REPORT OF THE RENEWABLE ENERGY COMMITTEE

This report summarizes a selection of legislative and regulatory developments at the state and federal level in the area of renewable energy during calendar year 2014.*

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I. STATE ACTIVITY

A. Northeast

1. Connecticut

The Connecticut Legislative Review Committee approved regulations that allow the siting of wind turbines effective on May 9, 2014.[1] The Connecticut Siting Council (the state entity with jurisdiction over the siting of power and telecommunications facilities) was originally directed to adopt regulations for the siting of wind turbines on or before July 1, 2012, by Public Act No. 11-245.[2] The Act stated that no wind turbine could be sited before the new regulations were adopted.[3] The Siting Council had multiple versions rejected by the Legislative Review Committee before this latest version of the Act was approved.

In June, Connecticut Governor Malloy signed into law two bills that amended existing statutes relating to renewable energy.[4] First, Public Act No. 14-94 made several revisions to existing energy statutes, including the creation of the Connecticut Green Bank (as the successor to the Clean Energy Finance and Investment Authority) to administer the Clean Energy Fund.[5] The Clean Energy Fund requires that 60% of the energy purchased by the Commissioner of the Connecticut Department of Energy and Environmental Protection for state operations must be from Class II renewable energy sources that originate from trash-to-energy facilities.[6] The Clean Energy Fund also expanded the definition of eligible "energy improvements" under the state's commercial sustainable

1. *See generally* CONN. AGENCIES REGS. §§ 16-50j-2a, -16, -18, -92, -96 (2014), *available at* http://www.sots.ct.gov/sots/lib/sots/regulations/recentlyadopted/ecopy_reg_6158.pdf.

2. Requiring the Adoption of Regulations for the Siting of Wind Projects, 2011 Conn. Pub. Acts 11-245, § 1.

3. *Id.*

4. Concerning Connecticut's Recycling and Materials Management Strategy, the Underground Damage Prevention Program, and Revisions to the Energy and Environmental Statutes, 2011 Conn. Pub. Acts 14-94; Concerning a Clean Alternative Fuel Vehicle Procurement Preference, 2014 Conn. Pub. Acts 14-136.

5. 2011 Conn. Pub. Acts. No. 14-94, § 29(d)(1)(A).

6. *Id.* § 9(b).

energy program to include microgrids.[7] Second, Public Act No. 14-136 updates an existing statute regarding a clean alternative fuel vehicle procurement preference in awarding state contracts to include hydrogen and propane in the definition of eligible "clean alternative fuel."[8]

In November, the Connecticut Public Utilities Regulatory Authority (CT PURA) issued new rules about how electric suppliers can advertise renewable content of their product.[9] Specifically, suppliers are only permitted to advertise energy as renewable if it is associated with Renewable Energy Credits (RECs) purchased beyond those the supplier is required to purchase.[10] Additionally, a supplier may not market any energy supply plan as "green" or "renewable" unless the plan offers RECs beyond the mandatory requirements.[11] Suppliers are required to submit standard contracts, offers, and advertisements involving renewable energy to CT PURA for its review.[12]

2. Maine

Public Law No. 2014, chapter 562, establishing state goals for investing in solar power, became effective on April 24, 2014.[13] The Act directs the Maine Public Utilities Commission to determine the value of solar energy generation and monitor the level of solar energy development in the state, basic trends in solar energy markets, and the likely relative costs and benefits for ratepayers from solar energy development.[14]

3. Massachusetts

On February 26, 2014, the Massachusetts Department of Public Utilities (MA DPU) approved twelve long-term power purchase agreements for onshore wind facilities in New England, totaling more than 409 megawatts (MWs) of electricity.[15] The projects represent the largest procurement of renewable energy in New England by Massachusetts utilities.[16]

On August 6, 2014, Massachusetts Governor Deval Patrick signed into law a bill that both expands eligible resources that qualify for the Alternative Energy Portfolio Standard (APS) and increases the state's net metering caps.[17] The original bill dealt with the APS only, but was later amended to increase net-

7. *Id.* § 23(a)(1)(B).

8. Conn. Pub. Acts No. 14-136 § 1(c)(3)(C).

9. PURA Establishment of Rules for Electric Suppliers and EDCS Concerning Operations and Marketing in the Electric Retail Market, Docket No. 13-07-18 (Pub. Utils. Regulatory Auth. Nov. 5, 2014).

10. *Id.*

11. *Id.* at 10-11.

12. *Id.* at 30.

13. Maine Solar Energy Act, ch. 562, Legis. Doc. 1652, § 3471 (2014).

14. *Id.* § 3474.

15. Press Release, Energy & Envtl. Affairs, Patrick Administration Approves Contracts for Largest Procurement of Renewable Energy in New England by Massachusetts Utilities (Feb. 26, 2014), http://www.mass.gov/eea/pr-2014/electric-procurement.html.

16. *Id.*

17. An Act Relative to Credit for Thermal Energy Generated with Renewable Fuels, 2014 Mass. Legis. Serv. ch. 251 (West).

metering caps after a separate bill regarding net metering failed to pass.[18] The Act expanded the APS to include "useful thermal energy" resources and removed gasification with capture and permanent sequestration of carbon dioxide and paper-derived fuel sources.[19] Regarding net metering, the Act increases the public net energy-metering cap from 3% to 5% and the private net energy-metering cap from 3% to 4%.

4. New Hampshire

New Hampshire Governor Hassan signed four renewable energy bills into law in 2014. First, on June 16, the Governor signed an act that requires the New Hampshire Public Utilities Commission (NH PUC) to permit owners of small renewable energy generation, under 15 kilowatt hour (kWh), to electronically report production to an independent monitor for the purposes of tracking New Hampshire's progress toward its Renewable Portfolio Standard.[20] On July 11, the Governor signed an act into law establishing a committee, comprising three members from each chamber, to study offshore wind energy and other ocean power technology development.[21] An act signed on August 1, 2014, established guidelines for the Site Evaluation Committee in adopting rules to govern the siting of large wind energy systems in New Hampshire.[22] The Act also addresses the divestiture of the Public Service Company of New Hampshire's generation assets.[23] Finally, on August 4, an act was signed permitting the NH PUC to allocate a small portion of the funds raised through the sale of Regional Greenhouse Gas Initiative allowances to entities managing certain comprehensive energy efficiency programs.[24]

5. New York

State Energy Plan. On January 7, 2014, the New York State Energy Planning Board released a draft State Energy Plan.[25] The plan is designed to "set[] forth a vision for New York's energy future that connects a vibrant private sector market with communities and individual customers to create a dynamic, affordable clean energy economy."[26] Interested parties were invited to attend regional hearings or submit comments on the draft.[27] The plan remained in draft form as of the end of 2014.

18. *Id.*

19. *Id.* § 2.

20. Relative to Reporting of Energy Production for Net Metering, H.B. 1600, 2014 Sess. (N.H. 2014).

21. Establishing a Committee to Study Offshore Wind Energy and the Development of Other Ocean Power Technology, H.B. 1312, 2014 Sess. (N.H. 2014).

22. Relative to the Divestiture of PSNH Assets and Relative to the Siting of Wind Turbines, H.B. 1602, 2014 Sess. (N.H. 2014).

23. *Id.*

24. Relative to Funding for Certain Energy Efficiency Programs, S.B. 268, 2014 Sess. (N.H. 2014).

25. N.Y. STATE ENERGY PLANNING BD., SHAPING THE FUTURE OF ENERGY: 2014 DRAFT NEW YORK STATE ENERGY PLAN 1 (Jan. 7, 2014), *available at* http://energyplan.ny.gov/-/media/nysenergyplan/2014stateenergyplan-documents/2014-draft-nysep-vol1.pdf.

26. *Id.* at 6.

27. *New York State Energy Plan Process*, N.Y. STATE ENERGY PLAN, http://energyplan.ny.gov/Process/Process (last visited Feb. 10, 2015).

Reforming the Energy Vision. The New York Public Service Commission (NY PSC) proposed a Reforming the Energy Vision (REV) initiative to reform New York's energy industry and regulatory practices.[28] The initiative focuses on "creating market based, sustainable products and services that drive an increasingly efficient, clean, reliable, and consumer-oriented industry."[29] The New York State Department of Public Service Staff Report and Proposal, released on April 24, 2014, is intended to provide a framework to respond to the challenges articulated in a 2013 Commission Order and the draft State Energy Plan[30] by creating those regulatory rules that provide proper incentives for investments in "a cleaner, more resilient, and affordable energy" system.[31]

New York State Energy Research and Development Authority. In September, the New York State Energy Research and Development Authority (NYSERDA) issued a proposal for a Clean Energy Fund (CEF)[32] as directed by the NY PSC's Clean Energy Fund Order Commencing Proceeding.[33] Its objective is to develop a larger, self-sustaining, renewable energy market not reliant on government incentives, thereby transitioning from the Energy Efficiency Portfolio Standard (EEPS) currently in use.[34] It is intended to complement existing New York State initiatives, particularly the regulatory changes proposed in the REV proceeding.[35] NYSERDA proposes four main portfolios of activity within the CEF: (1) market development activities to facilitate the market for on-site, behind-the-meter clean energy; (2) technology and business innovation activities to promote the development and commercialization of new technologies and business models; (3) the New York Green Bank; and (4) the New York Sun (NY-Sun) initiative.[36] The proposal calls for a ten-year, $5 billion funding commitment to the CEF.[37]

In August, NYSERDA submitted its Customer-Sited Tier Program Operating Addendum (Operating Addendum) in response to the NY PSC's Order Authorizing Funding and Implementation of the Solar Photovoltaic MW Block

28. N.Y. STATE DEP'T OF PUB. SERV., REFORMING THE ENERGY VISION, CASE 14-M-0101, 1 (2014), *available at* http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/26be8a93967e604785257cc40066b91a/%24FILE/ATTK0J3L.pdf/Reforming%20The%20Energy%20Vision%20(REV)%20REPORT%204.25.%2014.pdf.

29. *Id.* at 2.

30. *Id.*

31. N.Y. STATE ENERGY RESEARCH & DEV. AUTH., CLEAN ENERGY FUND PROPOSAL, CASE 14-M-0094, PROCEEDING ON MOTION OF THE COMMISSION TO CONSIDER A CLEAN ENERGY FUND 8 (2014) [hereinafter CEF PROPOSAL], *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={DABF6A8A-17A5-441F-AC44-48587105CF6D}.

32. *Id.* at 5.

33. Order Commencing Proceeding, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, Case 14-M-0094, 11 (N.Y. Pub. Serv. Comm'n May 8, 2014), *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={EC642944-E276-4094-AA33-A26E9B666CDC}.

34. CEF PROPOSAL, *supra* note 31, at 5.

35. *Id.* at 14.

36. *Id.* at 6.

37. *Id.*

Programs (MW Block Program), issued and effective on April 24, 2014.[38] The MW Block Program, part of the incentive component of the NY-Sun initiative, represents a transition of the Solar Photovoltaic Program currently administered by NYSERDA under the Renewable Portfolio Standard (RPS) Customer Sited Tier.[39] The Operating Addendum lays out an incentive structure for achieving certain megawatt goals for residential (up to 25 kilowatt (kW)) and small non-residential (up to 200 kW) projects over the 2014-2023 time period.[40] It allocates $960 million of funds made available by the NY PSC in April 2014, including up to $13 million for the support of low-to-middle income residential investment in renewables.[41]

NYSERDA obtained the NY PSC's authorization in June to increase the maximum length of RPS Main Tier contracts to a term not to exceed twenty years.[42] The previous maximum contract length was ten years.[43] The term extensions will not apply retroactively to existing NYSERDA renewable energy credit agreements.[44] Moreover, NY PSC expressly encouraged NYSERDA "not to enter into contracts for terms longer than the expected useful life of the project."[45]

Brooklyn Queens Demand Management. The NY PSC approved plans submitted by Consolidated Edison (Con Ed) for the Brooklyn Queens Demand Management (BQDM) program in a December 12, 2014, order.[46] In addition to 17 MW of traditional utility infrastructure investment, the program calls for 52 MW of non-traditional infrastructure investment, which may include battery storage equipment.[47] The NY PSC capped costs for the total 69 MW of

38. Order Authorizing Funding and Implementation of the Solar Photovoltaic MW Block Programs, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Case 03-E-0188, at 23 (N.Y. Pub. Serv. Comm'n Apr. 24, 2014) [hereinafter Order Authorizing Funding], http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BEDB54E42-13EA-4817-8F5C-8E3165D78919%7D. *See generally* N.Y. STATE ENERGY RESEARCH & DEV. AUTH., RENEWABLE PORTFOLIO STANDARD CUSTOMER-SITED TIER PROGRAM OPERATING PLAN ADDENDUM (2014) [hereinafter OPERATING ADDENDUM], *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BC5877D02-0D52-42FA-B398-086F2FCC53B3%7D.

39. OPERATING ADDENDUM, *supra* note 38, at 3.

40. *Id.* at 2. Non-residential projects with a nameplate capacity larger than 200 kW are to have targets at a later date. *Id.*

41. Order Authorizing Funding, *supra* note 38, at 7, 24.

42. Order Authorizing Modifications to The Main Tier Solicitation Contract Term, Proceeding on the Motion of the Commission regarding a Retail Renewable Portfolio Standard, Case 03-E-0188, at 16 (N.Y. Pub. Serv. Comm'n June 26, 2014), *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B04626FA2-365B-4A32-933A-91ABAA681EC2%7D.

43. *Id.* at 3.

44. *Id.* at 13.

45. *Id.*

46. Order Establishing Brooklyn/Queens Demand Management Program, Petition of Consolidated Edison Company of New York, Inc. for Approval of Brooklyn Queens Management Program, Case 14-E-0302, at 1 (N.Y. Pub. Serv. Comm'n Dec. 11, 2014), *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={83594C1C-51E2-4A1A-9DBB-5F15BCA613A2}.

47. *Id.* at 3, 23-24.

infrastructure at $200 million but included an incentive of up to a 100 basis point increase on the return on equity authorized by the NY PSC.[48] Basis point increases will be awarded based on Con Ed's performance in reducing consumer peak demand, increasing diversity in customer side DER, and reducing dollar per MW costs.[49]

Community Choice Aggregation Proposal. The NY PSC issued an order soliciting comments on a proposal that NY PSC allow Community Choice Aggregation (CCA) programs.[50] NY PSC stated that "CCA programs [] allow municipalities to set their own energy goals based on local input. A municipality might focus on price stability, increased clean energy generation, support of local generation, or inclusion of distributed energy resources."[51] A white paper on the CCA program accompanies the order.[52]

Changes to Net Metering Regulations. On December 15, 2014, the NY PSC issued an order updating the regulations regarding net metering.[53] Included in the order are provisions to have utilities file revised tariffs providing for a cap on net metering at 6% of 2005 levels (from the current 3% of 2005 levels) and allowing utilities to volumetrically compensate customers who begin net metering in the future.[54] Additionally, the order clarifies the conditions under which a customer will qualify for net metering even if all of its facilities combine to generate in excess of the 2 MW limit provided.[55] Finally, the order clarifies how utilities may impose costs on consumers whose generation facilities exceed 20% of the total capacity on local feeder lines.[56]

6. Rhode Island

In June, the Rhode Island General Assembly passed the Renewable Energy Growth Program (REGP) Bill. The REGP will be a tariff-based renewable energy distributed generation financing program implemented by the state's electric distribution companies.[57] It is designed to finance the development, construction, and operation of 160 MW of renewable energy distributed generation projects over five years through a competitive performance-based incentive system.[58]

48. *Id.* at 9, 19.

49. *Id.* at app. B, 1-4.

50. Order Instituting Proceeding and Soliciting Comments, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Case 14-M-0224, at 2 (N.Y. Pub. Serv. Comm'n Dec. 11, 2014), *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BDB4EB41-3E10-4BD0-AC6D-97EB40F7798D}.

51. *Id.* at 4.

52. *Id.* at app. A, 9.

53. *See generally* Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures, Case 14-E-0151, 14-E-0422 (N.Y. Pub. Serv. Comm'n Dec. 15, 2014), *available at* http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={24BFF7CA-2007-4B88-B7E2-3A5FD83684B4}.

54. *Id.* at 30-31.

55. *Id.* at 22.

56. *Id.* at 25.

57. An Act Relating to Public Utilities and Carriers–The Distributed Generation Growth Program, 2014 R.I. Pub. Laws ch. 14-200, 14-216; R.I. GEN. LAWS. ANN. § 39-26.6-2 (West 2014).

58. *Id.*

The Rhode Island General Assembly also approved the Affordable Clean Energy Security Act in June. The Act establishes a framework for the state to coordinate with other New England states on measures "to address electric price volatility and reliability and to pursue energy infrastructure expansion projects for electricity and natural gas, as well as clean energy resources."[59] Under the Act, the state is authorized to participate in multistate competitive solicitations for the development and construction of regional electric transmission projects that would allow for the reliable transmission of eligible renewable energy resources and hydroelectric power into New England load centers to benefit the state of Rhode Island.[60]

B. West

1. Alaska

There were no new significant legislative or judicial activities in Alaska in 2014. The Alaska Energy Authority (AKEA), acting under the authority granted to it by H.B. 250, submitted a list of recommended projects to receive awards under the Alaska Renewable Energy Fund Round VII to the Alaska legislature on January 29, 2014.[61] On September 22, 2014, applications for Alaska Renewable Energy Fund Round VIII were due to AKEA.[62] The AKEA will make its Round VIII recommendations on January 30, 2015.[63]

2. Arizona

On November 5, 2014, the Arizona Corporation Commission (AZCC) approved a program for Arizona Public Service (APS), Tucson Electric Power (TEP), and Unisource Energy (UNS), through which individuals can voluntarily contribute funds to be used to install solar panel systems on newly built residential single-family homes constructed by the Arizona chapter of Habitat for Humanity.[64] Any individual, not just customers of the utilities, can make the tax-deductible contributions.[65] The program became effective on January 1, 2015.[66]

59. Press Release, State of R.I. Gen. Assembly, Assembly OKs 'Affordable Clean Energy Security Act' (June 19, 2014), http://www.rilin.state.ri.us/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31%2D3c10%2D431c%2D8dcd%2D9dbbe21ce3e9&ID=9968&Web=2bab1515%2D0dcc%2D4176%2Da2f8%2D8d4beebdf488.

60. An Act Relating to Public Utilities and Carriers, 2014 R.I. Pub. Laws ch. 14-424; R.I. GEN. LAWS ANN. § 39-31-4 (West 2014).

61. H.B. 250, 27th Leg., 2d Sess. (Alaska 2012); *Renewable Energy Fund Detailed Round Information*, ALASKA ENERGY AUTH. [hereinafter *Renewable Energy Fund*], http://www.akenergyauthority.org/Programs/Renewable-Energy-Fund/Rounds (last visited Feb. 11, 2015).

62. *See generally Renewable Energy Fund*, *supra* note 61.

63. *Id.*

64. Press Release, Ariz. Corp. Comm'n, Commission Approves Voluntary Solar Fund Benefiting Habitat for Humanity (Nov. 5, 2014), http://www.azcc.gov/Divisions/Administration/news/default.asp.

65. *Id.*

66. *Id.*

On December 26, 2014, the AZCC voted "no objection" to an APS pilot program to install and own 10 MW of rooftop solar distributed generation.[67] The AZCC stated that APS is not seeking cost recovery through the Renewable Energy Standard and Tariff surcharge and therefore may seek recovery in its next rate case after the solar facility is in service.[68] The AZCC clarified that its non-objection to the pilot program is not a pre-approval for ratemaking purposes and not a prudency determination.[69] The program is subject to a total capital cost cap of $28.5 million.[70]

3. California

On January 21, 2014, the California Energy Commission (CEC) approved the Petition to Amend the Blythe Solar Power Project filed by a wholly-owned subsidiary of NextEra Energy Resources, LLC (NextEra) and granted a certificate to construct and operate the project.[71] The amendment reduced the project's size from 1,000 MW on approximately 7,043 acres to 485 MW on approximately 4,070 acres.[72] It also replaced the project's solar parabolic trough technology with photovoltaic generating technology.[73] The CEC explained that its order licenses NextEra to commence construction subject to conditions to ensure the project conforms to the applicable local, state, and federal laws, regulations, and ordinances.[74]

On September 26, 2014, the U.S. Department of the Interior and the California Natural Resources Agency released a draft Desert Renewable Energy Conservation Plan (DRECP).[75] The DRECP is a landscape-scale, joint Environmental Impact Report/Environmental Impact Statement planning effort by multiple federal and state agencies.[76] Specifically, the DRECP will facilitate the timely permitting of renewable energy projects in an area of the California desert covering more than twenty-two million acres.[77] The primary agencies responsible for preparing the DRECP are the U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and the CEC.[78] These agencies will coordinate with other federal and state agencies and the public

67. Julia Pyper, *Arizona Utilities Get Approval to Own Rooftop Solar*, GREENTECH MEDIA (Dec. 26, 2014), http://www.greentechmedia.com/articles/read/arizona-utilites-get-the-go-ahead-to-own-rooftop-solar.

68. *Id.*

69. *Id.*

70. *Id.*; Ariz. Pub. Serv. Co. for Approval of its 2014 Renewable Energy Standard Implementation Plan for Reset of Renewable Energy Adjustor, Docket No. E-01345A-13-0140, at 4 (Ariz. Corp. Comm'n Dec. 23, 2014).

71. Notice of Decision, Blythe Solar Power Project, Docket No. 09-AFC-6C (Cal. Energy Comm'n Jan. 21, 2014).

72. *Id.*

73. *Id.*

74. Commission Decision, Blythe Solar Power Project Amendment, Docket No. 09-AFC-06C (Cal. Energy Comm'n Jan. 21, 2014).

75. Notice of Availability of the Draft Desert Renewable Energy Conservation Plan and Draft Environmental Impact Statement/Environmental Impact Report, California, 79 Fed. Reg. 57,971, 57,972 (Sept. 26, 2014).

76. *Id.*

77. *Id.*

78. *Id.* at 57,971.

to site future renewable energy and transmission projects while conserving biological and natural resources, recreation areas, cultural areas, and other resources in the California desert.[79]

On December 5, 2014, the California Public Utilities Commission issued a decision that completes the rule for retail sellers' compliance with California's RPS program.[80] The decision, among other things, specifies the processes by which retail sellers may request a waiver of enforcement of their RPS procurement obligations and a reduction in their RPS portfolio balance requirements, and specifies the applicable penalty provisions for noncompliance.[81] With respect to penalties, the decision continues the current penalty amount of $50 per REC shortfall in a retail seller's RPS procurement obligation, and revises the cap on potential penalties by taking into consideration the new multi-year compliance periods in the RPS program and the size of the retail seller.[82] The decision became effective on December 4, 2014.[83]

4. Colorado

On December 8, 2014, the Colorado Public Utilities Commission (CO PUC) rejected the Public Service Company of Colorado's (PSCo) proposal to create a solar energy program known as the Solar*Connect Program (Program).[84] PSCo proposed to acquire "50 MW of solar generation and associated Renewable Energy Credits (RECs) through long-term solar power purchase agreements (PPAs)," and would "offer retail customers short-term subscriptions to the solar energy produced for up to 100[%] of their annual consumption."[85] In its decision, the CO PUC noted that, after PSCo would recover its start-up, marketing, and administration costs of the Program, it would share 40% of program earnings with ratepayers through credits to the Renewable Energy Standard Adjustment (RESA) while retaining the remaining 60% as profit.[86] The CO PUC held that the Program was not in the public interest for four reasons. First, PSCo does not need the solar RECs supported by RESA funds because its Renewable Energy Standard compliance requirements are satisfied through at least 2030.[87] Second, PSCo found that requiring ratepayers to fund proposed subsidies for a program that produces unspecified utility profits was unacceptable.[88] Third, PSCo did not adequately demonstrate that "it will ensure a level competitive playing field with

79. *Id.* at 57,972.

80. Decision Setting Enforcement Rules for the Renewables Portfolio Standard Program, Implementing Assembly Bill 2187, and Denying Petitions for Modification of Decision 12-06-038, Decision 14-12-023, at 2 (Cal. Pub. Utils. Comm'n Dec. 5, 2014).

81. *Id.*

82. *Id.* at 2-3.

83. *Id.* at 85.

84. Application of Public Service Company of Colorado for Approval of its Solar*Connect Program, Decision Denying Applications, No. C14-1485, at 2 (Colo. Pub. Utils. Comm'n Dec. 8, 2014).

85. *Id.*

86. *Id.* at 3.

87. *Id.* at 10.

88. *Id.* at 11.

other solar providers."[89] Lastly, PSCo "did not adequately demonstrate that there is customer demand" for the Program.[90]

5. Hawaii

The Hawaii Public Utilities Commission (HI PUC) approved a plan to advance projects under the Feed-In-Tariff program that are currently shovel-ready.[91] The plan consists of a two-year pilot program to advance renewable energy projects in Hawaii and develop 15 MWs of solar power in the state.[92] The HI PUC directed Hawaiian Electric Companies and the Independent Observer to immediately begin reviewing applications of shovel-ready projects in the queue to determine those projects that qualify under the Feed-In-Tariff program and eliminate those projects that do not qualify under the program.[93]

Governor Abercrombie signed H.B. 1943, A Measure Relating to the Modernization of the Hawaii Electric System, into law on June 20, 2014.[94] The measure is designed to facilitate the expansion of a modern electrical grid that can support increased renewable energy development in Hawaii.[95] The measure requires that the HI PUC "consider the value of improving electrical generation, transmission, and distribution systems and infrastructure . . . through the use of advanced grid modernization. . . ."[96] As part of this analysis, the state is required to advance the public interest by enabling diverse renewable energy sources and increasing interconnection to distributed generation, among other factors.

S.B. 2658, A Measure Relating to Solar Energy, was passed to establish conditions for solar energy projects on agricultural lands.[97] The conditions vary according to the overall productivity rating of the soil on the land.[98] The legislation also requires solar energy facilities to be decommissioned and removed within twelve months after terminating operations.[99]

Further, H.B. 1942, A Measure Relating to the Issuance of Special Purpose Revenue Bonds to Assist with the Planning, Design, Construction, Equipping, Land Leases, and Other Tangible Assets for a Renewable Energy Project with Energy Storage Technology on the Island of Molokai, was signed into law on July 3, 2014.[100] The measure issues special purpose revenue bonds for Princeton

89. *Id.*

90. *Id.* at 12.

91. Press Release, Haw. Pub. Utils. Comm'n, PUC Approves Joint Plan on the Administration of FIT Program Queues to Accelerate Project Completions (Dec. 8, 2014), *available at* http://puc.hawaii.gov/wp-content/uploads/2014/12/20141208_PUC_APPROVES_JOINT_PLAN_ON_THE_ADMINISTRATION_OF_FIT_PROGRAM_QUEUES_TO_ACCELERATE_PROJECT_COMPLETIONS.pdf.

92. *Id.*

93. *Id.*

94. H.B. 1943, 27th Leg., Reg. Sess., § 1 (Haw. 2014), http://www.capitol.hawaii.gov/session2014/bills/HB1943_CD1_.htm.

95. *Id.*

96. *Id.* § 2.

97. S.B. 2658, 27th Leg., Reg. Sess., § 1 (Haw. 2014), *available at* http://www.capitol.hawaii.gov/session2014/bills/SB2658_HD2_.PDF.

98. *Id.*

99. *Id.* § 3.

100. H.B. 1942, 27th Leg., Reg. Sess. (Haw. 2014), *available at* http://www.capitol.hawaii.gov/session2014/bills/HB1942_CD1_.pdf.

Energy Group and its affiliate, Ikehu Molokai LLC, to assist with the construction of a renewable energy project on Molokai Island.[101]

The Hawaii Department of Business, Economic Development and Tourism issued its 2014 Annual Report in December 2014.[102] According to the report, the State of Hawaii has reached its interim goal for renewable energy development two years ahead of schedule.[103] The report noted that as of the end of 2013, the state had achieved a level of 18% renewable energy, surpassing its 2015 goal of 15%.[104]

6. Idaho

The Idaho Public Utilities Commission (ID PUC) approved a twenty-year PPA for an approximately 80 MW solar photovoltaic project that included a novel avoided cost provision in *In the Matter of the Application of Idaho Power Company for Approval or Rejection of an Energy Sales Agreement with Grand View PV Solar Two, LLC*.[105] The agreement was "the first of its type . . . that contains negotiated avoided cost rates based upon the incremental cost, integrated resource plan pricing methodology."[106]

> Over the 20-year term of the Agreement, monthly rates will vary from approximately $31/megawatt hour (MWh) for light load hours in the early months to as high as $159/MWh for heavy load hours in the later years of the Agreement. The equivalent 20-year levelized avoided cost rate would amount to approximately $73.41/MWh.[107]

"The agreement also contains a solar integration charge" that "starts at $0.99/MWh for the first year of the [a]greement (2015) and escalates to $1.84/MWh in 2036."[108] Moreover, the agreement contains provisions for a reduced price if the project does not perform in conformance with generation estimates rather than a 90/110 firmness requirement, which the ID PUC has noted Idaho Power Company prefers in all Public Utility Regulatory Policies Act (PURPA) qualifying facilities (QF) agreements.[109]

7. Montana

The Montana Public Service Commission granted NorthWestern Power's request for a waiver from the requirement under the RPS statute section 69-3-2004(11)(a) that it obtain a certain amount of capacity from community-based

101. *Id.*

102. DEP'T OF BUS., ECON. DEV. & TOURISM, STATE OF HAW., ENERGY RESOURCE COORDINATOR'S ANNUAL REPORT (2014), *available at* http://energy.hawaii.gov/wp-content/uploads/2011/10/ERC2014_12.01.14.pdf.

103. *Id.* at 3.

104. *Id.* at 10.

105. Docket No. IPC-E-14-19, Order No. 33179, 2014 WL 6480260, at *1 (Idaho Pub. Utils. Comm'n Nov. 14, 2014), *available at* http://www.puc.idaho.gov/fileroom/cases/elec/IPC/IPCE1419/ordnotc/20141114FINAL_ORDER_NO_33179.PDF.

106. *Id.*

107. *Id.*

108. *Id.* at *2.

109. *Id.*

renewable energy projects.[110] The waiver was granted because the Western Area Power Administration denied a request by NorthWestern Power to interconnect Compass Wind, LLC.[111]

8. Nevada

In a study conducted pursuant to Nevada Assembly Bill 428 of the 2013 Legislative Session, Energy + Environmental Economics (E3) examined net metering in Nevada.[112] E3's conclusions include:

> (1) [net metering systems] are a small percentage of generation as of the end of 2013, but are expected to grow rapidly over the next three years; […] (2) [net metering] increases the overall cost of energy for the State of Nevada; […] (3) [net metering] has little impact on emissions due to renewable portfolio standards requirements for Nevada; […] (4) [net metering] participants pay more than they would have otherwise; […] (5) the impact on non-[net metering] participants varies by the vintage of the [net metering] system; […] (6) [net metering] results in lower utility revenue requirements; […] (7) [net metering] has few macroeconomic impacts; [and] (8) [net metering] participants have higher than median incomes.[113]

The study recommends that statutory changes be adopted by the legislature that "will enable the [c]ommission to design rates that are both equitable and further the goals of renewable energy in Nevada."[114]

On December 17, 2014, the Public Utility Commission of Nevada (NV PUC) voted to permit Nevada Power Company, doing business as Nevada Energy, to proceed with a pilot program for Voltage and Volt-Ampere Reactive Control and Optimization.[115] Bids for the program were due December 15, 2014, and the system is expected to be installed and go live by May 18, 2015.[116] The pilot program will run for one year.[117] Nevada Energy selected five substations to participate in the program that represent a 2014 system peak of 324 MWs.[118] A workshop is scheduled in April 2015 to update the NV PUC and the parties on the implementation of the program.[119]

9. New Mexico

On March 6, 2014, Governor Martinez signed two bills into law that amended the New Mexico RPS requirements under the Renewable Energy Act, New

110. NorthWestern Energy's Petition for a Waiver from Full Compliance with the Community Renewable Energy Project Purchase Obligation for Calendar Year 2013, Docket No. D2013.10.77, Order No. 7334g, 2014 WL 7189602, at *3 (Mont. Pub. Serv. Comm'n Dec. 17, 2014).

111. *Id.* at *2.

112. Investigation to Examine Cost and Benefits of Net Metering, Docket No. 13-07010, 2014 WL 4961198, at *1 (Nev. Pub. Utils. Comm'n Sept. 30, 2014).

113. *Id.* at *3.

114. *Id.* at *4.

115. Investigation Regarding Voltage and Volt-Ampere Reactive Control and Optimization, Docket No. 12-10013 (Nev. Pub. Utils. Comm'n Dec. 17, 2014) *available at* http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2010_THRU_PRESENT/2012-10/43387.pdf.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

Mexico Statutes Annotated (NMSA) 1978.[120] First, H.B. 232 amends section 62-15-34 of the Act by changing the reporting date for distributed cooperatives.[121] Additionally, the measurement of the "reasonable cost threshold," the threshold by which a distributed cooperative may be exempted from adding additional renewables, was further defined as "an amount that shall be no greater than one percent of the distribution cooperative's gross receipts from business transacted in New Mexico for the preceding calendar year."[122] Second, S.B. 81 amends section 62-16-4 of NMSA by exempting educational institutions from certain utility charges related to renewable energy.[123]

In 2014, the New Mexico Public Regulation Commission (NM PRC) continued to refine the RPS requirements under the Renewable Energy Act, NMSA 1978, sections 62-16-1 to 62-16-10. On April 16, 2014, the Commission amended the rules governing how investor-owned utilities calculate costs to meet the RPS.[124] The diversity requirements, enacted in 2013 (which include technology-based carve-outs) remained undisturbed.[125] The NM PRC allowed investor-owned utilities to receive a one-for-one credit for every kilowatt-hour of solar and wind energy produced.[126] The NM PRC also added a group of costs that may be included in the calculation for the "reasonable cost threshold."[127]

The NM PRC amended the rule on renewable energy certificates. Previously, in December 2013, the NM PRC had amended the renewable energy certificates rule to provide for a two-to-one calculation for certain credits based on the technology of the resource.[128] On April 16, 2014, this was vacated and the original definition set by the legislature was restored: "'renewable energy certificate' means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one kilowatt-hour of electricity generation from a renewable energy resource."[129]

10. Oregon

On December 1, 2014, the Oregon Department of Energy (ODOE) announced it would make up to $1.5 million in grants available for renewable

120. H.B. 232, 2014 Reg. Sess. (N.M. 2014), *available at* http://www.nmlegis.gov/Sessions/14%20Regular/final/HB0232.pdf.; S.B. 81, 2014 Reg. Sess. (N.M. 2014), *available at* http://www.nmlegis.gov/Sessions/14%20Regular/final/SB0081.pdf.

121. H.B. 232, *supra* note 120, § 1.

122. *Id.*

123. S.B. 81, *supra* note 120, §1.

124. Revised Final Order, Case No. 13-00152; *see also* Press Release, N.M. Pub. Reg. Comm'n, PRC Amends Renewable Energy Rule Again (Apr. 16, 2014) [hereinafter N.M. Press Release], *available at* http://www.nmprc.state.nm.us/administrative-services/docs/press-releases/2014-04-16-RCT2014.pdf.

125. *Id.*

126. *Id.*

127. *Id.*

128. Press Release, N.M. Pub. Reg. Comm'n, PRC Readjusts Rules for Renewable Energy Certificates (Dec. 18, 2013), *available at* http://www.nmprc.state.nm.us/administrative-services/docs/press-releases/2013-12-18-RCTRPS2013.pdf.

129. Revised Final Order, Case No. 13-00152; N.M. Press Release, *supra* note 124.

energy projects.[130] In the announcement, ODOE explained that Oregon Revised Statutes sections 469B.250 through 469B.265 authorize it to provide such grants, and that this particular grant will apply to renewable energy production systems that "use biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas, or wave, tidal or ocean thermal energy technology to produce electrical energy."[131] ODOE stated that the grants may not exceed 35% of the cost of the renewable energy project and may not exceed $250,000 per system.[132]

11. Utah

Senate Bill 242 was passed in the Utah 2014 General Session amending section 59-12-102 of the Utah Code effective July 1, 2014.[133] The amendments include the classification of waste heat as an alternative energy source under the statute, and waste vegetable oil and synthetic gas as a source of biomass energy.[134]

12. Washington

On July 30, 2014, the Washington Utilities and Transportation Commission (WA UTC) issued an interpretive statement regarding its jurisdiction over, and regulation of, net metering facilities.[135] Specifically, the WA UTC addressed the question of whether third-party owners of net metering systems are electrical companies under current Washington law.[136] The WA UTC explained that its jurisdiction over electrical companies includes economic and consumer protection regulations, and that such economic oversight is a "traditional rate base, rate of return regulation."[137] The WA UTC also stated that its "consumer protection oversight of electrical companies is broad and exclusive," because the state's "[Consumer Protection Act] specifically exempts [the] 'actions and transactions . . . regulated under the laws administered by' the [WA UTC]."[138] To determine whether a company is subject to its jurisdiction, the WA UTC explained that it must determine whether the company meets the statutory definition of an "electrical company," and whether there are "factors indicating that the service provided [by the company] is a public service."[139]

With respect to the first inquiry, the WA UTC found that a third-party owner of net metering systems meets the statutory definition of an electrical company

130. Press Release, Or. Dep't of Energy, Renewable Energy Development Grants Opportunity Announcement at 3 (Dec. 1, 2014), *available at* http://www.oregon.gov/energy/BUSINESS/Incentives/docs/EIP-Renew-Grant-OA.pdf.

131. *Id.*

132. *Id.* at 11.

133. S.B. 242, 2014 Gen. Sess. (Utah 2014), *available at* http://le.utah.gov/~2014/bills/sbillenr/SB0242.pdf.

134. *Id.*

135. Amending and Repealing Rules in WAC 480-108 Relating to Electric Companies-Interconnection With Electric Generators, Docket No. UE-112133 (Wash. Utils. & Transp. Comm'n July 30, 2014) [hereinafter WAC 480-108], *available at* http://www.wutc.wa.gov/rms2.nsf/177d98baa5918c7388256a550064a61e/779154169526db0688257d25006e653a!OpenDocument.

136. *Id.*

137. *Id.* at 23.

138. *Id.*

139. *Id.* at 25.

because it is a corporation that owns an electrical plant for hire.[140] With respect to whether the service a third-party owner of net metering systems provides is a public service, the WA UTC explained that, in analyzing the public service requirement, Washington courts look at a variety of factors including whether the service is offered to the public, whether there is a monopoly present, and whether consumers are in need of protection.[141] The WA UTC also explained that, because the public service test is generally a factual determination, "each [such] determination requires an investigation . . . and a detailed examination of the particular facts of the case."[142]

The WA UTC explained that, because of "the proliferation of offers to install and service solar systems," it is inclined to find that third-party owners of net metering systems provide a public service, but it also recognized that reasonable arguments can be made to the contrary.[143] The WA UTC explained that the absence of a natural monopoly for such systems "tilts slightly against such a finding" of public use.[144] However, the WA UTC found that the "risks to consumers strongly favor a finding of public use," and concluded that such providers would likely be subject to its jurisdiction.[145] The WA UTC noted that, although a case-by-case examination of the facts and circumstances of each company's business model would provide a decision regarding jurisdiction "tailored to the specific facts for each company," such an approach would be inefficient.[146] Instead, the WA UTC concluded that "the best course of action would be for the [state] [l]egislature to clarify," by statute, the WA UTC's jurisdiction "over and regulation of third-party owners of net metering systems."[147] According to the WA UTC, this approach "would produce a level of certainty that [it] is unable to provide and could serve to avoid potential litigation over [such] jurisdictional issues."[148]

C. South

1. Arkansas

Previously, in 2013, Arkansas enacted legislation that allowed great flexibility for utility customers under the net metering rules.[149] Late in December 2014, legislation was introduced to amend the net metering rules, which would reduce the rate at which customers were reimbursed for any net metering credits

140. *Id.*

141. WAC 480-108, *supra* note 135, at 26.

142. *Id.* at 27-28.

143. *Id.* at 29-30.

144. *Id.* at 30-31.

145. *Id.* at 31-32.

146. *Id.* at 32.

147. WAC 480-108, *supra* note 135, at 33.

148. *Id.*

149. H.B. 2019, 89th Gen. Assemb., Reg. Sess. (Ark. 2013), *available at* http://www.arkleg.state.ar.us/assembly/2013/2013R/Bills/HB2019.pdf; *see also* Amendments to the Arkansas Public Service Commission's Rules Concerning Meter Aggregation and Combined Billing for Net-Metering Customer, Order No. 7, Docket No. 12-060-R (Ark. Pub. Serv. Comm'n Sept. 3, 2013), *available at* http://www.apscservices.info/pdf/12/12-060-r_61_1.pdf.

that are carried forward into future months.[150] No action was taken on this proposal in 2014.

2. Florida

In November, the Florida Public Service Commission (FL PSC) voted to reduce the energy conservation goals, which include renewable rebate programs, for Florida's largest utilities (Florida Power and Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company).[151] The FL PSC is charged with reviewing and, at its discretion, revising the conservation goals under the Florida Energy Efficiency and Conservation Act every five years.[152] The conservation goals are now approximately 90% of the goals set by the Commission in 2009.[153] The final rule was not issued in 2014.

3. Georgia

On December 16, 2014, the Georgia Public Service Commission approved ten PPAs for 515 MWs of projects for the Georgia Power Company.[154] These PPAs were drafted pursuant to Georgia Power Company's request for proposals under Georgia's Advanced Solar Initiative.[155]

4. Louisiana

Senate Bill 63 was passed in Louisiana, establishing criminal penalties for tax credit fraud by solar electric and thermal contractors who do not meet specific contractual obligations.[156] Legislation was also passed (Senate Bill 447) to "[r]equire[] the State Licensing Board for Contractors to provide testing specifically for solar installers."[157]

5. Mississippi

In July, Mississippi enacted S.B. 2521 which grants authority to public entities to enter into energy performance contracts with terms extending up to

150. H.B. 1004, 90th Gen. Assemb., Reg. Sess. (Ark. 2015).

151. Press Release, Fla. Pub. Serv. Comm'n, Utility Conservation Goals Set to Benefit All Customers (Nov. 26, 2014), http://www.psc.state.fl.us/home/news/index.aspx?id=1211.

152. FLA. STAT. ANN. § 366.82(6) (West 2014); Final Order Approving Numeric Conservation Goals, Order No. PSC-09-0855-FOF-EG (Fla. Pub. Serv. Comm'n Dec. 30, 2009), *available at* http://www.floridapsc.com/library/filings/09%5C12263-09%5C12263-09.pdf.

153. *See generally* Press Release, *supra* note 151.

154. News Release, Ga. Pub. Serv. Comm'n, Georgia Public Service Commission Approves Additional 515 Megawatts of Solar Generation; Adds Solar Project at King's Bay Naval Base (Dec. 16, 2014), *available at* http://www.psc.state.ga.us/GetNewsRecordAttachment.aspx?ID=501.

155. *See generally Advanced Solar Initiative*, *Georgia Public Service Commission*, GEORGIAPOWER.COM, http://www.georgiapower.com/about-energy/energy-sources/solar/asi/advanced-solar-initiative.cshtml (last visited Mar. 30, 2015).

156. S.B. 63, 2014 Reg. Sess. (La. 2014), *available at* http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=SB63&sbi=y.

157. S.B. 447, 2014 Reg. Sess. (La. 2014), *available at* http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=SB447&sbi=y.

twenty years for renewable energy and energy conservation.[158] Prior to this enactment, public entities did not have the authority to enter into long-term third-party financed contracts.

6. South Carolina

In August, Governor Haley signed S.B. 1189 into law.[159] This law authorized the creation of a voluntary Distributed Energy Resource Program and provided new net metering rules favorable to installers of renewable energy.[160] The South Carolina Public Service Commission (SC PSC) is charged with creating the Distributed Energy Resource Program, which is aimed at empowering nonprofits to enter into off-take agreements and incentivizing residential customers to purchase or lease renewable facilities.[161] The SC PSC will determine the cost recovery allowed to utilities or this program, which may not exceed $12 for residential customers, $120 for commercial customer, and $1,200 for industrial customers.[162] As to net metering, S.B. 1189 set forth certain guidelines for system size, eligibility, and rate structuring.[163] To qualify for net metering, residential systems must be 20 kW or less, and nonresidential systems must be 1 MW or less, or meet 100% of the demand of the off-taker.[164] Solar photovoltaic, solar thermal, wind, hydroelectric, geothermal, tidal and wave, recycled biomass, and combined heat all qualify.[165] All systems must be "owned, operated, leased, or otherwise controlled" by the utility customer in order to qualify.[166] Excess energy can be rolled over into the next month.[167] The final ruling remained pending at the conclusion of 2014.[168]

On December 11, 2014, South Carolina utilities and renewable energy advocacy organizations filed a historic settlement agreement with the SC PSC agreeing to certain net metering rules and petitioning for a net metering rate at the retail rate for power.[169]

158. S.B. 2521, 2014 Reg. Sess. (Miss. 2014), *available at* http://billstatus.ls.state.ms.us/documents/2014/html/SB/2500-2599/SB2521SG.htm.

159. S.B. 1189, Gen. Assemb., 120th Sess. (S.C. 2015), *available at* http://www.scstatehouse.gov/sess120_2013-2014/prever/1189_20140521.htm.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. S.B. 1189, *supra* note 159.

166. *Id.*

167. *Id.*

168. *See generally Docket Detail: Docket 2014-246-E*, S.C. PUB. SERV. COMM'N, http://dms.psc.sc.gov/dockets/dockets.cfc?Method=DocketDetail&DocketID=115074 (last visited Feb. 11, 2015) (for Public Service Commission filings, testimony, and publications).

169. Petition of the Office of Regulatory Staff to Establish Generic Proceedings Pursuant to the Distributed Energy Resource Program Act, No. 236 of 2014, Ratification No. 241, Senate Bill No. 1189, Docket No. 2014-246-E (S.C. Pub. Serv. Comm'n 2014), *available at* http://dms.psc.sc.gov/pdf/matters/46A1FEE8-155D-141F-233230A670190EB2.pdf.

7. Texas

The City Council of Austin passed two resolutions aimed at dramatically decreasing CO_2 emissions, increasing renewable development, and creating a renewable portfolio standard.[170] Under City Council Resolution No. 20140828-157, 50% of the city's consumption of energy must be from a renewable source by 2020.[171] Furthermore, Austin Energy must install 600 MW of new large-scale solar by 2017, and 200 MW of distributed solar, local to Austin, by 2020.[172]

The Texas Comptroller of Public Accounts called for an end to the wind energy tax credit in the September 2014 special report, the *Texas Power Challenge*.[173] Specifically, the Comptroller stated, "[i]t is time for the wind energy industry to stand on its own two feet."[174] The Comptroller further called on the renewable energy industry as a whole to develop technology to store renewable energy before displacing other forms of traditional power sources.[175]

D. Mid-Atlantic

1. District of Columbia

On September 12, 2014, the District of Columbia Public Service Commission released its initial proposed District of Columbia Municipal Regulations for implementation of net metering and the community solar program, pursuant to the Community Solar Renewables Energy Act (B20-007).[176]

2. Maryland

Patuxent River Naval Air Station Legislation. On May 16, 2014, Governor O'Malley vetoed H.B. 1168.[177] The bill would have prohibited the Maryland Public Service Commission from approving the construction of a wind-powered generation station within twenty-four miles of the Patuxent River Naval Air Station (PRNAS) before July 1, 2015.[178] The bill also would have prohibited the construction of wind turbines of various heights depending on the distance from the PRNAS during the same period.[179] Instead, Governor O'Malley signed a bill

170. City Council Res. No. 201410-024 (Austin, TX Apr. 10, 2014), *available at* http://www.austintexas.gov/edims/document.cfm?id=208482; City Council Res. No. 20140828-157 (Austin, TX Aug. 28, 2014), *available at* http://www.dsireusa.org/documents/Incentives/20140828-157%20Resolution.pdf.

171. City Council Res. No. 20140828-157, *supra* note 170.

172. *Id.*

173. SUSAN COMBS, TEX. COMPTROLLER OF PUB. ACCOUNTS, TEXAS POWER CHALLENGE: GETTING THE MOST FROM YOUR ENERGY DOLLARS 14 (2014), *available at* http://www.window.state.tx.us/specialrpt/electricity/96-1767.pdf.

174. *Id.*

175. *Id.*

176. Notice of Proposed Rulemaking, Notice No. 5092711 (D.C. Pub. Serv. Comm'n Sept. 12, 2014), *available at* http://www.dcregs.dc.gov/Notice/DownLoad.aspx?noticeid=5092711.

177. Letter from Martin O'Malley, Gov. of Md., to Honorable Michael E. Busch, Speaker of the House, H-101 State House (May 16, 2014), *available at* http://mgaleg.maryland.gov/2014RS/veto_letters/hb1168.pdf.

178. H.B. 1168, 434th Gen. Assemb. (Md. 2014), *available at* http://mgaleg.maryland.gov/2014RS/bills/hb/hb1168e.pdf.

179. *Id.*

that would allow wind turbines to be constructed, provided they would not "create Doppler radar interference for missions at the [PRNAS]."[180]

Renewable Energy on Lands Subject to an Agricultural Easement. The Maryland Agricultural Land Preservation Foundation was authorized to approve the use of land subject to an agricultural easement for the generation of electricity using an "authorized renewable energy source" subject to certain requirements.[181] These requirements include a favorable recommendation from the local agricultural advisory board, that the "[renewable energy] facility occupies no more than 5% or 5 acres, whichever is less, . . . [of] the land subject to an easement," and a determination that the use does not significantly interfere with federal, state, or local "restrictions placed on [the] funds used . . . to purchase the [agricultural] easement."[182]

Changes to Jane E. Lawton Conservation Loan Program. The Jane E. Lawton Conservation Loan Program was amended to exclude certain renewable energy projects from the loan program and focus the program solely on energy efficiency projects.[183]

Changes to County/Municipality Clean Energy Loan Programs. Maryland's statute authorizing counties and municipalities to create clean energy loan programs[184] was amended to allow private lenders to provide capital for a commercial loan.[185] In addition, "with the . . . consent of any holder of a mortgage or deed of trust on the property, a county or municipality [can] collect [clean energy] loan payments owed on a commercial loan . . . through a surcharge on a property owner's property tax bill."[186]

3. New Jersey

Energy Resilience Bank. New Jersey's Energy Resilience Bank (ERB) began accepting applications to finance energy projects in November, with $200 million in funding from New Jersey's second Community Development Block Grant-Disaster Recovery.[187] The ERB aims to improve the state energy sector's ability to provide service in the face of catastrophes like Superstorm Sandy through the installation of distributed generation.[188] According to the ERB, "[i]n addition to providing resilience, the potential benefits of distributed energy resources include lower and more stable energy costs, a cleaner environment through reduced emissions, and increased overall efficiency."[189]

180. S.B. 259, 434th Gen. Assemb., ch. 287 (Md. 2014), *available at* http://mgaleg.maryland.gov/2014RS/Chapters_noln/CH_287_sb0259t.pdf.

181. *Id.*

182. *Id.*

183. S.B. 875, 434th Gen. Assemb., ch. 348 (Md. 2014), *available at* https://legiscan.com/MD/text/SB875/id/1021481/Maryland-2014-SB875-Chaptered.pdf.

184. *See generally* MD. CODE ANN., Local Gov't §§ 1-1101-1-1311 (West 2013).

185. H.B. 202, 434th Gen. Assemb., ch. 473 (Md. 2014), *available at* http://mgaleg.maryland.gov/2014rs/chapters_noln/ch_473_hb0202t.pdf.

186. *Id.*

187. Press Release, N.J. Bd. of Pub. Utils., NJ Energy Resilience Bank Now Accepting Applications (Oct. 20, 2014), *available at* http://www.state.nj.us/bpu/newsroom/announcements/pdf/20141020_erb_press.pdf.

188. *Id.*

189. *Id.*

Funding for Power Storage. In November, the New Jersey Board of Public Utilities (BPU) announced two application periods, each using $3 million in New Jersey Clean Energy Funding, for renewable electric storage and new biopower projects.[190] The funding is intended to leverage over $7 million in projects.[191] The focus is to keep operational "public and critical" facilities during power outages.[192]

Proposed changes in RPS. New Jersey lawmakers have proposed changes in the State's RPS that would require reaching 3 GW of qualified offshore wind generation capacity by 2030 and 4.5 GW of qualified offshore wind generation capacity by 2050, and sourcing of at least 20% of total power by 2020 and over 80% of total power generation by 2050 from in-state Class I renewable energy sources.[193] The current RPS requires that 1.1 GW of power generation come from offshore wind generation by 2028, 4% of total power generation come from solar, wind, wave, or tidal action by 2012, and that 4.1% of total power generation come from solar generation by 2028.[194]

4. Pennsylvania

Pennsylvania's Public Utility Commission issued an order requiring electricity distribution companies to allow net metering of customers who own renewable generation provided that the generation supports the electrical needs of the customer's facility, the customer is not a utility, the generation not exceed 110% of the location's annual electricity needs, and generation does not exceed nameplate limits from the Alternative Energy Portfolio Standards Act of 2004.[195] All systems with a capacity greater than 500 kW must obtain PUC approval for net metering.[196] Customers operating systems with nameplate capacity between 3 MW and 5 MW may qualify for customer-generator facility net metering if "they make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization (RTO) or where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure."[197]

190. Press Release, N.J. Bd. of Pub. Utils., Christie Administration Continues Support for a Diverse Portfolio of Reliable In-State Generation (Nov. 6, 2014), *available at* http://www.state.nj.us/bpu/newsroom/2014/pdf/Storage%20and%20Biopower%20Solicitation%20Press%20Release_11.06.2014.pdf.

191. *Id.*

192. *Id.*

193. S.B. 2444, 216th Leg., 2014 Gen. Assemb. (N.J. 2014).

194. *Id.*

195. Proposed Rulemaking Order, Implementation of the Alternative Energy Portfolio Standards Act of 2004, Docket No. L-2014-2404361 (Pa. Pub. Util. Comm'n Feb. 20, 2014), *available at* http://www.puc.state.pa.us//pcdocs/1269782.doc.

196. *Id.*

197. *Id.*

5. Virginia

On April 6, 2014, Virginia enacted H.B. 1239, which exempts all commercial solar facilities under 20 MW from state and local property taxes.[198] The law does not apply to real property taxes for land upon which solar facilities are installed.[199]

6. West Virginia

Pursuant to the Alternative and Renewable Energy Portfolio Standard Act enacted by the West Virginia Legislature in 2009,[200] the Public Service Commission of West Virginia issued its 2014 Alternative and Renewable Energy Resource Planning Assessment (Assessment).[201] This Assessment, among other things, identifies the current and pending renewable energy facilities in the state and summarizes annual alternative and renewable energy portfolio standard compliance plans filed by West Virginia's seven electric utilities.

E. Midwest

1. Illinois

The Illinois Commerce Commission granted a certificate of public convenience and necessity to Clean Line Energy Partners to build and operate the first merchant-owned electric transmission line in the state.[202] The proposed $2 billion 600kV "Rock Island Clean Line" will deliver 3.5 GW of wind power from northwest Iowa to Illinois and is expected to reduce electric rates in Illinois and help the state meet its renewable portfolio standard goals.[203] The Rock Island Clean Line has already secured key regulatory approvals from the Federal Energy Regulatory Commission (FERC) but is awaiting approvals from the Iowa Utilities Board.[204]

2. Iowa

On July 11, 2014, the Iowa Supreme Court upheld a PPA between Eagle Point Solar (EPS) and the City of Dubuque (Dubuque) for the behind-the-meter sale of power by the kWh from solar power (photo voltaic) arrays.[205] The court held that such an arrangement was not sufficiently "clothed with the public interest" so as to transform EPS into a "public utility" or "electric utility" that

198. H.B. 1239, 2014 Reg. Sess. (Va. 2014), *available at* http://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+CHAP0737.

199. *Id.*

200. W. VA. CODE ANN. § 24-2F-1-24-2F-12 (West 2009).

201. PUB. SERV. COMM'N OF W. VA., 2014 ALTERNATIVE AND RENEWABLE ENERGY RESOURCE PLANNING ASSESSMENT (2014), *available at* http://www.legis.state.wv.us/legisdocs/reports/agency/P09_FY_2014_2500.pdf.

202. Petition for an Order Granting Rock Island Clean Line LLC a Certificate of Public Convenience and Necessity, Docket No. 12-0560 (Ill. Commerce Comm'n Nov. 25, 2014).

203. *Id.*

204. *Order Conditionally Authorizing Proposal and Granting Waivers in Part, Rock Island Clean Line LLC*, 139 F.E.R.C. ¶ 61,142 (May 22, 2012).

205. SZ Enters., LLC v. Iowa Utils. Bd., 850 N.W.2d 441, 443-44 (Iowa 2014).

would be prohibited by statute from making such sales within the exclusive service territory of Interstate Power and Light Company (IPL).[206]

In this case, EPS was "in the business of providing design, installation, maintenance, monitoring, operational, and financing assistance services" with respect to solar electric generation systems in Iowa.[207] Dubuque was pursuing the development of a renewable energy resource in the form of an on-site solar power system to satisfy a portion of the electric power needs of a single city building within the exclusive electric service territory of IPL, and sought to enter into a long-term financing agreement with EPS to accomplish that goal.[208] EPS proposed to finance, install, own, operate, and maintain the solar system and charge Dubuque on a cents-per-kWh basis for the electric output.[209] Under the PPA, EPS would be entitled to incentives associated with the solar power system,[210] the building would continue to remain connected to the electric grid, and Dubuque would continue to purchase electricity from IPL to satisfy some of the electric energy needs of the building.[211]

EPS petitioned the Iowa Utilities Board (IUB) for a declaratory order determining that EPS was neither a "public utility" subject to regulation by the IUB under Iowa law nor an "electric utility" subject to the exclusive service territory provisions of Iowa law.[212] On April 12, 2012, the IUB issued an order finding that, under a bright-line test based solely on the fact that EPS proposed to sell electricity on a per-kWh basis, EPS met the definitions of "public utility" and "electric utility."[213]

On judicial review of the IUB's decision, the Iowa District Court held that the IUB erred, finding that, under the authority of *Iowa State Commerce Commission v. Northern Natural Gas Co.*,[214] the IUB should have applied an eight-factor test established by *Natural Gas Service Co. v. Serv-Yu Cooperative, Inc.*,[215] rather than the IUB's bright-line single-factor test to determine whether EPS was acting as a "public utility."[216] Applying the eight-factor test, the Iowa

206. *Id.* at 468-70.

207. *Id.* at 444.

208. *Id.*

209. *Id.*

210. *SZ Enterprises*, 850 N.W.2d at 444-45.

211. *Id.* at 445.

212. *Id.*

213. *Id.* at 445-46.

214. Iowa State Commerce Comm'n v. N. Natural Gas Co., 161 N.W.2d 111, 115 (Iowa 1968).

215. Natural Gas Serv. Co. v. Serv-Yu Coop., Inc., 219 P.2d 324, 325-26 (Ariz. 1950).

216. *SZ Enterprises*, 850 N.W.2d at 447; *Natural Gas Serv. Co.*, 219 P.2d at 325-26. The eight Serv-Yu factors are:

> (1) [w]hat the corporation actually does; (2) [a] dedication to public use; (3) [a]rticles of incorporation, authorization, and purposes; (4) [d]ealing with the service of a commodity in which the public has been generally held to have an interest; (5) [m]onopolizing or intending to monopolize the territory with a public service commodity . . . ; (6) [a]cceptance of substantially all requests for service . . . ; (7) [s]ervice under contracts and reserving the right to discriminate is not always controlling . . . ; and (8) [a]ctual or potential competition with other corporations whose business is clothed with the public interest.

Natural Gas Serv. Co, 219 P.2d at 325-26; *SZ Enterprises*, 850 N.W.2d at 447-48.

District Court held that EPS was neither a "public utility" nor an "electric utility."[217]

On appeal from district court, a divided Iowa Supreme Court held (4-2) that: (1) the IUB is not entitled to deference on this issue; (2) under a de novo review, the core issue is whether the transaction was sufficiently clothed in public interest to make EPS a "public utility"; and (3) that the resolution of this issue should be informed by the eight-factor test established in *Serv-Yu*.[218] In weighing these factors, the Iowa Supreme Court agreed with the district court and held that EPS would not be acting as a "public utility."[219] The court also held that under Iowa law, an entity that is neither a "public utility" nor a "city utility" is not an "electric utility" subject to the exclusive service territory provisions of Iowa law.[220]

On January 7, 2014, the IUB initiated an informal notice-of-inquiry proceeding to gather information relating to the policy and technical issues associated with the potential for widespread use of distributed generation in Iowa, including consumer protection, interconnection, and safety.[221] The order initiating the proceeding solicited comments from interested parties on the potential benefits and challenges of distributed generation for utilities and ratepayers, as well as the policies the IUB, other state agencies, or the Iowa General Assembly should examine with respect to distributed generation and other related topics.[222] Subsequent orders solicited additional comments specifically relating to net metering, interconnection, and consumer protection and education in the context of distributed generation. The IUB also prepared and invited comments on a draft of a distributed generation checklist. Most recently, the IUB asked interested parties to submit draft language for proposed rule changes to the IUB's administrative rules that incorporate additional standards for (1) pre-application, site control, supplemental review, and confidentiality; (2) testing of existing customer-owned generation; (3) periodic inspection of distributed generation interconnection; and (4) allowing studies of and group requests for distributed generation interconnection for neighborhood service areas or new developments.[223] The proceeding was still pending at the close of 2014.

3. Kansas

On April 16, 2014, Kansas enacted H.B. 2101, which extends and amends Kansas' net metering rules.[224] The law grandfathers in facilities that were installed prior to July 1, 2014. New installations will have their net metering credits limited

217. *SZ Enterprises*, 850 N.W.2d at 449.

218. *Id.*

219. *Id.* at 468.

220. *Id.* at 469-70.

221. Order Opening Inquiry on Distributed Generation and Soliciting Comments, Docket No. NOI-2014-0001, at 1-2 (Iowa Dep't of Commerce Utils. Bd. Jan. 7, 2014), *available at* https://efs.iowa.gov/cs/groups/external/documents/docket/mdaw/mjez/~edisp/213037.pdf.

222. *Id.* at 3.

223. *In re* Distributed Generation, Additional Comments, Docket No. NOI-2014-0001 (Iowa Utils. Bd. Oct. 24, 2014), *available at* https://efs.iowa.gov/cs/idcplg?IdcService=GET_FILE&dID=266343&allowInterrupt=1.

224. S. Sub. H.B. 2101, 2013-2014 Leg. Sess. (Kan. 2014), *available at* http://www.kslegislature.org/li/b2013_14/measures/documents/hb2101_enrolled.pdf.

to 15 kW for residential customers and 100 kW for commercial customers.[225] To change any rates associated with the new net metering rules, utilities must petition a rate case before the Kansas Corporation Commission.[226]

4. Minnesota

Repeal of Community Energy Planning Grants Program. The legislature repealed the Community Energy Planning Grants program[227] which provided grants to local units of government to prepare and implement comprehensive energy programs, including expanding the use of renewable energy.[228]

Value of Solar Tariff. In 2013, the legislature passed a bill allowing utilities the option to use a value of solar tariff in lieu of the standard net metering rate for customers with distributed solar photovoltaic panels.[229] The bill required the Minnesota Department of Commerce (MN DOC) to establish a calculation methodology to quantify the value of distributed photovoltaics. The specific value components required for inclusion in the calculation were: energy and its delivery; generation capacity; transmission capacity; transmission and distribution line losses; and environmental value.[230] The MN DOC's methodology was submitted to the Minnesota Public Utilities Commission (MN PUC) in January 2014 and approved by the MN PUC on April 1, 2014.[231] No utility has opted to use the value of solar tariff as of the end of 2014, opting instead to continue their use of net metering.

5. Missouri

On September 11, 2014, the Missouri Supreme Court heard oral arguments in *Earth Island Institute v. Empire District Electric Co.*[232] The petitioners in *Earth Island* assert that the Missouri Public Service Commission (MO PSC) wrongly exempted Empire District Electric Company from the 2% solar carve-out in Missouri's RPS.[233] MO PSC asserts that the utility already receives 15% of its generation from renewable sources, thereby meeting the RPS requirements, and that adding a 2% solar carve-out would impose an additional compliance burden.[234] A decision is expected in 2015.

In July, Missouri extended its income tax dedication for residential taxpayers with solar installations. The deduction was extended by S.B. 601, which maintains

225. *Id.*

226. *Id.*

227. MINN. STAT. ANN. § 216C.14 (West 2012).

228. 2014 Minn. Sess. Law Serv. ch. 222 (West).

229. 2013 Minn. Laws 114-116.

230. *Id.*

231. *In re* Establishing a Distributed Solar Value Methodology, Order Approving Distributed Solar Value Methodology, Docket No. E-999/M-14-65 (Minn. Pub. Utils. Comm'n Apr. 1, 2014).

232. Docket No. SC93944 (Mo. 2014) [hereinafter Petition Brief], *available at* http://www.eenews.net/assets/2014/09/11/document_ew_02.pdf.

233. MO. REV. STAT. § 393.1020 (2014); Petition Brief, *supra* note 232.

234. *Id.*

the same level deduction.[235] The deduction is now set to expire on December 31, 2020.[236]

6. Nebraska

On December 12, 2014, the Nebraska Power Review Board issued its findings of a study mandated by L.B. 1115.[237] The study found that Nebraska had the capacity to build more wind energy capacity, at least 2,000 MW of capacity.[238] The study also concluded that Nebraska's existing transmission infrastructure could enable the exportation of wind energy to other states.[239] Finally, further development of the state's transmission system could allow for up to 10,000 MW of wind capacity.[240]

7. Ohio

Amended Substitute House Bill 483 (H.B. 483). As part of Governor John Kasich's mid-biennium budget review proposal, the Ohio General Assembly introduced H.B. 483 on March 18, 2014.[241] The bill's effective date for the wind setback provisions is September 15, 2014.[242] H.B. 483 amends sections 4906.20 and 4906.201 of the Ohio Revised Code, which prescribe regulations regarding economically significant wind farms (5-50 MW) and utility wind farms (50 MW or more) in the state.[243] Under current law, two minimum setbacks for wind turbines of such wind farms exist: (1) a 1,125-foot-minimum setback measured "from the tip of the [turbine's] nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the [Ohio Power Siting Board (OPSB)] certification application;" and (2) a minimum setback distance, measured from the turbine's base to the wind farm property line, equal to one and one-tenth (1.1) times the total height of the turbine from its base to the tip of its highest blade.[244] The bill changes the 1,125-foot-minimum setback by requiring it to be measured, not from the turbine blade to the nearest, habitable, residential structure located on adjacent property at the time of the certification application, but from the turbine blade to the property line of the nearest adjacent property line at the time of the certification application.[245]

235. S.B. 601, 97th Gen. Assemb., 2d Reg. Sess. (Mo. 2014), *available at* http://www.senate.mo.gov/14info/pdf-bill/tat/SB601.pdf.

236. *Id.*

237. L.B. 1115, 103d Leg., 2d Sess. (Neb. 2014), *available at* http://nebraskalegislature.gov/FloorDocs/103/PDF/Intro/LB1115.pdf.

238. NEB. POWER REVIEW BD., NEBRASKA RENEWABLE ENERGY EXPORTS: CHALLENGES AND OPPORTUNITIES (L.B. 1115 STUDY) (2014), *available at* http://nebraskalegislature.gov/FloorDocs/103/PDF/Agencies/Power_Review_Board/512_20141215-125511.pdf.

239. *Id.*

240. *Id.*

241. *Mid-Biennium Review*, OHIO LEGIS. SERV. COMM'N, http://www.lsc.state.oh.us/fiscal/mbr130/defaultlink.htm (last visited Feb. 12, 2015).

242. *Id.*

243. OHIO LEGIS. SERV. COMM'N, BILL ANALYSIS: AM. SUB. H.B. 483, 130TH GENERAL ASSEMBLY (AS PASSED BY THE SENATE) 165 (2014).

244. *Id.*

245. *Id.*

Renewable Energy Legislation. On March 28, 2014, the Ohio General Assembly introduced Substitute Senate Bill 310 (Sub. S.B. 310), effective September 12, 2014.[246] Sub. S.B. 310 amends several sections of the Ohio Revised Code to make changes to the renewable energy, energy efficiency, and peak demand reduction requirements, among other provisions.[247] Current law requires electric distribution utilities (EDUs) and electric services companies (ESCs) to provide 25% of their electricity supply required for their Ohio retail electric sales from "alternative energy resources" by 2025.[248] "Alternative energy resources" include both advanced and renewable energy resources.[249] While annual benchmarks were provided for meeting the renewable portion of the alternative energy requirement, no annual benchmarks were provided for meeting the advanced portion.[250] Sub. S.B. 310 repeals the advanced energy component entirely, eliminating references to the "alternative energy resource requirements" and referring instead to the "renewable energy resource requirements."[251]

The bill also freezes the renewable and solar energy benchmarks at the 2014 level (2.5% of the electricity supply from renewable energy resources, including 0.12% from solar energy resources) for 2015 and 2016.[252] Sub. S.B. 310 requires the benchmarks to resume in 2017 at the 2015 levels provided in current law, as well as be extended for two years, until 2027, to accommodate the two-year freeze.[253]

Additionally, current law requires that at least one-half of the renewable energy resources that an EDU or an ESC implements to meet the benchmarks must be met through facilities located in Ohio and that the remainder must be met through resources that are deliverable into Ohio.[254] Sub. S.B. 310 eliminates the in-state requirement.[255] The bill instead allows the renewable energy resource requirements to be met through either facilities located in Ohio or resources that are deliverable into Ohio.[256]

While current law allows RECs to be purchased from any entity and provides examples of such entities, Sub. S.B. 310 modifies and adds to these examples.[257] First, the bill modifies the description of an owner or operator of a hydroelectric generating facility by including language that adds a hydroelectric generating facility "that produces power that can be shown to be deliverable into [Ohio]."[258] Sub. S.B. 310 further modifies the placed-in-service date for certain hydroelectric

246. *Status Report of Legislation*, OHIO LEGIS. SERVICE COMM'N, http://www.lsc.state.oh.us/status130/senatebills.htm (last visited Feb. 12, 2015).

247. Sub. S.B. 310, 130th Gen. Assemb., Reg. Sess. (Ohio 2014).

248. OHIO LEGIS. SERV. COMM'N, BILL ANALYSIS: SUB. S.B. 310, 130TH GENERAL ASSEMBLY (AS REPORTED BY H. PUBLIC UTILITIES) 7 (2014) [hereinafter SUB. S.B. 310].

249. *Id.*

250. *Id.*

251. *Id.* at 8.

252. *Id.*

253. SUB. S.B. 310, *supra* note 248, at 8.

254. *Id.*

255. *Id.* at 10.

256. *Id.*

257. *Id.*

258. SUB. S.B. 310, *supra* note 248, at 10.

generating facilities.[259] Finally, the bill also adds a seller of compressed natural gas that has been produced from biologically derived methane gas as a potentially qualified renewable energy resource.[260]

Sub. S.B. 310 maintains current energy savings through 2014.[261] However, the bill requires an EDU, for 2015 and 2016, to achieve annual energy efficiency (EE) savings equal to the result of subtracting the cumulative EE savings achieved since 2009 from the product of multiplying the applicable baseline for EE savings by 4.2%.[262] This represents a change from the annual incremental EE savings of 1% for 2015 and 2016 required under current law.[263] Further, if the result of the calculation is zero or less for the year for which it is being made, the bill prohibits the EDU from being required to achieve additional EE savings for that year, but the EDU is permitted to do so.[264]

Sub. S.B. 310 maintains current peak demand reduction (PDR) requirements through 2014, but it requires an EDU, for 2015 and 2016, to achieve PDR equal to the result of subtracting the cumulative PDR achieved since 2009 from the product of multiplying the baseline prescribed for PDR by 4.75%.[265] If the result of the calculation is zero or less for the year for which it is being made, the bill prohibits the EDU from being required to achieve additional PDR for that year, but the EDU is permitted to do so.[266] Sub. S.B. 310 also specifies that the EDU must achieve an additional 0.75% of PDR from 2017 to 2020.[267] Under current law, EDUs must implement PDR programs designed to achieve a 1% PDR and an additional 0.75% PDR each year through 2018.[268] Further, the bill prohibits the baseline prescribed for EE savings and PDR from including the load and usage of: (1) beginning in 2017, a customer for which a reasonable arrangement has been approved, and (2) a customer that has opted out of the utility's portfolio plan.[269]

Sub. S.B. 310 also directs what is to happen with existing portfolio plans.[270] The bill gives EDUs two options: (1) continue to implement the existing plan through the end of 2016; or (2) seek an amendment of the plan.[271] Sub. S.B. 310 also includes opt-out provisions, which permit certain customers to temporarily opt-out of an EDU's portfolio plan between January 1, 2015, and December 31, 2016, if the plan has been amended, or to opt-out for a longer period beginning January 1, 2017, regardless of whether or not the plan has been amended.[272] Under the bill, the opt-out provisions apply to higher voltage or higher consumption

259. *Id.* at 12.
260. *Id.* at 10.
261. *Id.* at 12.
262. *Id.*
263. *Id.*
264. SUB. S.B. 310, *supra* note 248, at 13.
265. *Id.*
266. *Id.*
267. *Id.*
268. *Id.*
269. *Id.* at 13-14.
270. SUB. S.B. 310, *supra* note 248, at 14.
271. *Id.*
272. *Id.* at 15.

customers.[273] After opting-out of an EDU's portfolio plan, these customers are exempt from any EE or PDR cost recovery mechanisms.[274] The bill also removes their opportunity and ability to obtain direct benefits from the portfolio plan(s) and limits their eligibility to participate in or directly benefit from programs arising from the plan(s).[275] In addition to being permitted to opt-out under Sub. S.B. 310, a customer is also permitted to opt back in to the EDU's portfolio plan if the customer has previously opted-out for at least three consecutive calendar years.[276] A customer that opts-in must remain in for at least three consecutive calendar years before it can again choose to opt-out.

8. Oklahoma

On April 21, 2014, Oklahoma enacted S.B. 1456 which significantly amended the state's net metering rules.[277] First, the law states that utilities are not required to purchase any monthly net excess generation, but that customers must provide such excess generation to utilities free of any charge.[278] Second, the law allows utilities, with the permission of the Oklahoma Corporation Commission (OCC), to apply a fixed charge, or a tax, to customers who install net-metered generation.[279] Simultaneous to signing S.B. 1456, Governor Fallin issued Executive Order 2014-07, which requires that OCC consider all alternative rate reforms, such as time-of-use and demand charges, before allowing the implementation of a fix charge on net-metered generation.[280]

9. Wisconsin

The Public Service Commission of Wisconsin (PSCW) approved proposals by the state's investor-owned utilities to charge fees on residential solar systems and to pay a reduced rate for the power these systems sell back to the grid. The PSCW also approved a substantial increase to the fixed costs customers pay on their monthly electric bills while slightly reducing the per-unit cost of energy.[281]

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.* at 17.

277. S.B. 1456, 2014 Reg. Sess. (Okla. 2014), *available at* http://webserver1.lsb.state.ok.us/cf_pdf/2013-14%20ENR/SB/SB1456%20ENR.PDF.

278. *Id.*

279. *Id.*

280. State of Oklahoma, Office of the Governor, Exec. Order 2014-07 (2014), *available at* https://www.documentcloud.org/documents/1146319-gov-mary-fallin-executive-order-2014-07.html.

281. Final Order on 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, Docket No. 5-UR-107 (Pub. Serv. Comm'n of Wis. Dec. 23, 2014); Final Order on Application of Madison Gas and Electric Company for Authority to Change Electric and Natural Gas Rates, Docket No. 3270-UR-120 (Pub. Serv. Comm'n of Wis. Dec. 23, 2014); Final Order on Application of Wisconsin Public Service Corporation for Authority to Adjust Electric and Natural Gas Rates, Docket No. 6690-UR-123 (Pub. Serv. Comm'n of Wis. Dec. 18, 2014).

II. FEDERAL

A. IRS

On December 19, 2014, President Obama signed the Tax Increase Prevention Act of 2014 (H.R. 5771 or Tax Extenders Bill).[282] The Tax Extenders Bill includes a revision to the section 45 production tax credit (PTC)[283] so construction that began on qualifying renewable facilities prior to January 1, 2015, will be eligible for the $0.023/kWh PTC or option to choose a 30% investment tax credit in lieu of the PTC.[284] The PTC applies to wind, closed biomass, open-loop biomass, geothermal, solar, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities.[285]

On October 31, 2014, Private Letter Ruling 2014-44-025 examined which components qualify for the Investment Tax Credit (ITC) in the case of a solar energy system designed as an integrated assembly of equipment, not all of which generated electricity.[286] The Internal Revenue Service (IRS) concluded that nearly all of the components of the system used solar energy to generate electricity, including the conversion components, energy storage battery, collection panels, control equipment, and wiring, and thus were ITC eligible.[287] The IRS also determined that certain mounts supporting the panels were ITC eligible because these components are essential to the functioning of the solar generating equipment.[288] However, the IRS stated that any "lights, surveillance equipment, motion detectors, two way transmission systems and other attachments" that "protect the equipment from damaging weather and general degradation" do not generate or collect electricity and thus do not qualify for the ITC.[289] Importantly, the IRS stated that the taxpayer must exclude some portion of the basis of any dual-use component that provides structural support to both energy and non-energy property.[290]

B. FERC

On June 17, 2013, Hydrodynamics Inc. (Hydrodynamics), Montana Marginal Energy, Inc. (Montana Marginal Energy), and WINData, LLC (WINData) submitted a Petition for Enforcement and Declaratory Order pursuant to section 210(h)(2)(A) of PURPA. The petition, requesting that the Commission take enforcement action, or, in the alternative, issue a declaratory order finding that Administrative Rule of Montana section 38.5.1902(5) (the Montana Rule), and orders interpreting that rule issued by the Montana Public Service Commission,

282. H.R. 5771, 113th Cong. (2014), *available at* https://www.congress.gov/bill/113th-congress/house-bill/5771.

283. 26 U.S.C. § 45 (2012).

284. Joseph Bebon, *Senate Passes Tax Extenders Bill with Wind PTC Extension*, N. AM. WINDPOWER (Dec. 17, 2014), http://www.nawindpower.com/e107_plugins/content/content.php?content.13761.

285. *Id.*

286. Private Letter Ruling 2014-44-025 (Internal Revenue Serv. Oct. 31, 2014), *available at* http://www.irs.gov/pub/irs-wd/201444025.pdf.

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

fail to implement the rights set forth under PURPA and FERC regulations regarding legally enforceable obligations, and sales of energy and capacity between QFs and utilities.[291] In its order, the FERC stated it did not intend to go to court to enforce PURPA on behalf of petitioners; however, the petitioners may bring their own enforcement action against the Montana Public Service Commission in the appropriate United States district court. Notwithstanding its decision, the FERC issued a declaratory order, finding that the 50 MW installed capacity limit and the Montana Rule were inconsistent with PURPA and the FERC's regulations under PURPA. In doing so, the FERC stated that the Commission's regulations require that a utility purchase any energy and capacity made available by a QF.[292] Under section 292.304(d) of the FERC's regulations, a QF also has the unconditional right to choose whether to sell its power "as available" or at a forecasted avoided cost rate pursuant to a legally enforceable obligation.[293] The FERC declared the Montana Rule is therefore inconsistent with PURPA and the FERC's regulations implementing PURPA to the extent that it offers the competitive solicitation process as the only means by which a QF greater than 10 MW can obtain long-term avoided cost rates. The FERC also stated that the Montana Rule creates "a practical disincentive to amicable contract formation because a utility may refuse to negotiate with a QF at all."[294] "Such obstacles to the formation of a legally enforceable obligation were found unreasonable by the Commission in *Grouse Creek*, and are equally unreasonable here and contrary to the express goal of PURPA to 'encourage' QF development."[295] Finally, the FERC determined "that the 50 MW installed capacity limit applicable to purchases from wind QFs larger than 100 kW but equal to or below 10 MW is inconsistent with PURPA and the FERC's regulations."[296]

291. Notice of Intent Not to Act and Declaratory Order, *Hydrodynamics, Inc.*, 146 F.E.R.C. ¶ 61,193, 2014 WL 1097409 (2014) [hereinafter *Hydrodynamics*].

292. 18 C.F.R. § 292.303(a) (2013).

293. 18 C.F.R. § 292.304(d) (2013).

294. *Hydrodynamics*, *supra* note 291, at P 33.

295. *Id.*

296. *Id.* at P 34.

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