

## REPORT OF THE RENEWABLE ENERGY COMMITTEE

This report summarizes key legislative, regulatory, and judicial developments affecting renewable energy, both on a state and federal level, during 2012. This report is organized by region.\*

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## I. NORTHEAST

### A. Connecticut

In March 2012, the Connecticut Department of Energy and Environmental Protection (CT DEEP) approved Connecticut's Clean Energy Finance and Investment Authority's (CEFIA) plan for CEFIA's new solar photovoltaics (PV) residential investment program, which aims to support a total of thirty megawatts (MW) of residential solar PV within Connecticut.<sup>1</sup> The initial tranche of funding approved was \$7.5 million; ultimately, the value of incentives provided under the program is expected to exceed \$40 million.<sup>2</sup> Under the program, consumers can either purchase solar PV systems directly and obtain a rebate equal to \$2.275 per watt for the first 5 kilowatts (kW) of the system and \$1.075 for the next 5 kW, or install a third party owned system and receive a performance-based incentive of \$0.30 per kilowatt-hour, paid based on actual performance of the system over six years.<sup>3</sup>

In October 2012, the CT DEEP issued its draft 2012 Comprehensive Energy Strategy for Connecticut (Draft Strategy).<sup>4</sup> In the Draft Strategy, the CT DEEP proposes to, among other things,

[u]se economic incentives . . . to bring down the cost of renewable electricity, spur innovation, and promote a portfolio of alternative energy technologies that can compete with existing fossil fuel generation over time[;] [f]ocus on the deployment of renewable energy at scale using limited government resources to induce private sector investment through the Connecticut Green Bank (CEFIA), Zero (and Low) Emissions Renewable Energy Credits, and other innovative financing mechanisms; [and] [s]tudy Connecticut's Renewable Portfolio Standard . . . with an eye toward considering: (1) raising the target, (2) broadening what counts as 'renewable' and (3) expanding in-state clean power generation.<sup>5</sup>

### B. Massachusetts

In February 2012, the Massachusetts Department of Public Utilities "issued a net metering order promulgating legislation that revised the state's net

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1. Memorandum from Dan Esty, Comm'r, Dep't of Energy and Env'tl. Prot., to Bryan Garcia, President, Clean Energy Fin. and Inv. Auth. (Mar. 1, 2012), *available at* [http://www.ctcleanenergy.com/NewsEvents/PressRoom/tabid/118/ctl/ViewItem/mid/1364/ItemId/244/Default.aspx?SkinSrc=/Portals/\\_default/Skins/subpages/subpage\\_level0](http://www.ctcleanenergy.com/NewsEvents/PressRoom/tabid/118/ctl/ViewItem/mid/1364/ItemId/244/Default.aspx?SkinSrc=/Portals/_default/Skins/subpages/subpage_level0).

2. *Id.*

3. AM. COUNCIL ON RENEWABLE ENERGY, RENEWABLE ENERGY IN THE 50 STATES 26 (2012), *available at* <http://www.acore.org/files/pdfs/states/2012-50statereport-lowres.pdf>.

4. CONN. DEP'T OF ENERGY AND ENVTL. PROT., 2012 COMPREHENSIVE ENERGY STRATEGY FOR CONNECTICUT: DRAFT FOR PUBLIC COMMENT (Oct. 5, 2012), *available at* <http://www.ct.gov/deep/cwp/view.asp?a=4120&Q=500752>.

5. *Id.* at 3.

metering law.”<sup>6</sup> “The order specifies there will be two aggregate participation caps—one cap reserved for municipalities and other governmental entities” (2% of a local distribution company’s peak load), and “another cap for all other net metering facilities” (remains at 1% of a local distribution company’s peak load).<sup>7</sup> The order defines the “net metering facility of a municipality or other government entity as: a Class II or III net metering facility (1) that is owned or operated by a municipality or other governmental entity; or (2) of which the municipality or other governmental entity is assigned 100% of the output.”<sup>8</sup> “The maximum amount of generating capacity eligible for net metering [and owned] by a municipality or other governmental entity at [ten] megawatts.”<sup>9</sup>

In August 2012, Massachusetts Governor Patrick signed An Act Relative to Competitively Priced Electricity in the Commonwealth.<sup>10</sup> The Act includes a number of provisions relating to renewable electricity. For example, it raises the cap on the maximum size of Class I and Class II hydroelectric generation facilities eligible for the Commonwealth’s renewable portfolio standard to 30 MW and 7.5 MW, respectively, and permits electric utilities to own solar generation, up to 25 MW of capacity, if they obtain approval from the Massachusetts Department of Public Utilities by June 30, 2014.<sup>11</sup> The Act also modifies the long term contracting by electric utilities for renewable generation beginning January 1, 2013, until December 31, 2016, and raises the cap on net metering to 3% for both public and private projects, with the total cap raised from 3% to 6% of peak load, with certain projects exempted entirely from the cap.<sup>12</sup>

### C. New Hampshire

New Hampshire legislators passed a statute, which went into law without signature by the Governor in June 2012, restructuring the state’s involvement in the Regional Greenhouse Gas Initiative (RGGI) and including a contingent withdrawal from RGGI, triggered if two or more other New England states withdraw from RGGI.<sup>13</sup> The Act replaces the “greenhouse gas emissions reduction fund” with the “energy efficiency fund,” and lowers the rebate threshold for auction proceeds to one dollar.<sup>14</sup>

Also in June 2012, New Hampshire signed into law Senate Bill 218, which made changes to the state’s Renewable Portfolio Standard (RPS).<sup>15</sup> Changes

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6. *Northeast States: Massachusetts*, CONNECTING TO THE GRID (Interstate Renewable Energy Council, N.C. State University), Mar. 2012, at 4, *available at* [http://www.irecusa.org/wp-content/uploads/March\\_2012\\_Connecting\\_to\\_the\\_Grid.pdf](http://www.irecusa.org/wp-content/uploads/March_2012_Connecting_to_the_Grid.pdf) (discussing Order Adopting Regulations to Implement Net Metering Provisions, Mass. Dep’t of Pub. Utils. Docket No. D.P.U. 11-10-A (Feb. 17, 2012)).

7. *Id.*

8. *Id.*

9. *Id.*

10. An Act Relative to Competitively Priced Electricity in the Commonwealth, 2012 Mass. Acts 209.

11. *Id.* §§ 15-17.

12. *Id.* §§ 23-30, 36.

13. An Act Relative to New Hampshire’s Regional Greenhouse Initiative Cap and Trade Program for Controlling Carbon Dioxide Emissions, H.B. 1490-FN, Reg. Sess. (N.H. 2012).

14. *Id.*

15. An Act Relative to Electric Renewable Portfolio Standards, S.B. 218-FN, Reg. Sess. (N.H. 2012).

implemented by the Act include making small hydro facilities (1 MW or less) eligible to produce Renewable Energy Credits (RECs), expanding compliance options for existing biomass plants, and requiring that a portion of the Class I requirement be met through use of renewable energy technologies producing “useful thermal energy.”<sup>16</sup>

#### D. New York

In August 2012, New York enacted three new laws establishing and expanding financial incentives for solar energy projects.<sup>17</sup> The bills establish tax credits for the lease of solar equipment or the purchase of energy from an on-site solar facility through a power purchase agreement,<sup>18</sup> provide sales tax exemptions for commercial solar equipment and power purchase agreements,<sup>19</sup> and extend the real property tax abatement in New York City for solar installations.<sup>20</sup>

In December 2012, New York Governor Cuomo announced that \$250 million would be available from the state to fund “a broad range of renewable energy projects,” with funding to be awarded competitively through the New York State Energy Research and Development Authority.<sup>21</sup>

#### E. Vermont

In May 2012, Vermont passed An Act Relating to the Vermont Energy Act of 2012, which, among other things, increased the cap for participation in the State’s feed-in tariff from 50 MW to 127.5 MW, in annual increments over the next ten years.<sup>22</sup> The Act also exempts farm methane plants, new standard offer plants that “have sufficient benefits to the operation . . . of the electric grid,” and existing in-state hydroelectric plants with a capacity of 5 MW or less from the cap.<sup>23</sup> The Act requires the Vermont Public Service Board, in consultation with the Vermont Department of Public Service, to study a potential renewable

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16. *Id.* §§ 272.2-.3.

17. *New York Develops Tax Incentives to Increase Solar Energy Capacity*, CENTER FOR CLIMATE AND ENERGY SOLUTIONS, <http://www.c2es.org/us-states-regions/news/2012/new-york-develops-tax-incentives-increase-solar-energy-capacity> (last visited Mar. 19, 2013) (noting that Governor Andrew Cuomo signed all three pieces of legislation into law on August 17, 2012).

18. An Act to Amend the Tax Law, in Relation to Tax Credits Provided for Solar Energy System Equipment, A34B, 2011-2012 Reg. Sess. (N.Y. 2011).

19. An Act to Amend the Tax Law, in Relation to Exempting the Sale and Installation of Commercial Solar Energy Systems Equipment from State Sales and Compensating Use Taxes and Granting Municipalities the Option to Grant Such Exemption, A5522B, 2011-2012 Reg. Sess. (N.Y. 2011).

20. An Act to Amend the Real Property Tax Law, in Relation to a Solar Electric Generating System Tax Abatement for Certain Properties in a City of One Million or More Persons, A10620, 2011-2012 Reg. Sess. (N.Y. 2012).

21. Press Release, N.Y. Governor’s Press Office, Governor Cuomo Announces \$250 Million for Renewable Energy Projects to Add Reliable Clean Power to New York’s Energy Highway (Dec. 24, 2012), <http://www.governor.ny.gov/press/12242012Clean-Power>.

22. An Act Relating to the Vermont Energy Act of 2012, S.B. 214, 2011-2012 Vt. Acts & Resolves No. 170 §§ 4, 5.

23. *Id.* § 4.

portfolio standard for the state as well as other potential ways to encourage renewable energy.<sup>24</sup>

## II. WEST

### A. Arizona

At the end of 2012, Arizona Public Service (APS), Arizona's largest regulated utility, received approval of its Renewable Energy Standard (RES) Implementation Plan for 2012-16 from the Arizona Corporation Commission (ACC).<sup>25</sup> APS submitted several options in its RES Implementation Plan, including one that proposed only the amount of funding necessary to meet the requirements of the ACC's RES rules, passed in 2006.<sup>26</sup> The Commission approved funding above the minimum required to maintain compliance but below previously approved levels.<sup>27</sup> APS filed its 2013-17 RES Implementation Plan in June 2012 but that proceeding is ongoing.<sup>28</sup> The other major regulated utility in Arizona, Tucson Electric Power Company (TEP), has still not received approval of its RES Implementation Plan for 2012.<sup>29</sup> TEP filed the application in July 2011 and the ACC issued a decision on January 13, 2012.<sup>30</sup> Among other things, the decision included a requirement that, in the future, customers who benefit from RES funds by acquiring solar systems must continue to pay RES fees at the same rate they would have paid without the energy savings created by the solar system.<sup>31</sup> This provision was opposed by solar groups and by the two democratic commissioners as a reduction in solar incentives.<sup>32</sup> Soon after the Commission's decision, one of the intervenors—a large customer of TEP—filed an application for rehearing over a portion of the decision allowing TEP to recover revenue lost as a result of commercial distributed generation beginning in 2012.<sup>33</sup> The Commission granted that application and eventually agreed that all

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24. *Id.* § 7.

25. Decision No. 74576, *Application of Arizona Public Service Company for Approval of its 2012 Renewable Energy Standard Implementation Plan and Request for Reset of Renewable Energy Adjustor*, Ariz. Corp. Comm'n Docket No. E-01345A-11-0264 (Nov. 21, 2012) [hereinafter Decision No. 74576].

26. *Application of Arizona Public Service Company for Approval of its 2012 Renewable Energy Standard Implementation Plan and Request for Reset of Renewable Energy Adjustor*, Ariz. Corp. Comm'n Docket No. E-01345A-11-0264 (July 1, 2011).

27. Decision 74576, *supra* note 25.

28. *In re Application of Arizona Public Service Company for Approval of its 2013 Renewable Energy Standard Implementation for Reset of Renewable Energy Adjustor*, Ariz. Corp. Comm'n Docket No. E-01345A-12-0290 (June 29, 2012).

29. *In re Application of Tucson Elec. Power Co. for Approval of its 2012 Renewable Energy Standard Implementation Plan and Distributed Energy Administrative Plan and Request for Reset of Renewable Energy Adjustor*, Ariz. Corp. Comm'n Docket No. E-01933A-11-0269 (July 1, 2011).

30. *Id.*; Decision No. 72736, *In re Application of Tucson Elec. Power Co. for Approval of its 2012 Renewable Energy Standard Implementation Plan and Distributed Energy Administrative Plan and Request for Reset of Renewable Energy Adjustor*, Ariz. Corp. Comm'n Docket No. E-01933A-11-0269 (Jan. 13, 2012) [hereinafter Decision No. 72736].

31. Decision 72736, *supra* note 30, ¶ 111.

32. *Id.* (Comm'r Sandra D. Kennedy, dissenting).

33. Request for Rehearing, *In re Application of Tucson Elec. Power Co. for Approval of its 2012 Renewable Energy Standard Implementation Plan and Distributed Energy Administrative Plan and Request for Reset of Renewable Energy Adjustor*, Ariz. Corp. Comm'n Docket No. E-01933A-11-0269 (Feb. 2, 2012).

of these issues should be considered in the docket for TEP's 2013 RES Implementation Plan.<sup>34</sup>

A bill was introduced in Arizona's legislature in 2012 that would have given the legislature veto authority over the ACC's policy decisions.<sup>35</sup> Both the ACC's legal division<sup>36</sup> and the Arizona Legislative Council<sup>37</sup> issued opinions that the bill was unconstitutional, but it passed the House of Representatives and both Senate Committees to which it was assigned before being withheld from a full vote in the Senate.<sup>38</sup>

### B. California

The California legislature enacted Senate Bill 594, which allows for the possibility of meter aggregation under net metering pending a favorable determination by the California Public Utilities Commission (Cal. PUC) and the ratemaking authorities of publicly-owned utilities.<sup>39</sup> Under this new bill, a customer with multiple meters on contiguous property may elect to aggregate the electrical load of their meters and apply the generation credits of a renewable energy system also located on contiguous property to all of the meters.<sup>40</sup> Lawmakers also passed Assembly Bill 2196, which made some changes to the eligibility requirements for generation facilities fueled by landfill gas, digester gas, or other renewable fuels delivered through a common carrier pipeline.<sup>41</sup> The bill also provides that biomethane procurement contracts entered into prior to March 29, 2012, will be eligible for compliance with the RPS if certain conditions are met.<sup>42</sup>

The Cal. PUC issued a number of decisions in 2012 that will impact renewable energy efforts in the state, including the following (in chronological order):

- In December 2011, the Cal. PUC implemented changes to California's renewable energy program required by Senate Bill 2 (IX), passed in March 2011.<sup>43</sup> The changes include increasing the state's renewable portfolio standard from 20% to 33% in 2020 and providing guidance on

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34. Decision No. 72875, *In re Application of Tucson Elec. Power Co. for Approval of its 2012 Renewable Energy Standard Implementation Plan and Distributed Energy Administrative Plan and Request for Reset of Renewable Energy Adjustor*, Ariz. Corp. Comm'n Docket No. E-01933A-11-0269 (Feb. 16, 2012).

35. H.B. 2789, 50th Leg., 2nd Reg. Sess. (Ariz. 2012).

36. Letter from Janice Alward, Chief Counsel, Legal Div., Ariz. Corp. Comm'n, to Paul Newman, Comm'r, Ariz. Corp. Comm'n on Proposed Legislation—HB 2789 (Feb. 17, 2012), available at <http://www.lrlaw.com/files/Uploads/Documents/Letter-to-Newman.pdf>.

37. Memorandum from Ken Behringer, General Counsel, Ariz. Leg. Council, to Rep. Chad Campbell on House Bill 2789; Constitutionality (R-50-110) (Feb. 27, 2012), available at <http://www.lrlaw.com/files/Uploads/Documents/LegCouncil2789.pdf>.

38. Matt Bingham, *Arizona House of Reps. Approves Potentially Unconstitutional Energy Bill*, LEWIS AND ROCA RENEWABLE ENERGY BLOG (Mar. 6, 2012, 5:32 PM), <http://www.lrlaw.com/energyblog/blog.aspx?entry=524>.

39. S.B. 594, 2012 Cal. Stat. 610.

40. *Id.*

41. Assemb. B. 2196, 2012 Cal. Stat. 605.

42. *Id.*

43. Decision No. 11-12-052, *In re Implementation and Administration of California Renewables Portfolio Standard Program*, Cal. P.U.C. Docket No. R.11-05-005, at 3 (Dec. 15, 2011).

the law's in-state procurement requirements.<sup>44</sup> Commissioner Simon issued a concurring opinion focused on the risk of high prices in California compared to neighboring states.<sup>45</sup>

- In a PG&E rate case, the Commissioners rejected several proposals from The Solar Alliance that would have increased funding for solar programs or given solar users more advantageous rates.<sup>46</sup>
- In *Southern California Edison Co.* (SCE), the Cal. PUC approved SCE's sale of its ownership interest in the Four Corners coal plant.<sup>47</sup> This move was made after direction from the Cal. PUC, including the Commission's conclusion that generating electricity from coal was inconsistent with the state's energy performance standard and that SCE would not be able to include any capital investments made in the Four Corners unit after January 1, 2012, in its rate base.<sup>48</sup>
- In May, the Cal. PUC adopted a new pricing mechanism for its renewable power feed-in tariff program.<sup>49</sup> The Commission believed that the prior tariff was not high enough to attract sufficient small-scale solar development.<sup>50</sup> This rule also increased the size of eligible facilities from 1.5 MW to 3 MW and exempted small electric utilities from the program.<sup>51</sup>
- In Decision No. 12-05-037, the Cal. PUC approved a program to fund the development of clean energy technologies after the statute creating the Public Goods Charge (PGC) expired.<sup>52</sup> The statutory authorization expired at the end of 2011 after the legislature failed to extend a 1996 law.<sup>53</sup> At the request of Governor Brown, the Cal. PUC adopted the Electric Program Investment Charge (EPIC) to replace the PGC and continue funding renewable energy research, development, and demonstration through 2020.<sup>54</sup>
- In August, the Cal. PUC issued a decision regarding energy storage as an integral part of the state's successful deployment of intermittent

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44. *Id.* at 5-6.

45. Decision No. 11-12-052, *Concurrence of Comm'n Timothy Alan Simon, Implementation and Administration of California Renewables Portfolio Standard Program*, Cal. P.U.C. Docket No. R.11-05-005, at 1 (Dec. 28, 2011).

46. Decision No. 11-12-053, *In re Pac. Gas & Elec. Co.*, Cal. P.U.C. Docket No. A.10-03-014, at 19 (Dec. 15, 2011).

47. Decision No. 12-03-034, *In re Southern Calif. Edison Co.*, Cal. P.U.C. Docket No. A.10-11-010, at 2 (Mar. 22, 2012).

48. *Id.* at 8-9.

49. Decision 12-05-035, *In re Calif. Renewables Portfolio Standard Program*, Cal. P.U.C. Docket No. R.11-05-005, at 2 (May 24, 2012).

50. *Id.* at 71-73.

51. *Id.*

52. Decision No. 12-05-037, *Phase 2 Decision Establishing Purposes and Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020*, Cal. P.U.C. Docket No. R.11-10-003, at 1-4 (May 24, 2012).

53. *Id.* at 4.

54. *Id.* at 1-4.

renewable resources, such as solar and wind.<sup>55</sup> In this decision, the Cal. PUC created a framework for analyzing the state's storage needs and capabilities and opened a rulemaking to further evaluate energy storage through pilot projects and research and development efforts.<sup>56</sup>

- In September, the Cal. PUC revised its rules of service for the interconnection of generation in order to support the success of existing renewable distributed generation programs, including net metering and renewable feed-in tariff programs.<sup>57</sup> Under the prior rules, many interconnection applicants were failing initial screening reviews to export their energy onto the utilities' electrical grids.<sup>58</sup>

### C. Idaho

The Idaho Public Utilities Commission (IPUC) issued several orders in 2012 related to renewable energy. In February, the IPUC ruled that two wind projects located in Idaho, but theoretically selling their output to customers in Oregon, were subject to Idaho's pricing rules.<sup>59</sup> The project developers tried to word their Power Purchase Agreements (PPAs) in a way that would allow them to be governed by Oregon's more favorable rates even though the vast majority of the utility's facilities and customers were in Idaho.<sup>60</sup> The Commissioners rejected this attempted "arbitrage."<sup>61</sup> In *Grand View PV Solar Two, LLC v. Idaho Power Co.*, the IPUC rejected an attempt by a solar developer to retain RECs associated with a proposed 20 MW PV system.<sup>62</sup> The Commission was not persuaded by the developer's arguments based on the Public Utility Regulatory Policy Act of 1978 (PURPA) and the U.S. Constitution, holding that the RECs were created by the state and, therefore, the Commission had the authority to determine their ownership.<sup>63</sup> In July, the IPUC approved a settlement agreement in a proceeding involving a dispute between Idaho Power Company and the developer of a biomass plant.<sup>64</sup> The settlement included a \$200,000 payment from the developer to the utility for not meeting the project's scheduled operation date.<sup>65</sup>

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55. Decision No. 12-08-016, *In re Procurement Targets for Viable and Cost-Effective Energy Storage Systems*, Cal. P.U.C. Docket No. R.10-12-007, at 2 (Aug. 2, 2012).

56. *Id.* at 22-24, 30.

57. Decision 12-09-018, *In re Improve[d] Distribution Level Interconnection Rules and Regulations*, Cal. P.U.C. Docket No. R.11-09-011, at 12 (Sept. 13, 2012).

58. *Id.* at 16.

59. Order No. 32453, *In re Petition of Idaho Power Co. for a Declaratory Order Regarding PURPA Jurisdiction*, Idaho P.U.C. Case No. IPC-E-11-14, at 6 (Feb. 10, 2012).

60. *Id.* at 1-2.

61. *Id.* at 6.

62. Order No. 32589, *Grand View PV Solar Two, LLC v. Idaho Power Co.*, Idaho P.U.C. Case No. IPC-E-11-15, at 1-2, 13 (June 21, 2012).

63. *Id.* at 14-16.

64. Order No. 32601, *Idaho Power—Firm Energy Sales Agreement with Yellowstone Power, Inc.*, Idaho P.U.C. Case No. IPC-E-10-22 (July 31, 2012).

65. *Id.* at 2.



#### D. Nevada

The Public Utilities Commission of Nevada (PUCN) approved PPAs for three renewable energy projects after initially rejecting them on the basis of need.<sup>66</sup> The three projects involved were: FRV Spectrum Solar (30 MW solar PV in Clark County), Mountain View Solar (20 MW solar PV project in Clark County), and Dixie Meadows Geothermal Project (51 MW geothermal project in Churchill County).<sup>67</sup> These PPAs were rejected by the PUCN in 2011 because the Commission found that Nevada Power did not meet its burden in justifying the need for the additional renewable energy/portfolio credits from these projects.<sup>68</sup> However, on rehearing the Commission noted the environmental and economic benefits, and found a need for portfolio credits existed due to uncertainty surrounding projects in development.<sup>69</sup>

#### E. New Mexico

In December 2012, the New Mexico Public Regulation Commission (NMPRC) approved<sup>70</sup> its 2011 proposed rule to establish a methodology for utilities to calculate the costs of renewable energy.<sup>71</sup> The rule retains the previous rule's requirement that 10% of present electric generation be generated from alternative energy resources, with that amount increasing to 20% by 2020.<sup>72</sup> The rule also retains a "diversity requirement" that mandates certain levels of various types of alternative energy sources.<sup>73</sup> However, the finalized rule establishes a new reasonable cost threshold (RCT) of 3.0%.<sup>74</sup> The previous RCT, implemented to protect ratepayers, contained a phase-in process that originally limited renewable expenditures to 2.25% of customers' bills, with a ramp up to 3.0% by 2015.<sup>75</sup> The state Attorney General's Office<sup>76</sup> and the New

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66. Second Modified Final Order on Rehearing, *In re Application of Nevada Power Company d/b/a NV Energy Seeking Acceptance and Approval of the First Amendment to the Action Plan Approved as Part of its Triennial Integrated Resource Plan Covering the Period 2010-2029, Including Three New Renewable Energy Contracts, Four Renewable Energy Contract Amendments and Three New Renewable Portfolio-Credit-Only Contracts*, Nev. P.U.C. Docket No. 11-03014 (Feb. 2, 2012).

67. *Id.* at PP 60-61 (ordering P 1).

68. *Id.* at P 31.

69. *Id.* at PP 57, 144-45, 177.

70. Damon Scott, *PRC Approves Renewable Energy Plan*, ALBUQUERQUE BUSINESSFIRST (Dec. 19, 2012), <http://www.bizjournals.com/albuquerque/blog/morning-edition/2012/12/prc-approves-renewable-energy-plan.html>.

71. Notice of Proposed Rulemaking, *In re The Adoption of Amendments to Rule 17.9.572 NMAR, Renewable Energy for Electric Utilities*, N.M.P.U.C. Case No. 11-00218-UT (Nov. 22, 2011) [hereinafter NMPRC Proposed Rule] (including an exhibit containing the proposed amendments to New Mexico's Renewable Portfolio Standard, N.M. CODE R. § 17.9.572).

72. *Id.* at Exhibit 1 (N.M. CODE R. § 17.9.572.10).

73. *Id.* (N.M. CODE R. §§ 17.9.572.7, -572.14).

74. *Id.*; see also News Release, PRC Sets Reasonable Cost Threshold for Renewable Energy Procurement, N.M.P.R.C. (Dec. 18, 2012), <http://www.nmprc.state.nm.us/administrative-services/docs/press-releases/2012-12-18-RCT2012.pdf> (discussing the 4-1 vote to pass the new RCT and diversity requirements and noting that "utility cooperatives will also begin complying with a 5% RCT beginning in 2015").

75. NMPRC Proposed Rule, *supra* note 71, at Exhibit 1 (showing a strike through of the ramp-up provisions in the pre-amendment N.M. CODE R. § 17.9.572.11).

76. Brief of the New Mexico Attorney General at 2, *In re the Commission Establishing a Standard Method for Calculating the Cost of Procuring Renewable Energy, Applying that Method to the Reasonable*

Mexico Industrial Energy Consumers<sup>77</sup> had argued against the diversity requirements and the removal of the RCT phase-in. The Renewable Energy Industry Association<sup>78</sup> and the Green Chamber of Commerce<sup>79</sup> campaigned to retain the diversity requirements. The NMPRC's final rule develops a balanced approach to maintaining the diversity requirements, "allowing more flexibility" by modifying the requirements to increase the allowed wind power usage to 30%, reducing biofuels and geothermal power to 5%, and keeping solar at 20%.<sup>80</sup>

#### F. Oregon

The Oregon legislature passed a bill that amends a 2007 law requiring the use of solar in public building projects. The 2007 law mandates that all public building construction and reconstruction projects with a total contract price of at least one million dollars include solar technologies worth at least 1.5% of the total contract price.<sup>81</sup> The new legislation, Senate Bill 1533, allows investment in geothermal electric or geothermal direct use to satisfy the investment requirement of the 2007 law.<sup>82</sup>

#### G. Washington

The Washington legislature passed Senate Bill 5575, which adds certain biomass fuels to the list of eligible renewable resources under the state's Renewable Portfolio Standard.<sup>83</sup> The additional fuels include construction debris, yard waste, food processing residues, and animal manure.<sup>84</sup> The bill also extended the "eligible renewable resources" label to biomass generating plants

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*Cost Threshold, and Calculating the Rate Impact Due to Renewable Energy Procurements*, N.M.P.R.C. Case No. 11-00218-UT (Nov. 26, 2012), available at <http://www.reia-nm.org/wp-content/uploads/2012/12/11-00218-UT-NM-Attorney-Generals-Brief.pdf>.

77. New Mexico Industrial Energy Consumers' Brief in Chief at 1, *In re the Commission Establishing a Standard Method for Calculating the Cost of Procuring Renewable Energy, Applying that Method to the Reasonable Cost Threshold, and Calculating the Rate Impact Due to Renewable Energy Procurements*, N.M.P.R.C. Case No. 11-00218-UT (Nov. 26, 2012), available at <http://www.reia-nm.org/wp-content/uploads/2012/12/11-00218-UT-NMIECs-BIC-11.26.12.pdf>.

78. Post-Hearing Brief of Renewable Energy Industries Association of New Mexico at 7-10, *In re the Commission Establishing a Standard Method for Calculating the Cost of Procuring Renewable Energy, Applying that Method to the Reasonable Cost Threshold, and Calculating the Rate Impact Due to Renewable Energy Procurements*, N.M.P.R.C. Case No. 11-00218-UT (Nov. 26, 2012), available at <http://www.reia-nm.org/wp-content/uploads/2011/02/REIAs-Post-Hearing-Brief-11-00218-UT112612.pdf>.

79. Kevin Robinson-Avila, *PRC Approves New Way for Utilities to Calculate Costs of Renewable Energy, Keeps Current Price Cap on Renewables to Help Limit Consumers' Expenses, While Also Revising State-Mandated Diversity*, N.M. GREEN CHAMBER OF COMMERCE (Dec. 26, 2012), <http://nmgreenchamber.com/2012/12/revising-rules/> (noting that the rule "gives small solar business 'greater security going forward'" (quoting Allan Oliver, CEO, Green Chamber of Commerce)).

80. Scott, *supra* note 70.

81. H.B. 2620, 74th Leg. Assemb., Reg. Sess. (Or. 2007); see also Press Release, Oregon Dep't of Energy, Meeting to Expand Renewable Energy in Public Buildings is October 18 (Oct. 15, 2012), <http://www.oregon.gov/energy/Pages/2012-60-1.5-percent-rulemaking.aspx>.

82. S.B. 1533, 76th Leg. Assemb., Reg. Sess. (Or. 2012).

83. S.S.B. 5575, 62d Leg., Spec. Sess. (Wash. 2012).

84. *Id.* § 2(19)(a).

that began operating before March 31, 1999.<sup>85</sup> Under the original RPS statute, utilities could not use facilities built before 1999 towards satisfying their renewable energy quotas.<sup>86</sup>

### III. SOUTH

#### A. Florida

The Florida legislature passed the Renewable Energy Production Tax Credit, H.B. 7117, which is a production tax credit of \$0.01 per KWh of renewable electricity for solar thermal electric, PV, wind, biomass, hydroelectric, geothermal electric, combined heat and power, cogeneration, tidal energy, and wave energy technologies.<sup>87</sup> This tax credit was initially established in 2006, but expired in 2010. The updated version of the Renewable Energy Production Tax Credit went into effect on July 1, 2012, and continues through June 30, 2016, providing a maximum of \$1 million per corporation and \$5 million for state FY 2012-2013 and \$10 million for FY 2013-2017.<sup>88</sup> There is no maximum on the credit for individual projects, and any unused credit may be carried for up to five years.<sup>89</sup>

The City of Longwood established the Raising Energy Efficiency Rebate Program, which provides rebates of up to \$500 annually as a residential local rebate program for the installation of solar water heaters, solar panel or PV systems, and other energy efficient improvements.<sup>90</sup> The rebate program went into effect on January 18, 2012.<sup>91</sup>

Progress Energy Florida implemented the SunSense Schools Program, which provides up to eleven public schools with fully installed solar PV systems annually.<sup>92</sup> Priority is given to schools designated as Enhanced Hurricane Protection Areas. Ten K-12 public schools annually will receive a solar PV system of up to 10 kW with a battery backup option. Schools that demonstrate a commitment to energy efficiency and renewable energy education are given priority. Also, at least one public post-secondary school will receive a system of up to 100 kW.<sup>93</sup>

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85. *Id.* § 2(20).

86. I.M. 937, 60th Leg., Reg. Sess. (Wash. 2007).

87. *Florida Incentives/Policies for Renewable Energy: Renewable Energy Production Tax Credit*, DSIRE, <http://www.dsireusa.org/incentives/allsummaries.cfm?State=FL&&re=1&ee=0> (last updated Apr. 20, 2012).

88. *Id.*

89. *Id.*

90. *Longwood Raising Energy Efficiency Program (REEP)*, LONGWOODFL.ORG, <http://www.longwoodfl.org/content/210/212/412/3682/3687.aspx> (last visited Mar. 9, 2013).

91. *Id.*

92. *SunSense Schools*, PROGRESS ENERGY, <https://www.progress-energy.com/florida/business/save-energy-money/sunsense/solar-school.page?> (last visited Mar. 9, 2013).

93. *Id.*

### B. Alabama, Georgia, Kentucky, Mississippi, and Tennessee

The Tennessee Valley Authority established Green Power Providers, a performance-based initiative for the installation of PV, wind, biomass, and small hydroelectric systems of 0.5 kW to 50 kW in commercial, residential, nonprofit, local, and state and federal governments.<sup>94</sup> The program began on October 1, 2012, and will continue for twenty years.<sup>95</sup> This program replaces the utility's Generation Partners pilot program.<sup>96</sup> The program is structured the same way for Alabama, Georgia, Kentucky, Mississippi, and Tennessee.

### C. Texas

In June 2012, the Austin City Council approved a tariff specific to solar PV systems, the Value of Solar residential rate, for Austin Energy.<sup>97</sup> The Value of Solar provides a rate for residential solar PV systems and is "available for all past, present and future residential solar customers beginning October 1, 2012."<sup>98</sup> "This tariff [will] replace[] net billing for residential solar PV systems no larger than 20 kW."<sup>99</sup> Residential customers with qualifying systems will be credited monthly for their solar generation based on the Value of Solar tariff, which establishes a rate of \$0.128 per kWh.<sup>100</sup>

## IV. MID-ATLANTIC

### A. Delaware

In April 2012, by Order No. 8139, the Delaware Public Service Commission approved amendments to the Rules and Procedures to Implement the Renewable Portfolio Standards (RPS Rules) (Order No. 6931) for the Renewable Energy Portfolio Standards Act.<sup>101</sup> The Order amends the RPS Rules to include provisions for fuel cell projects, to require that certain generation be from facilities physically located in Delaware, and to establish grounds upon which certified energy resources may be decertified.<sup>102</sup> Additionally, the Order sets forth new reporting requirements and new, firm certification deadlines.<sup>103</sup>

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94. *Green Power Providers Program*, TENN. VALLEY AUTH., <http://www.tva.com/greenpowerswitch/providers/index.htm> (last visited Mar. 9, 2013).

95. *Id.*

96. *Id.* The TVA program covers participating power companies in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia. *Green Power Providers Participating Power Companies*, TENN. VALLEY AUTH., <http://www.tva.com/greenpowerswitch/providers/distributors.htm> (last visited Mar. 9, 2013).

97. *Texas Incentives/Policies for Renewable Energy: Austin Energy—Value of Solar Residential Rate*, DSIRE, [http://www.dsireusa.org/incentives/incentive.cfm?Incentive\\_Code=TX139F&re=1&ee=0](http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=TX139F&re=1&ee=0) (last updated Oct. 9, 2012).

98. *Id.*

99. *Id.*

100. *Id.*

101. Order No. 8139, *Adoption of Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act*, 26 Del. C. §§ 351-363, as Applied to Retail Electricity Suppliers, Del. P.S.C. Regulation Docket No. 56 (Apr. 17, 2012).

102. *Id.*

103. *Id.*

In the area of grants, the Green Energy Program for residential renewable generation remains in effect, though there is a queue for payment following approval,<sup>104</sup> and limited funds remain for businesses under the Energy Efficiency Investment Fund for energy assessments, energy efficiency projects, and combined heat and power projects.<sup>105</sup>

In October 2012, the U.S. Department of Interior (DOI) granted a lease permit for an offshore wind farm off the coast of Delaware to an affiliate of NRG Energy.<sup>106</sup> The lease includes 96,430 acres of land.<sup>107</sup>

### B. Maryland

In May 2012, Governor Martin O'Malley signed into law SB 791, which accelerates the increase of the solar carve-out in the RPS, which is now at 2% solar generation.<sup>108</sup> Also in May, the Governor signed into law HB 1186, which makes energy generated from geothermal heating and cooling (GHC) eligible for RECs.<sup>109</sup>

In the area of grants, the Residential Clean Energy Grant Program and the Commercial Energy Grant Program, covering PV, solar thermal, geothermal, and wind projects, began operating under new funding authority in July 2012, which subjected all awarded grant funds to federal and state taxes.<sup>110</sup> Additionally, for FY 2013, the Maryland Energy Administration's EmPOWER Clean Energy Communities Low-to-Moderate Income Grant Program has been allocated grant money specific to counties in proportion to the number of low-to-moderate income households in each county.<sup>111</sup>

### C. New Jersey

In July 2012, Governor Chris Christie signed into law the Solar Act, SB 1925.<sup>112</sup> It includes a series of measures designed to stabilize the New Jersey Solar Renewable Energy Credit (SREC) market: (a) it imposes a penalty ceiling at \$339; (b) it allows financiers and developers to hold on to SRECs for five

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104. *Welcome to the Green Energy Program*, DNREC: DIVISION OF ENERGY AND CLIMATE, <http://www.dnrec.delaware.gov/energy/services/GreenEnergy/Pages/default.aspx> (last visited Mar. 22, 2013).

105. *Energy Efficiency Investment Fund*, DNREC: DIVISION OF ENERGY AND CLIMATE, <http://www.dnrec.delaware.gov/energy/information/otherinfo/Pages/EnergyEfficiencyInvestmentFund.aspx> (last visited Mar. 9, 2013).

106. Press Release, U.S. Dep't of Interior, Interior Announces Commercial Lease for Renewable Energy Offshore Delaware (Oct. 23, 2012), [www.doi.gov/news/pressreleases/Interior-Announces-Commercial-Lease-for-Renewable-Energy-Offshore-Delaware.cfm](http://www.doi.gov/news/pressreleases/Interior-Announces-Commercial-Lease-for-Renewable-Energy-Offshore-Delaware.cfm).

107. *Id.*

108. S.B. 791, Reg. Sess. (Md. 2012); 2012 Md. Laws 583.

109. H.B. 1188, Reg. Sess. (Md. 2012); 2012 Md. Laws 557.

110. *Residential Clean Energy Grant Program*, MD. ENERGY ADMIN., <http://energy.maryland.gov/Residential/cleanenergygrants/index.html> (last visited Mar. 9, 2013); *Commercial Clean Energy Grant Program*, MD. ENERGY ADMIN., <http://energy.maryland.gov/Business/cleanenergygrants/index.html> (last visited Mar. 9, 2013).

111. MD. ENERGY ADMIN., EMPOWER CLEAN ENERGY COMMUNITIES LOW-TO-MODERATE INCOME GRANT PROGRAM, available at <http://energy.maryland.gov/documents/FactSheet-EmPOWERLMigrants.pdf> (last visited Mar. 9, 2013).

112. S.B. 1925, 215th Leg., Reg. Sess. (N.J. 2012) (codified in scattered sections of N.J. STAT. ANN. § 48: 3 (West 2012)).

years; and (c) it moves the RPS away from a fixed number of megawatts and towards a variable percentage of total energy demand for the year.<sup>113</sup> Additionally, it allows solar projects on farmland and brownfield sites to be eligible for SRECs.<sup>114</sup>

In December 2012, the U.S. Department of Energy (DOE) announced that Fishman's Atlantic City Windfarm would be one of the seven offshore wind projects to receive federal funding support.<sup>115</sup>

#### D. North Carolina

During the 2012 legislative term, two major energy bills emerged but neither was ultimately signed into law. The Energy Jobs Act, SB 709, stalled in the Senate.<sup>116</sup> The Bill sought to incentivize energy production in the state and also tied future revenues to preserving state natural resources and quality of life.<sup>117</sup> The Clean Energy and Economic Security Act, SB 820, HR 1054, passed both houses, but was vetoed by then-Governor Beverly Perdue.<sup>118</sup> In July of 2012, the veto was overridden by both houses and the bill was signed into law, expanding the Mining Commission to be the Mining and Energy Commission, and allowing for horizontal hydraulic fracturing.<sup>119</sup>

In December 2012, the DOI issued a Call for Information and a Notice of Intent to Prepare an Environmental Assessment in the *Federal Register* for commercial leasing of wind projects on the outer continental shelf of North Carolina.<sup>120</sup> The publication is the culmination of the Intergovernmental Renewable Energy Task Force created two years earlier with representation from federal, state, and local governments.<sup>121</sup>

#### E. Pennsylvania

In the 2011 legislative term the Renewable Portfolio Standards Act, HB 1580, was proposed but failed in the House.<sup>122</sup> It would have accelerated the solar carve-out in Pennsylvania's RPS, in an attempt to stabilize the SREC

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113. *Id.*; see also *Christie Signs Bill to Boost New Jersey's Solar Industry*, REUTERS (July 24, 2012), <http://www.reuters.com/article/2012/07/24/us-newjersey-solar-idUSBRE86N1MK20120724>.

114. S.B. 1925, 215th Leg., Reg. Sess. (N.J. 2012); see also Letter from Kristi Izzo, Sec'y of the N.J. Bd. of Pub. Utils. to Public on New Solar Act (Senate Bill No. 1925) (July 23, 2012), <http://nj.gov/bpu/pdf/announcements/2012/solarletter.pdf> (initial guidance on the Farmland Provision).

115. Press Release, U.S. Dep't of Energy, DOE Wind Program Selects Seven Projects to Demonstrate Next-Generation Offshore Wind Technologies (Dec. 12, 2012), [http://www1.eere.energy.gov/wind/news\\_detail.html?news\\_id=18842](http://www1.eere.energy.gov/wind/news_detail.html?news_id=18842).

116. *Senate Bill 709 Information/History*, N.C. GEN. ASSEMBLY, <http://www.ncleg.net/gascripts/billlookup/billlookup.pl?Session=2011&BillID=S709> (last visited Mar. 9, 2013).

117. S.B. 709, 2011-2012 Gen. Assemb., Reg. Sess. (N.C. 2011).

118. *Senate Bill 820 Information/History*, N.C. GEN. ASSEMBLY, <http://www.ncleg.net/gascripts/billlookup/billlookup.pl?Session=2011&BillID=S820> (last visited Mar. 9, 2013).

119. *Id.*; 2012 N.C. Sess. Laws 143.

120. Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore North Carolina—Call for Information and Nominations, 77 Fed. Reg. 74,204 (Bureau of Ocean Energy Mgmt. Dec. 12, 2012).

121. *Gov. Perdue Announces Key Step in the Development of Offshore Energy*, THRIVENC (Dec. 12, 2012), <http://www.thrivenc.com/newsandevents/gov-perdue-announces-key-step-development-offshore-energy>.

122. H.B. 1580, Gen. Assemb. (Pa. 2011).

market which had crashed during FY 2011.<sup>123</sup> The substance of the bill was then incorporated into SB 1350, which has been referred to committee.<sup>124</sup> The earliest it can be debated will be during the 2013 legislative session.<sup>125</sup>

In the area of grants, the Alternative & Clean Energy Program, the Renewable Energy Program, the Solar Energy Program, and the High Performance Building Program are currently not accepting applications as the agencies that administer the programs are revising their guidelines.<sup>126</sup> These agencies include the Department of Community and Economic Development, the Department of Environmental Protection, and the Commonwealth Financing Authority.<sup>127</sup> Additionally, the solar rebate offered through the PA Sunshine Solar Program has been fully obligated and new solar builds are, as of this writing, being placed on a wait-list to participate in the program.<sup>128</sup> However, low interest financing is still available for wind and geothermal via the Keystone HELP Program.<sup>129</sup>

In March 2012, Governor Tom Corbett joined with the Obama Administration, various federal agencies, and the governors of Illinois, Michigan, Minnesota, and New York to sign a memorandum of understanding to streamline offshore wind development in the Great Lakes.<sup>130</sup> The DOE estimates that the area has the capacity to generate 700 gigawatts of wind energy.<sup>131</sup>

#### F. South Carolina

In March 2012, the U.S. Bureau of Ocean Energy Management established a South Carolina Renewable Energy Task Force to facilitate intergovernmental communications regarding offshore wind activities.<sup>132</sup>

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123. *Last Minute Push to Revive Pennsylvania HB 1580*, SRECTRADE (May 21, 2012), <http://www.srectrade.com/blog/srec-markets/last-minute-push-to-revive-pennsylvania-hb-1580>.

124. H.B. 1350, Gen. Assemb. (Pa. 2012).

125. *Pennsylvania Legislative Update*, SRECTRADE (Nov. 14, 2012), <http://www.srectrade.com/blog/srec-markets/pennsylvania-legislative-update>.

126. *Commonwealth Financing Authority (CFA)*, PA. DEP'T OF COMMUNITY & ECON. DEV., <http://www.newpa.com/find-and-apply-for-funding/commonwealth-financing-authority> (last updated Feb. 8, 2013).

127. PA. DEP'T OF CMTY. & ECON. DEV., *SOLAR ENERGY PROGRAM: PROGRAM GUIDELINES* (Sept. 2009), available at [http://www.newpa.com/sites/default/files/uploads/solarenergyprogram\\_guidelines\\_2009\\_2.pdf](http://www.newpa.com/sites/default/files/uploads/solarenergyprogram_guidelines_2009_2.pdf).

128. *PA Sunshine Solar Program*, PA. DEP'T OF ENERGY, [http://www.portal.state.pa.us/portal/server.pt/community/grants\\_loans\\_tax\\_credits/10395/pa\\_sunshine\\_solar\\_program/821790](http://www.portal.state.pa.us/portal/server.pt/community/grants_loans_tax_credits/10395/pa_sunshine_solar_program/821790) (last updated Feb. 2013).

129. *Statewide Geothermal Heat Pump System Loan Program*, KEYSTONE HELP, <http://www.keystonehelp.com/info/geothermal.php> (last visited Mar. 9, 2013).

130. Memorandum of Understanding Among the White House Council on Env'tl. Quality, Various Federal Agencies, the Commonwealth of Pennsylvania, and the States of Illinois, Michigan, Minnesota, and New York, to Create a Great Lakes Offshore Wind Energy Consortium (Feb. 2, 2012), available at [http://www1.eere.energy.gov/wind/pdfs/great\\_lakes\\_offshore\\_wind\\_energy\\_consortium\\_mou.pdf](http://www1.eere.energy.gov/wind/pdfs/great_lakes_offshore_wind_energy_consortium_mou.pdf).

131. *Obama Administration and Great Lakes States Announce Agreement to Spur Development of Offshore Wind Projects*, ENERGY.GOV (Mar. 30, 2012), <http://energy.gov/articles/obama-administration-and-great-lakes-states-announce-agreement-spur-development-offshore>.

132. *South Carolina*, BUREAU OF OCEAN ENERGY MGMT., <http://www.boem.gov/Renewable-Energy-Program/State-Activities/South-Carolina.aspx> (last visited Mar. 9, 2013).

### G. Virginia

Awards under the Clean Energy Manufacturing Incentive Grant Program began in July 2012.<sup>133</sup> These grants are for biofuel producers and manufacturers of renewable energy products, nuclear equipment, and energy efficiency products.<sup>134</sup>

In December 2012, the DOE announced that Dominion Virginia Power's wind project off the coast of Virginia Beach would be one of the seven off-shore wind projects to receive federal funding support.<sup>135</sup>

## V. MIDWEST

### A. Colorado

In December 2012, the City of Boulder issued a report concerning a proposed purchase of the Boulder distribution system of Xcel Energy by the City of Boulder.<sup>136</sup> The report proposes a partnership with Xcel Energy and strategies for increases in distributed generation and local renewables; investments in energy efficiency and demand management; and increased customer choice for clean energy sources.<sup>137</sup>

### B. Illinois

In July 2012, Illinois enacted several changes to the state's net metering law.<sup>138</sup> First, the amended law prescribes a dual metering and bill crediting system for certain customers.<sup>139</sup> Second, as to system capacity limits, the law raises the system capacity limit to 2 MW and the aggregate capacity limit to 5%.<sup>140</sup> Third, under the amended law, electricity providers can

consider whether to allow meter aggregation for the purposes of net metering on: (1) properties owned or leased by multiple customers that contribute to the operation of an eligible renewable electrical generating facility, such as a community-owned wind project, a community-owned biomass project, a community-owned solar project, or a community methane digester processing livestock waste from multiple sources; and (2) individual units, apartments, or properties owned or leased by multiple customers and collectively served by a

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133. *Clean Energy Manufacturing Incentive Program (Virginia)*, ENERGY.GOV, <http://energy.gov/savings/clean-energy-manufacturing-incentive-program-virginia> (last visited Mar. 19, 2013).

134. *Id.* For a full copy of the official guidelines, see GUIDELINES FOR CLEAN ENERGY MFG. INCENTIVE GRANT (July 1, 2012), available at <http://www.virginiaallies.org/assets/files/incentives/CEMIGGuidelines.pdf>.

135. Press Release, U.S. Dep't of Energy, DOE Wind Program Selects Seven Projects to Demonstrate Next-Generation Offshore Wind Technologies (Dec. 12, 2012), [http://www1.eere.energy.gov/wind/news\\_detail.html?news\\_id=18842](http://www1.eere.energy.gov/wind/news_detail.html?news_id=18842).

136. BOULDER ENERGY STRATEGY AND ELEC. UTIL. DEV. DEP'T, EXPLORING OPPORTUNITIES FOR REACHING BOULDER'S ENERGY FUTURE GOALS (Dec. 2012), available at [http://www.bouldercolorado.gov/files/Energy/2012/EF\\_Options\\_Dec2012.pdf](http://www.bouldercolorado.gov/files/Energy/2012/EF_Options_Dec2012.pdf).

137. *Id.*

138. 220 ILL. COMP. STAT. ANN. 5/16-107.5 (West 2012); 2012 Ill. Legis. Serv. 97-0824 (West).

139. 220 ILL. COMP. STAT. ANN. 5/16-107.5 (West 2012).

140. *Id.* § 16-107.5(b), (j)-(k).



common eligible renewable electrical generating facility, such as an apartment building served by photovoltaic panels on the roof.<sup>141</sup>

### C. Indiana

In March 2012, the Indiana Utility Regulatory Commission (IURC) issued a report detailing the increase in the number of Indiana citizens taking advantage of net metering programs.<sup>142</sup> From 2010 to 2011, the number of customers participating in net metering programs increased 50%, and the maximum output for the renewable energy facilities increased 136%.<sup>143</sup> “This increase in output includes wind and solar energy, which increased 187[%] and 112[%], respectively.”<sup>144</sup>

Indianapolis Power & Light (IPL) announced in 2012 that beginning in March 2013, it will stop offering to buy electricity generated by customers from renewable sources under its Renewable Energy Production program.<sup>145</sup> Correspondence from IPL to IURC explained that IPL plans to discontinue the Renewable Energy Production program because it already has contracts to purchase 300 MW of electricity generated by utility-scale wind farms.<sup>146</sup> Further, IPL explained that it was purchasing the credits from other wind farms to hedge against costs that could result from potential future renewable energy purchase mandates imposed on a federal level.<sup>147</sup>

### D. Iowa

In April 2012, the Iowa Utilities Board (IUB) issued a declaratory ruling as to “the interpretation and application of Iowa [law] as [it] relates to the ability of [an entity] to enter into a long-term financing agreement with a city for the purposes of supplying a portion of the city’s electric power needs from on-site renewable generation at the city’s premises.”<sup>148</sup> The IUB found that third-party PPAs trigger public utility status for the system owner and may be otherwise prohibited as a violation of exclusive utility service territories.<sup>149</sup>

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141. *Id.* § 16-107.5(l).

142. Press Release, Ind. Util. Regulatory Comm’n, Net Metering Numbers Up For Indiana (Mar. 27, 2012), [http://www.in.gov/iurc/files/Net\\_Metering\\_Numbers\\_Up\\_for\\_Indiana\(1\).pdf](http://www.in.gov/iurc/files/Net_Metering_Numbers_Up_for_Indiana(1).pdf).

143. *Id.*

144. *Id.*

145. Chris O’Malley, *IPL Pulling Plug on Renewable-Energy Effort*, IND. BUS. J. (July 5, 2012), available at <http://www.ijb.com/ipl-pulling-plug-on-renewable-energy-effort/PARAMS/article/35380>.

146. Letter from William H. Henley, IPL Vice President of Corporate Affairs, to James D. Atterholt, IURC Chairman (June 28, 2012), available at [http://indianadg.files.wordpress.com/2012/07/letter-from-william-henley-to-atterholt\\_2012-06-28.pdf](http://indianadg.files.wordpress.com/2012/07/letter-from-william-henley-to-atterholt_2012-06-28.pdf).

147. *Id.*

148. Declaratory Ruling, *SZ Enterprises, LLC*, Iowa Utils. Bd. Docket No. DRU-2012-0001, at 1 (Apr. 12, 2012), available at <https://efs.iowa.gov/cs/groups/external/documents/docket/mdaw/mtmy/~edis/101261.pdf>.

149. *Id.* at 14-17.

### E. Kansas

In April 2012, Kansas amended its Renewable Energy Standards Act to broaden the definition of renewable energy resources.<sup>150</sup> “Renewable energy resources” now includes storage connected to any renewable generation by means of energy storage equipment.<sup>151</sup> The amended Act further requires the Kansas Corporation Commission to annually determine and report the statewide retail rate impact of compliance with the Renewable Energy Standards Act.<sup>152</sup>

### F. Michigan

In August 2012, the Michigan Public Service Commission (MPSC) issued a net metering and solar pilot report, which noted that in the previous year, the number of net metering customers surpassed 1,000 for the first time.<sup>153</sup>

Further, in November 2012, the MPSC approved Detroit Edison Company’s request to implement “Phase II,” an expansion and revision of the utility’s fully-subscribed 5 MW customer-owned SolarCurrents Program.<sup>154</sup> Phase II is intended to “provide for an upfront purchase of half of the RECs that are anticipated to be generated over the life of the system, with the remaining RECs purchased via monthly payments on actual generation.”<sup>155</sup>

### G. Minnesota

In April 2012, Minnesota enacted legislation clarifying the purpose of its renewable development account.<sup>156</sup> Under the amended law, funds in the renewable development account may only be used for the following purposes:

- (1) to increase the market penetration of renewable electric energy resources within the state at reasonable costs;
- (2) to promote the start-up, expansion, and attraction of renewable electric energy projects and companies within the state;
- (3) to stimulate research and development within the state into renewable electric energy technologies; and
- (4) to develop near-commercial and demonstration scale renewable electric projects or near-commercial and demonstration electric infrastructure delivery projects if those delivery projects enhance the delivery of renewable energy.<sup>157</sup>

### H. Ohio

In June 2012, Ohio enacted legislation reclassifying certain cogeneration technology as “renewable energy” under Ohio’s renewable portfolio standard,

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150. KAN. STAT. ANN. §§ 66-1257, 66-1260 (2012); 2012 Kan. Sess. Laws 101.

151. KAN. STAT. ANN. § 66-1257(f)(11).

152. *Id.* § 66-1260(c).

153. MICH. PUB. SERV. COMM’N, NET METERING AND SOLAR PILOT PROGRAM REPORT FOR CALENDAR YEAR 2011, at 3 (Aug. 2012), available at [http://www.michigan.gov/documents/mpsc/NetMeteringReport\\_Aug2012\\_396259\\_7.pdf](http://www.michigan.gov/documents/mpsc/NetMeteringReport_Aug2012_396259_7.pdf).

154. *MPSC Approves Phase II of Detroit Edison’s SolarCurrent Program*, MICH. DEP’T OF LICENSING AND REGULATORY AFFAIRS (Nov. 16, 2012), available at [http://www.michigan.gov/mpsc/0,4639,7-159-16400\\_17280-290012--,00.html](http://www.michigan.gov/mpsc/0,4639,7-159-16400_17280-290012--,00.html).

155. *Id.*

156. MINN. STAT. § 116C.779 (2012); 2012 Minn. Sess. Law Serv. 196 (West).

157. MINN. STAT. § 116C.779(d).

which requires Ohio utilities to draw 12.5% of their electricity from renewable sources and a separate 12.5% of their electricity from advanced energy sources by 2025.<sup>158</sup>

### I. Wisconsin

In December 2012, the Public Service Commission of Wisconsin (PSCW) approved Madison Gas and Electric's proposed increase in the green pricing premium for the Green Power Tomorrow Program to 4 cents per kWh.<sup>159</sup> Also in December 2012, the PSCW approved Wisconsin Electric Power Company's proposal to increase the Energy for Tomorrow green pricing premium.<sup>160</sup>

## VI. FEDERAL

### A. IRS

In July 2012, the Internal Revenue Service (IRS) issued Notice 2012-44, which clarified the meaning of "capital expenditures" and "green community programs," as well as provided guidance on meeting the 20% energy consumption reduction requirement for energy-efficiency related capital expenditures in publicly-owned buildings as applied under section 54D of the Internal Revenue Code, which addresses Qualified Energy Conservation Bonds (QECBs).<sup>161</sup> The Energy Improvement and Extension Act of 2008, enacted in October 2008, authorized the issuance of QECBs that may be used by state, local, and tribal governments to finance certain types of energy projects. QECBs are qualified tax credit bonds and similar to new Clean Renewable Energy Bonds.<sup>162</sup>

### B. FTC

On October 1, 2012, the Federal Trade Commission (FTC) adopted revised Guides for the Use of Environmental Marketing Claims (Revised Green Guides).<sup>163</sup> The Revised Green Guides include FTC guidance regarding renewable energy claims, which had not been addressed in the existing Green Guides. The Revised Green Guides permit the marketing of electricity matched with RECs as "renewable energy," but caution that companies may minimize the risk of deception by specifying the sources of renewable energy – solar, wind,

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158. S.B. 289, 129th Gen. Assemb., Reg. Sess. (Ohio 2011) (enacted); S.B. 315, 129th Gen. Assemb. Reg. Sess. (Ohio 2011) (enacted).

159. Final Decision, *Application of Madison Gas and Electric Company for Authority to Change Electric and Natural Gas Rates*, Wisc. P.S.C. Docket No. 3270-UR-118 (Dec. 14, 2012), available at [http://psc.wi.gov/apps35/ERF\\_view/viewdoc.aspx?docid=177918](http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=177918).

160. Final Decision, *Joint Application of Wisconsin Electric Power Company and Wisconsin Gas LLC, both d/b/a/ We Energies, for Authority to Adjust Electric, Natural Gas, and Steam Rates*, Wisc. P.S.C. Docket No. 5-UR-106 (Dec. 21, 2012), available at [http://psc.wi.gov/apps35/ERF\\_view/viewdoc.aspx?docid=178105](http://psc.wi.gov/apps35/ERF_view/viewdoc.aspx?docid=178105).

161. I.R.S. Notice 2012-44, 2012-28 I.R.B. 45.

162. *Id.*; Energy Improvement and Extension Act of 2008, Pub. L. No. 110-343, 122 Stat. 1365 (2008).

163. Guides for the Use of Environmental Marketing Claims, 77 Fed. Reg. 62,122 (F.T.C. Oct. 11, 2012) (codified at 16 C.F.R. pt. 260).

biomass – in their marketing materials.<sup>164</sup> The FTC declined to require companies to disclose the location of their renewable energy sources when making claims, but cautioned in its FTC Green Guides Statement of Basis and Purpose, released on the same day, that net impression of some advertisements could imply local benefits, in which case a non-local source of RECs would need to be disclosed to avoid deceptive advertising.<sup>165</sup> The Revised Green Guides clarify through examples that a property owner who “hosts” an on-site renewable energy facility but does not purchase the RECs produced by the facility may not claim it uses renewable electricity or that it “hosts” a renewable facility.<sup>166</sup> The Revised Green Guides added a provision stating that the generator may advertise that it “generate[s] renewable energy, but sell[s] all of it to others.”<sup>167</sup>

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164. 16 C.F.R. § 260.15.

165. FED. TRADE COMM’N, THE GREEN GUIDES: STATEMENT OF BASIS AND PURPOSE 226-27 (Oct. 2012), available at <http://www.ftc.gov/os/fedreg/2012/10/greenguidesstatement.pdf>.

166. 16 C.F.R. § 260.15 (example 5).

167. *Id.*

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