).

4. Colo. S.B. 236 § 8, 40-2-132(1)(b).

5. *Id.* § 5, 40-2-125.5(4)(a).

6. *Id.* § 5, 40-2-125.5(4)(a)(V).

policy goals.<sup>7</sup> Colorado is home to Tri-State Generation and Transmission Association, a coal-heavy co-op with several co-op customers seeking to leave their wholesale arrangements with Tri-State in search of greener options.<sup>8</sup>

Another law, the Colorado Climate Action Plan, commits Colorado to achieving a 26% cut in greenhouse gas emissions by 2025, a 50% cut by 2030, and a 90% cut by 2050 compared to 2005 levels.<sup>9</sup> It directs the Air Quality Control Commission (AQCC) to promulgate rules to achieve these goals that consider equity issues.<sup>10</sup>

Other new renewables and clean energy laws from the 2019 legislative session increase the maximum size of community solar gardens,<sup>11</sup> direct counties to meet or exceed building code energy standards,<sup>12</sup> authorize development of electric vehicle infrastructure,<sup>13</sup> and require the AQCC to collect greenhouse gas emissions data and update the statewide greenhouse gas inventory at least every two years.<sup>14</sup>

## II. CONNECTICUT

On June 7, 2019, Governor Ned Lamont signed An Act Concerning the Procurement of Energy Derived from Offshore Wind.<sup>15</sup> This legislation allows the Connecticut Department of Energy and Environmental Protection Commissioner, in consultation with certain other state officials, to solicit proposals from developers of facilities that generate electricity using offshore wind and any associated transmission for up to 2,000 MW in the aggregate.<sup>16</sup> This legislation also sets certain requirements for submitted and selected proposals and directs the Electric Distribution Companies (EDCs) to enter into 20-year power purchase agreements when proposals satisfy certain criteria.<sup>17</sup>

Public Act No. 19-117<sup>18</sup> was signed by Governor Lamont on June 26, 2019. This legislation: (1) increases the number of Public Utilities Regulatory Authority Commissioners from three to five; (2) requires that, on and after January 1, 2030, at least 50% of all cars and light duty trucks purchased or leased by the state shall

7. *Id.* § 8, 40-2-134(1)(a).

8. Mark Jaffe, *Colorado Co-op's Fight for Renewable Energy Could Upend how Rural Communities are Powered*, THE COLO. SUN (Feb. 13, 2019), <https://coloradosun.com/2019/02/13/tri-state-delta-montrose-electric-renewable-energy/>.

9. H.B. 1261 § 1, 25-7-102(2)(g), 72nd Gen. Assemb., Reg. Sess. (Colo. 2019).

10. *Id.* § 3, 25-7-105(1)(e)(II).

11. H.B. 1003 § 2, 40-2-127(2)(b)(I)(D), 72nd Gen. Assemb., Reg. Sess. (Colo. 2019) (increasing size from 2 MW to 5 MW with a further increase to 10 MW beginning July 1, 2023, pending authorization from the Colorado PUC).

12. *See generally* H.B. 1260, 72nd Gen. Assemb., Reg. Sess. (Colo. 2019).

13. *See generally* S.B. 077, 72nd Gen. Assemb., Reg. Sess. (Colo. 2019).

14. S.B. 096 § 1, 25-7-140(2)(a)(II), 72nd Gen. Assemb., Reg. Sess. (Colo. 2019).

15. *See generally* H.B. 7156, Gen. Assemb., Reg. Sess., 2019 Conn. Acts 71 (Reg. Sess.).

16. Conn. H.B. 7156 § 3(j).

17. *Id.*

18. *See generally* H.B. 7424, Gen. Assemb., Reg. Sess., 2019 Conn. Acts 117 (Reg. Sess.).

be zero emissions; and (3) requires that, on and after January 1, 2030, at least 30% of all buses purchased or leased by the state shall be zero emissions.<sup>19</sup>

On June 28, 2018, Governor Lamont signed Public Act No. 19-35,<sup>20</sup> which makes various changes to energy-related statutes and programs, including: (1) extending the Low and Zero Emissions Renewable Energy Credit program for an additional two years; (2) increasing the virtual net metering cap from \$10 million to \$20 million; (3) authorizing EDCs to build, own, and operate energy storage systems; and (4) allowing Connecticut regulators to authorize EDCs to recover prudently incurred costs and investments for energy storage systems.

Lastly, Public Act No. 19-112 was signed by the Governor on July 8, 2019.<sup>21</sup> This legislation, with a limited exception for research, permanently bans accepting, receiving, collecting, storing, treating, transferring, selling, acquiring, handling, applying, processing, and disposing of hydraulic fracturing (fracking) waste, natural gas waste, or oil waste in Connecticut.<sup>22</sup> This legislation also bans the sale, offer, barter, manufacture, distribution and use of anti-icing, de-icing, pre-wetting, or dust suppression products derived from or containing fracking waste, natural gas waste, or oil waste.<sup>23</sup> As amended, this law preempts related municipal ordinances.<sup>24</sup>

### III. KENTUCKY

In 2019, Kentucky enacted Senate Bill 100, an Act Related To Net Metering (Net Metering Act), which amended Kentucky's net metering statutes effective January 1, 2020.<sup>25</sup> The amendments revised the compensation rate paid to net metered customers who begin new net metering service as of January 1, 2020, establishing compensation for production in excess of usage "in the form of a dollar-denominated bill credit."<sup>26</sup> The amendments further permitted retail electric suppliers to implement rates to recover from eligible customer-generators "all costs necessary to serve its eligible customer-generators, including but not limited to fixed and demand-based costs, without regard for the rate structure for customers who are not eligible customer-generators."<sup>27</sup>

On July 30, 2019, the Kentucky Public Service Commission (KY PUC) initiated an administrative proceeding to consider implementation of the Net Metering Act, primarily focused on determining the compensation rate for net metered

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19. Conn. H.B. 7424 §§ 80(a), 93(b)(3), (c).

20. H.B. 5002 §§ 2(c)(3)(A), 7(e)(1), 13(a), (c), Gen. Assemb., Reg. Sess., 2019 Conn. Acts 35 (Reg. Sess.).

21. *See generally* S.B. 753, Gen. Assemb., Reg. Sess., 2019 Conn. Acts 112 (Reg. Sess.).

22. Conn. S.B. 753 § 1(b), (g).

23. *Id.* § 1(d).

24. *Id.* § 1(i).

25. *See generally* S.B. 100, Gen. Assemb., Reg. Sess., 2019 Ky. Acts 459.

26. *Compare* Ky. S.B. 100 § 2(4) *with* Ky. Rev. Stat. Ann. § 278.466(4) (2008).

27. *Compare* Ky. S.B. 100 § 2(5) *with* Ky. Rev. Stat. Ann. § 278.466(5) (2008).

customers.<sup>28</sup> Following the receipt of written comments and a public comment hearing, the KY PUC did not issue findings or conclusions to implement the Net Metering Act, but (i) incorporated the full record of that proceeding into all initial ratemaking proceedings initiated by retail electric utilities under the Net Metering Act and (ii) stated its intention to award a contract to an outside consultant to assist the KY PUC in reviewing, analyzing, and evaluating new net metering tariffs, alternative rate designs, and net metering rate applications.<sup>29</sup>

#### IV. OHIO

In July 2019, Ohio enacted Amended Substitute House Bill 6, effective October 22, 2019 (HB6).<sup>30</sup> HB6 addressed several energy topics, including amendments to Ohio's renewable portfolio standards (RPS).<sup>31</sup> Among other things, the amendments (i) require a reduction to a company's RPS baseline in the amount of sales to self-assessing purchasers, (ii) decrease the RPS benchmarks, including eliminating the solar carve-out beginning with the 2020 compliance year, (iii) reduce overall RPS obligations commensurate with output from certain utility-scale solar facilities and (iv) terminate the RPS at the end of the 2026 compliance year.<sup>32</sup> Shortly after enactment of HB6, Ohioans Against Corporate Bailouts, LLC began the process to challenge HB6 by referendum, and subsequently filed suit in the United States District Court for the Southern District of Ohio challenging the constitutionality of Ohio's referendum laws.<sup>33</sup> On December 24, 2019, the Ohio Supreme Court agreed to consider certified questions from the federal court related to the referendum process.<sup>34</sup>

#### V. PENNSYLVANIA

In July 2019, the Pennsylvania Public Utility Commission (PA PUC) finalized a policy statement regarding alternative ratemaking.<sup>35</sup> The Final Policy Statement Order noted the enactment of legislation in 2018 that permitted the PA PUC to approve an application by a utility to establish alternative rates and rate mechanisms, and stated that both the legislation and the Policy Statement acknowledged the impact of new technologies and information in promoting the efficient use of utility services.<sup>36</sup> While declining to adopt specific ratemaking mechanisms, rate

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28. KY. PUB. SERV. COMM'N, ELECTRONIC CONSIDERATION OF THE IMPLEMENTATION OF THE NET METERING ACT, No. 2019-00256 at 1-2 (Dec. 18, 2019).

29. *Id.* at 1, 33.

30. *See generally* H.B. 6, 133rd Gen. Assemb., Reg. Sess. (Ohio 2019).

31. *Id.*

32. Ohio H.B. 6 §§ 4928.64(B)(1), 4928.642, 4928.644(B).

33. *See generally* Ohioans Against Corp. Bailouts, LLC v. LaRose, 414 F. Supp. 3d 1058 (S.D. Ohio 2019).

34. *See generally* Ohioans Against Corp. Bailouts, LLC v. LaRose, 136 N.E.3d 522 (Ohio 2019).

35. Robert Walton, *Pennsylvania Regulators Outline Criteria for Alternative Rate Proposals to Support New Tech*, UTILITYDIVE (July 12, 2019), <https://www.utilitydive.com/news/pennsylvania-regulators-outline-criteria-for-alternative-rate-proposals-to/558640/>.

36. PENN. PUB. UTIL. COMM'N, FIXED UTILITY DISTRIBUTION RATES POLICY STATEMENT, No. M-2015-2518883 at 13 (July 18, 2019).

designs, consumer protections or review procedures, the PA PUC specifically encouraged parties to comment on rate designs that can “foster distributed energy adoption while also working to increase capacity utilization.”<sup>37</sup>

## VI. WEST VIRGINIA

In West Virginia, an electric generating facility that either (a) is or will be designated as an exempt wholesale generator (EWG) under federal law or (b) is not or will not be designated as an EWG, but intends to sell at retail outside the state or solely at wholesale, must obtain a siting certificate from the West Virginia Public Service Commission (WVPSC).<sup>38</sup> In late 2018, the West Virginia Supreme Court of Appeals suggested that the WVPSC should eliminate from its Siting Certificate Rules, (Siting Rules), a requirement for a hypothetical tax calculation of the estimated taxes that would have been paid by an applicant if it built the electric generating facility without public funds.<sup>39</sup> In response, the WVPSC opened a docket seeking comment on recommended improvements to the Siting Rules generally.<sup>40</sup> The comment period closed on May 31, 2019, and a decision by the WVPSC remains pending.

Additionally, in October 2019, following a period of public comment and a public hearing, the WVPSC adopted amendments to its Rules Governing Electric Utility Net Metering Arrangements and Interconnections, (Net Metering Rules).<sup>41</sup> The amendments acknowledged the repeal by the West Virginia Legislature of previously-enacted portfolio standards in the same act that addressed net metering, and also added or modified various definitions, including minor modifications to the definition of “renewable energy resources,” which identify solar, wind, hydro-power, geothermal, biomass, biologically derived fuel, fuel cell technology, and recycled energy as the types of resources eligible for net metering.<sup>42</sup> The WVPSC largely declined to adopt other changes proposed by electric utility commenters, but accepted a suggested modification that requires new Customer-generators to install a second blank meter socket for dual meters.<sup>43</sup> The WVPSC also modified the reporting requirements for electric utilities to include kilowatt hours by month delivered to and received from net metered Customer-generators served through separate inflow and outflow meters.<sup>44</sup>

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37. *Id.* at 14, 19.

38. W. Va. Code R. § 150-30-1 (2019).

39. *Ohio Valley Jobs All., Inc. v. Pub. Serv. Comm’n of W. Va.*, No. 18-0249, 2018 WL 5734679, at \*6 (W.Va. Nov. 1, 2018) (unpublished).

40. PUB. SERV. COMM’N OF W. VA., GENERAL INVESTIGATION INTO THE RULES GOVERNING SITING CERTIFICATES FOR EXEMPT WHOLESALE GENERATORS, 150 C.S.R. SERIES 33, No. 19-0311-EG-GI (Mar. 5, 2019).

41. PUB. SERV. COMM’N OF W. VA., PROPOSED REVISIONS TO RULES GOVERNING ELECTRIC UTILITY NET METERING ARRANGEMENTS AND INTERCONNECTIONS, 150 C.S.R. SERIES 33, Gen. Order No. 258.3 (Oct. 16, 2019).

42. *Id.* at 5; *see also* W. Va. Code R. § 150-33-2.17 (2019).

43. PUB. SERV. COMM’N OF W. VA., *supra* note 40, at 5-7; *see also* W. Va. Code R. § 150-33-6.2 (2019).

44. PUB. SERV. COMM’N OF W. VA., *supra* note 40, at 7-8; *see also* W. Va. Code R. § 150-33-7.1(iv) (2019).

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