RENEWABLE ENERGY COMMITTEE REPORT

This report summarizes a selection of legislative and regulatory developments at the federal and state level in the areas of renewable energy during 2013.*

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I. STATE ACTIVITY

A. The Northeast

Governors in all six New England states signed an agreement in 2013 to collaborate on energy infrastructure and renewables.[1] The initiative, signed in December 2013, seeks to develop a regional strategy for investing in energy efficiency, new and existing renewable generation, natural gas pipelines and electric transmission.[2] The multi-state strategy would be developed with input from ISO New England and the New England States Committee on Electricity.[3]

1. Connecticut

In June 2013, Governor Malloy signed Senate Bill (SB) 1138[4] into law, expanding the class of Class I renewable energy sources for Connecticut's renewable portfolio standard (RPS).[5] The law changes the definition of Class I renewable energy sources to include geothermal, anaerobic digestion, or other biogas derived from biological sources, as well as thermal electric direct energy conversion.[6] The legislation also increases the capacity of hydropower facilities that can be classified as Class I renewable energy sources from 5 megawatts (MW) to 30 MW and eliminates the requirement that a Class I hydropower facility not cause appreciable change in the river flow.[7] In addition, the bill bars renewable energy sources that used to satisfy other states' RPS goals from counting towards Connecticut's total.[8]

1. Mario Moretto, A*ll Six New England Governors Commit to Joint Energy Infrastructure Agenda*, BANGOR DAILY NEWS (Dec. 5, 2013), http://bangordailynews.com/2013/12/05/politics/all-six-new-england-governors-commit-to-joint-energy-infrastructure-agenda/ (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont).

2. Press Release, State of Conn., New England Governors' Commitment to Regional Cooperation on Energy Infrastructure Issues (Dec. 5, 2013), *available at* http://www.ct.gov/deep/lib/deep/press_releases/2013/New_England_Governors_Statement-Energy_12-5-13_final.pdf.

3. *Id.*

4. S.B. 1138, 2013 Gen. Assemb., Jan. Sess. (Conn. 2013).

5. Press Release, Office of Governor Dannel P. Malloy, State of Conn., Gov. Malloy Signs Bill Modernizing Connecticut's Renewable Energy Portfolio Standards (June 5, 2013), *available at* http://www.governor.ct.gov/malloy/cwp/view.asp?Q=526022&A=4010.

6. S.B. 1138 § 1.

7. *Id.*

8. *Id.*

In September, Connecticut Governor Malloy announced that two renewable projects, a solar installation in Connecticut and a wind farm in Maine, signed long-term contracts to provide clean electricity for the state.[9] In October, the state's Public Utilities Regulatory Authority (CT PURA) approved the power purchase agreements from the 20 MW solar farm and 250 MW wind farm.[10] In the order, CT PURA, which explained that it was not tasked with determining whether the projects were in the best interests of Connecticut ratepayers, noted that "the environmental effects . . . will primarily accrue to the citizens of sparsely populated Aroostook County, certain parts of Canada's Maritime Provinces, and the Atlantic Ocean."[11] The Connecticut Light & Power Company and the United Illuminating Company negotiated to buy the renewable energy as part of the state's goal to obtain 20% of its electricity from clean sources by 2020.[12]

Also in September, the Connecticut Regulation Review Committee voted to continue the moratorium on wind turbines in Connecticut.[13] Specifically, the committee voted to reject, for the fifth time, proposed regulations put forth by Connecticut Siting Council.[14] This extended a two-year moratorium established by the legislature in 2011, which prohibited new wind turbines pending regulations from the Connecticut Siting Council regarding "the size, location, and manner of each wind turbine."[15]

2. Massachusetts

After issuing a joint request, the four Massachusetts utility companies[16] filed contracts to procure 565 MW of renewable energy from six different renewable projects to be built in New England.[17] The deal, a joint effort by NSTAR, Western Massachusetts Electric Company, National Grid, and Unitil, follows from August 2012 legislation directing the utilities "to solicit proposals for long-term contracts" that would provide 4% of their total energy demand

9. Press Release, Office of Governor Dannel P. Malloy, Gov. Malloy: State Selects Two Large-Scale Clean Energy Projects Furthering Connecticut's Commitment to Renewable Energy (Sept. 20, 2013), *available at* http://www.governor.ct.gov/malloy/cwp/view.asp?A=4010&Q=532154.

10. Application for Approval of Class I Renewable Power Purchase Agreements Resulting From Department of Energy and Environmental Protection's July 8, 2013 Requests for Proposals Pursuant to Section 6 of P.A. 13-303, Docket No. 13-09-19, at 1 (Conn. P.U.R.A. Oct. 23, 2013).

11. *Id.*

12. *Id.*

13. Brian Dowling, *Moratorium on Wind Power Holds*, HARTFORD COURANT (Sept. 24, 2013), http://articles.courant.com/2013-09-24/business/hc-wind-regulations-voted-down-20130924_1_turbines-wind-projects-connecticut-siting-council.

14. Brad Kane, *CT Extends Wind Ban Until at Least February*, HARTFORD BUS. J. (Nov. 26, 2013), http://www.hartfordbusiness.com/ARTICLE/20131126/NEWS01/131129938.

15. *Id.*; CONN. GEN. STAT. § 16-50kk (2013).

16. The four companies are NSTAR, Western Massachusetts Electric Company, National Grid, and Unitil.

17. Press Release, Mass. Exec. Office of Energy & Envtl. Affairs, Patrick Administration Announces Largest Procurement of Renewable Energy in New England by Massachusetts Utilities (Sept. 23, 2013), *available at* http://www.mass.gov/eea/pr-2013/reneable-procurement.html; *see also* Andy Metzger, *Renewable Energy Procurement Announced*, COMMONWEALTH (Sept. 24, 2013), http://www.commonwealthmagazine.org/News-and-Features/Online-exclusives/2013/Summer/040-Renewable-procurement-draws-cost-comparisons-with-Cape-Wind.aspx.

from renewable sources.[18] The contracts, which call for a total of six wind projects to be developed in Maine and New Hampshire, are now under review by the Massachusetts Department of Public Utilities.[19]

3. Maine

Maine's omnibus energy bill, House Paper (HP) 1128,[20] was passed June 27, 2013, after the House and Senate overrode the governor's veto.[21] The new law seeks to expand natural gas infrastructure in the state, increase energy efficiency spending to be similar to other states that participate in the Regional Greenhouse Gas Initiative (RGGI),[22] improve electric reliability, and protect the environment.[23] Governor LePage originally supported the bill, but vetoed it in part over controversy surrounding the pilot offshore wind energy project and because the bill did not alter the state's RPS to allow non-wind projects larger than 100 MW to qualify.[24]

4. New York

a. New York Green Bank

In December 2013, New York Governor Andrew Cuomo announced initial funding for the New York Green Bank in the amount of $210 million.[25] The Green Bank is designed to mobilize private investment to build a more cost-effective, resilient and clean energy system in New York.[26]

> The NY Green Bank will partner with private sector institutions by providing financial products such as credit enhancement, loan loss reserves and loan bundling to support securitization and build secondary markets. These products will support economically viable clean energy projects that cannot currently access financing due to market barriers, such as federal policy uncertainty, insufficient performance data, and the lack of publicly traded capital markets for clean energy.[27]

The initiative permits the Green Bank to leverage private sector financing for clean energy projects that create jobs and help make New York's communities more sustainable.[28]

18. *Id.*

19. *Id.*

20. H.P. 1128, 126th Leg., 1st Reg. Sess. (Me. 2013), *available at* http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1128&item=1&snum=126.

21. *Main Overrides Governor Veto and Passes Omnibus Energy Bill*, CENTER FOR CLIMATE & ENERGY SOLUTIONS, http://www.c2es.org/us-states-regions/news/2013/maine-overrides-governor-veto-passes-omnibus-energy-bill (last visited Feb. 25, 2014) [hereinafter *Maine Omnibus Energy Bill*].

22. H.P. 1128 § 1903.

23. *Id.* pt. D.

24. *Maine Omnibus Energy Bill*, *supra* note 21.

25. Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces $210 Million Initial Capitalization to Jump Start N.Y. Green Bank (Dec. 19, 2013), *available at* http://www.governor.ny.gov/press/12192013-funding-to-ny-green-bank.

26. *Id.*

27. *Id.*

28. *Id.*

b. NY-Sun Initiative

"The NY-Sun initiative brings together and expands and extends the length of existing programs administered by the New York State Energy Research and Development Authority (NYSERDA), Long Island Power Authority (LIPA), and the New York Power Authority (NYPA), to ensure a coordinated, well-funded solar energy expansion plan."[29] The current solar program is investing $800 million through 2015 but will be extended through 2023.[30] The program is designed to

> provide longer program certainty to solar developers than current programs, funded through 2015, and is expected to attract significant private investment in solar photovoltaic systems, enable the sustainable development of a robust solar power industry in New York, create well-paying skilled jobs, improve the reliability of the electric grid, and reduce air pollution.[31]

The Sun Initiative is designed to stimulate the marketplace to

> increase[] financial incentives for large, commercial-sized photovoltaic (PV) projects and expand[] incentive programs for small-to-medium residential and commercial systems; provide[] additional funding for its competitively bid solar program for larger-scale and aggregated systems that currently focuses on businesses, colleges and universities, and other large buildings located in New York City, Westchester, and the lower Hudson Valley.[32]

The program is also designed to

> initiate a balance-of-system (BOS) program, where NYSERDA and NYPA will work with private and public partners across New York State, to standardize and streamline procedures for permitting and interconnection, and development and training. It will build on the BOS advancements made by the City University of New York (CUNY) and the efforts underway in the PV Manufacturing Consortium.[33]

c. Energy Efficiency—Build Smart NY

On December 28, 2012, Governor Cuomo "issued an [e]xecutive [o]rder directing state agencies to increase energy efficiency in state buildings by twenty percent in seven years."[34] In conjunction with this announcement, New York "launched 'Build Smart NY,' a plan to strategically implement the executive order."[35] The Build Smart NY program

> will accelerate projects that produce the greatest savings and coordinate all spending. The program will also ensure that cost-effective improvements for energy savings are considered in all of the state's capital project planning. The

29. *About*, NY-SUN INITIATIVE, http://ny-sun.ny.gov/about (last visited Feb. 24, 2014) [hereinafter *About NY-Sun Initiative*]; *see also* NY-SUN INITIATIVE, FACT SHEET (2013), *available at* http://www.ny-sun.ny.gov/sites/default/files/GEN-NYSERDA-sun-fs-1-v4_lowres.pdf.

30. FACT SHEET, *supra* note 29, at 2.

31. *About NY-Sun Initiative*, *supra* note 29 (quoting New York Governor Andrew M. Cuomo on the NY-Sun Initiative).

32. *Id.*

33. *Id.*

34. Press Release, Governor Andrew M. Cuomo, Governor Cuomo Launches "Build Smart NY" Initiative with Executive Order (Dec. 28, 2012), *available at* http://www.governor.ny.gov/press/12282012-smartny.

35. *Id.*

> New York Power Authority (NYPA) has committed to provide $450 million in low-cost financing for this initiative. Additionally, for most projects, no upfront capital spending will be required because agencies will be able to repay the loans through the projects' energy savings. Also in support of Build Smart NY, [NYSERDA's] energy efficiency programs [will] provide . . . information to help state agencies and others make informed energy decisions and also provide . . . financial incentives to help offset the costs of energy efficiency improvements.[36]

4. Rhode Island

The Rhode Island General Assembly passed a Residential Property Assessed Clean Energy (PACE) program that was signed into law by Governor Chafee in July 2013.[37] "PACE is a financing program designed to help qualifying homeowners invest in specified energy efficiency and/or renewable energy improvements[, and] . . . a voluntary program in which municipalities can choose to participate."[38]

B. The West

1. Alaska

Alaska enacted HB 250 in May 2012, authorizing $50 million per year in funding for renewable grants.[39] The authorization applies through June 30, 2023.[40] HB 250 is an amendment to HB 152, enacted in May 2008.[41] HB 152 sets forth the objective of the renewable grants as financing "feasibility studies, reconnaissance studies, energy resource monitoring, and construction of renewable energy projects, natural gas projects, or transmission or distribution infrastructure."[42] Eligible applicants include electric utilities, independent power producers, local governments, or other governmental utilities, including tribal councils, and housing authorities.[43]

2. Arizona

a. ACC Takes Steps to Address Net Metering Cost-Shifting Issue

The Arizona Corporation Commission (ACC) voted 3-2 on November 14, 2013, to modify Arizona Public Service Company's (APS) Net Energy Metering

36. *Id.*

37. *Rhode Island Residential Property Assessed Clean Energy (PACE Program): Overview*, ST R.I. OFF. ENERGY RESOURCES, http://www.energy.ri.gov/renewable/pace/ (last visited Feb. 24, 2014) [hereinafter *Overview R.I. PACE Program*]; *see also* S. 0900, 2013 Gen. Assemb., Jan. Sess. (R.I. 2013).

38. *Overview R.I. PACE Program*, *supra* note 37.

39. *Renewable Energy Grant Program: Alaska*, DATABASE ST. INCENTIVES FOR RENEWABLES & EFFICIENCY, http://dsireusa.org/incentives/incentive.cfm?Incentive_Code=AK12F&re=1&ee=1%20%20 (last updated Apr. 19, 2013); *see also* H.B. 250, 27th Leg., 2d Sess. (Alaska 2012).

40. *Renewable Energy Grant Program: Alaska*, *supra* note 39.

41. *Id.*

42. H.B. 152, 25th Leg. § 42.45.045(e) (Alaska 2008).

43. *Id.* § 42.45.045(l).

(NEM) program.[44] This modification was initiated in an attempt to address the shifting in costs caused when owners of distributed generation no longer pay transmission and distribution and other utility charges required to maintain infrastructure necessary for delivery of electricity, placing a greater burden on those customers who are still obtaining electricity from the grid.[45] The ACC voted to adopt a 70 cent/kW-installed monthly charge for ratepayers with rooftop solar, which will be assessed beginning December 31, 2014.[46] Existing systems as of December 2013 will be grandfathered in and not assessed the charge; although, this point was debated before the ACC.[47] For the average-sized rooftop installation of 7 kW, the charge amounts to a monthly charge of $4.90.[48] The amount of this charge was based on the amount that the PV industry said that customers could absorb and still be willing to install a solar PV system.[49] The APS and Commissioners Pierce and Brenda Burns felt that it did not go far enough in addressing the cost shift resulting from NEM.[50]

b. Renewable Energy Standard Implementation Plans

On July 12, 2013, APS filed its 2014 Renewable Energy Standard (REST) Implementation Plan (Plan) to reset its energy adjustor.[51] The APS REST Plan did not propose any new programs, but requested funding to fulfill previously approved projects.[52] The Plan included continuation of all ACC approved programs, a proposal to expand the RES adjustor from three customer classes to five customer classes to better match various commercial customer segments and improve proportionality, a request for minor revisions to the distributed energy administration plan, and a request for budget approval in the amount of $143 million and a request to collect $114 million through the RES adjustor (in addition to a $28.6 million rollover from the prior year) while retaining the flexibility to modify up-front incentives as discussed in the APS net metering proposal.[53] The proposed REST Plan continued power purchase agreement contract commitments of $50.6 million, production based incentives of $40.1 million, and AZ Sun Program revenue requirements of $36.2 million.[54]

At the ACC December 17, 2013, Open Meeting, the ACC approved the APS Plan with the following modifications:

44. Ryan Randazzo, *Commission Votes to Raise APS Solar Customers' Bills*, AZCENTRAL.COM (Nov. 14, 2013), http://www.azcentral.com/business/arizonaeconomy/articles/20131114aps-solar-customer-bills-higher.html.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. Application, Application of Arizona Public Service Company for Approval of its 2014 Renewable Energy Standard Implementation Plan for Reset of Renewable Energy Adjustor, Docket No. E-01345A-13-0140 (Ariz. Corp. Comm'n July 12, 2013).

52. *Id.*

53. *Id.*

54. *Id.*

- The ACC adopted a mechanism to hold any over-collection in an interest bearing account on behalf of rate payers.[55]
- The ACC also reduced APS's AZ Sun program from 50 MW to 20 MW. As a result, APS will build less solar over the next few years. APS may seek ACC approval if it needs more solar in the future. The ACC's rationale was that APS does not need the additional 30 MW to meet the REST standards.[56]
- Finally, the ACC adopted a proposal to provide more incentives for solar water heating.[57]

On October 25, 2013, the ACC approved the 2014 REST Plan of Tucson Electric Power (TEP).[58] The approved plan included a budget of $40 million.[59] As it did with APS, in approving the TEP plan, the ACC took steps to lessen certain incentives and reduced TEP's obligations to build solar facilities beyond those required to meet the REST standards.[60]

c. U.S. Department of Interior Approved the Quartzsite Solar Energy Project and the Mohave County Wind Farm to be Built on Federal Land

On May 30, 2013, the Bureau of Land Management (BLM), U.S. Department of the Interior, issued a Record of Decision (ROD) approving the use of 1,675 acres of federal land in southwestern Arizona for the development of the Quartzsite Solar Energy Project.[61] The project is owned by Quartzsite Solar Energy, LLC, a subsidiary of SolarReserve, LLC, and will use SolarReserve's unique "power tower" technology to create steam from the sun's heat.[62] The project will produce up to 100 MW and is expected to create 438 construction jobs and forty-seven full-time jobs in operations and maintenance.[63]

Less than one month later, on June 28, 2013, BLM issued an ROD for the Mohave County Wind Farm Project.[64] The ROD approves the use of over 38,000 acres of federal land in northwestern Arizona for the construction of a

55. Arizona Public Service Company—Request for Approval of its 2014 Renewable Energy Standard Implementation Plan for Reset of Renewable Energy Adjustor, Decision No. 74237, Docket No. E-01345A-13-0140, ¶ 48 (Ariz. Corp. Comm'n Jan. 7, 2014).

56. *Id.* ¶¶ 36-37, 47-48.

57. *Id.* ¶ 53.

58. Application of Tucson Electric Power Company for Approval of its 2014 Renewable Energy Standard and Tariff Implementation Plan, Decision No. 74165, Docket No. E-01933A-13-0224 (Ariz. Corp. Comm'n Oct. 25, 2013).

59. *Id.* ¶ 6.

60. *Id.* ¶ 28.

61. BUREAU OF LAND MGMT., RECORD OF DECISION FOR THE QUARTZSITE SOLAR ENERGY PROJECT AND AMENDMENT TO THE YUMA FIELD OFFICE RESOURCE MANAGEMENT PLAN (2013), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/energy/qsep.Par.19850.File.dat/QuartzsiteROD.pdf.

62. Press Release, Bureau of Land Mgmt., Secretary Jewell Announces Approval of Three Renewable Energy Projects in Arizona and Nevada (June 3, 2013), *available at* http://www.blm.gov/wo/st/en/info/newsroom/2013/june/nr_06_04_2013.html.

63. *Id.*

64. BUREAU OF LAND MGMT., RECORD OF DECISION (ROD): MOHAVE COUNTY WIND FARM PROJECT (2013), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/energy/mohave.Par.82639.File.dat/ROD.pdf.

wind farm consisting of up to 243 turbines.[65] This project is owned by BP Wind Energy North America, Inc., a subsidiary of BP P.L.C.[66] BP announced in April that it was going to sell its U.S. wind power assets by the end of the year but reversed course in August.[67] The project will produce up to 500 MW and create approximately 750 jobs through construction and operations.[68]

3. California

California codified the PG&E Green Tariff Settlement Agreement with SB 43, which was approved by Governor Jerry Brown in September 2013.[69] The program, dubbed "Solar Gardens," is a 600 MW pilot program for customers to purchase green power from renewable facilities without shifting costs to non-participating ratepayers.[70]

Assembly Bill (AB) 217, signed into law in October 2013, authorizes $108 million in funding from surcharges collected for the California Star Initiative to continue programs designed to incentivize the installation of solar energy systems on low-income residential housing.[71] SB 591, also approved by the Governor in October 2013, exempts a publicly owned electric utility (POU) from procuring eligible renewable energy resources in excess of specified levels if it receives 50% or greater of its annual retail sales from its own hydroelectric generation, even if that generation is not an eligible renewable energy resource.[72] The Act effectively limits the Merced Irrigation District's RPS obligation to the electricity demands that are satisfied by the New Exchequer Dam.[73]

In May 2013, the California Public Utilities Commission issued an order approving a standard feed-in tariff (FIT) power purchase agreement (PPA) for each of the large investor owned utilities in the state, along with revised FITs.[74] Also in May 2013, the California Energy Commission issued an order adopting new regulations to establish enforcement rules and procedures for the RPS for local POUs.[75] In October 2013, the California Air Resources Board issued its Resolution Adopting Amendments to the Existing Regulation for the Mandatory Reporting of Greenhouse Gas Emissions.[76]

65. *Id.*

66. *Id.*

67. Robert Wright, *BP Changes Tack by Keeping US Wind Farms*, FIN. TIMES (Aug. 1, 2013), http://www.ft.com/intl/cms/s/0/9317818a-fa33-11e2-b8ef-00144feabdc0.html.

68. RECORD OF DECISION (ROD) MOHAVE COUNTY WIND FARM PROJECT, *supra* note 64, at 1.

69. S.B. 43 2013-2014 Reg. Sess. (Cal. 2013).

70. *Id.*

71. A.B. 217, 2013-2014 Reg. Sess. (Cal. 2013).

72. S.B. 591, 2013-2014 Reg. Sess. (Cal. 2013).

73. Press Release, Merced Irrigation District, Bill to Aid Energy Costs Advances (Aug. 30, 2013), *available at* http://www.mercedid.org/default/assets/File/SB%20591%208-30-13.pdf.

74. Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program, Decision 13-05-034, Rulemaking 11-05-005 (Cal. P.U.C. May 23, 2013).

75. CAL. CODE REGS. tit. 20, §§ 3200-3208 (2013).

76. Notice of Available Text and Documents, Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, Resolution 13-43 (Cal. Air Res. Bd. Oct. 25, 2013).

4. Colorado

The year 2013 presented a mixed bag for renewable energy issues in Colorado with some successes, some controversies, and some issues still undecided. On the legislative front, the Colorado General Assembly passed, and Governor John Hickenlooper signed into law, SB 13-273, which creates certain incentives for the beneficial use of forest biomass.[77] The bill seeks to address Colorado's forest wildfire risks by encouraging the use of biomass for forest industries and as a fuel for the generation of clean energy under Colorado's renewable energy standard (RES), Colorado Revised Statute section 40-2-123.[78] Colorado House Bill (HB) 13-1293 was also enacted and created a new executive branch position responsible for climate change matters.[79] This position is responsible for the development of a Colorado climate action plan and collaboration with other entities on climate change preparedness issues.[80]

More controversial was SB 13-252 which was signed into law in June and doubled to 20% the Renewable Energy Standard (RES) applicable to certain of the state's electric cooperatives.[81] The bill also created a new 20% RES applicable to generation and transmission cooperatives providing wholesale power in Colorado and added coal mine methane and synthetic gas from pyrolysis of municipal solid waste as eligible energy resources under the RES.[82] Finally, the bill eliminated certain multipliers which gave additional credit to Colorado-based resources for RES compliance purposes; such credits have been challenged in Colorado and elsewhere as violating the federal Commerce Clause.[83]

The Colorado Public Utilities Commission (CPUC) was equally busy considering a number of high-profile issues involving the state's largest investor-owned utility, Public Service Company of Colorado (PSCo), the Colorado subsidiary of Xcel Energy.[84] In December, the CPUC approved PSCo's 2011 electric resource plan which sets forth the utility's plans to acquire both traditional and renewable energy resources for the period 2018 and beyond.[85] Noteworthy in the plan is the CPUC's authorization to acquire 620 MW of additional renewable energy consisting of 450 MW of wind power and 170 MW of photovoltaic solar power.[86] These resources are significant not because they are being acquired to meet the utility's RES obligations, but because the utility believes these resources have become cost-competitive with other resources such

77. S.B. 13-273, 69th Gen. Assemb., 1st. Reg. Sess. (Colo. 2013).

78. *Id.* § 6.

79. H.B. 13-1293, 69th Gen. Assemb., 1st Reg. Sess. (Colo. 2013).

80. *Id.* § 1.

81. S.B. 13-252, 69th Gen. Assemb., 1st Reg. Sess. (Colo. 2013).

82. *Id.* § 1.

83. *Id.*

84. Application of Public Service Company of Colorado for Approval of Its 2011 Electric Resource Plan, Decision No. C13-1566, Proceeding Nos. 11A-869E, 12A-782E, 12A-785E (Colo. P.U.C. Dec. 10, 2013).

85. *Id.* ¶ 1.

86. *Id.* ¶ 11.

as natural gas and are part of the company's plans to move toward a low carbon future.[87]

At the same time, PSCo is in a battle with the city of Boulder, Colorado, over its plans to create a municipal electric utility and to municipalize parts of PSCo's transmission and distribution systems in and around Boulder.[88] As part of a plan entitled *Boulder Energy Future*, the city intends to launch a municipal utility to give it greater control over its power supply so as to incorporate more clean energy resources and better manage its energy consumption, all with the goal of lowering the City's overall carbon emissions.[89] While the dispute between Boulder and PSCo may ultimately require a judicial decision, in late-October the CPUC confirmed that it has regulatory authority over the city's provision of utility services outside its municipal boundaries, and the utility must obtain the CPUC's approval with respect to the transfer of PSCo's certificate of public convenience and necessity or facilities by condemnation or otherwise.[90]

Finally, in July 2013, PSCo filed its 2014 RES Compliance Plan describing the steps it will take to comply with the Colorado RES in the coming years.[91] As part of its plan, the utility proposed a plan calling for greater transparency with regard to the benefits provided by on-site solar and the extent to which customers with such distributed systems would pay a share of transmission and distribution system costs.[92] PSCo proposed to reduce the amount of distributed solar power it acquires if the CPUC does not approve its request for net metering transparency.[93] As it has elsewhere in the country where other utilities have raised the same issue, PSCo's position prompted a substantial backlash from the distributed solar power community.[94] Given the significant public interest in this issue, the CPUC scheduled a public input hearing for February 3, 2014.[95]

5. Hawaii

HB 1464, signed into law in June 2009, increased the amount of required renewable generation to 25% of net sales by December 31, 2020, and 40% of net sales by December 31, 2030.[96] This is one in a series of amendments to the

87. *See generally* XCEL ENERGY, CLEAN ENERGY: CORPORATE RESPONSIBILITY REPORT (2013), *available at* http://www.xcelenergy.com/staticfiles/xe/Corporate/CRR2011/clean-energy/.

88. *See generally Energy Future—Workplan*, CITY BOULDER COLO., https://bouldercolorado.gov/energy-future/energy-future-work-plan-home-page (last visited Feb. 13, 2014).

89. *See generally Energy Future—About—Goals and Objectives*, CITY BOULDER COLO., https://bouldercolorado.gov/energy-future/energy-future-goals-and-objectives (last visited Feb. 13, 2014).

90. Verified Petition of Public Service Company of Colorado for Certain Declaratory Orders Concerning the Rights of Public Service Company of Colorado Under Its Service Territory Certificate Covering Boulder County, Colorado, Decision No. C13-1350, Proceeding No. 13D-0498E, ¶¶ 20-22, 26-29 (Colo. P.U.C. Oct. 9, 2013).

91. Application, Application of Public Service Company of Colorado for Approval of Its 2014 Renewable Energy Standard Compliance, Docket No. 13A-0836E (Colo. P.U.C. July 24, 2013).

92. *Id.* at 3.

93. *Id.* at 2.

94. Interim Decision Scheduling Public Comment Hearing, Application of Public Service Company of Colorado for Approval of Its 2014 Renewable Energy Standard Compliance Plan, Decision No. R13-1517-I, Proceeding No. 13A-0836E, § I ¶ 2 (Colo. P.U.C. Dec. 10, 2013).

95. *Id.* § II ¶ 1.

96. H.B. 1464, 25th Leg., Reg. Sess. § 3 (Haw. 2009) (codified at HAW. REV. STAT. § 269-92 (2013)).

Hawaiian RPS, originally set as a goal in 2001 and enacted as an enforceable requirement in 2004.[97] HB 1464 also established an energy-efficiency portfolio standard of 4,300 gigawatt-hours by 2030.[98]

SB 1087, enacted in July 2013, expanded the scope for the disposal of funds collected through the public benefits fee.[99] The scope of energy efficiency was expanded to include clean energy technology, demand response, and energy use reduction.[100] If approved by the Hawaii Public Utilities Commission, the funds can be applied to support any technology investment that enables Hawaii to meet its renewable portfolio and energy efficiency portfolio standards.[101]

6. Idaho

The Idaho Governor's Office of Energy Resources (OER) was awarded a competitive grant from the U.S. Forest Service, Department of Agriculture, in September 2013 to promote wood energy systems throughout the state.[102] The OER will be partnering with several other public and private entities to advance commercially viable wood systems across Idaho.[103] The grant is part of the Forest Service's efforts to expand wood energy use as a way to improve forest management, prevent wildfires, and promote renewable energy.[104]

In its 2013 Integrated Resource Plan, Idaho Power proposed to continue acquiring renewable energy certificates (RECs) despite the absence of an RPS in Idaho.[105] This proposal was based on the utility's assessment of the possibility of a federal RES in the future.[106] Under a REC management plan approved by the Idaho Public Utilities Commission in 2010, Idaho Power acquires long-term rights to RECs but sells them in the near term and returns those proceeds to customers through a billing mechanism knows as the Power Cost Adjustment (PCA).[107]

7. Montana

The Montana Legislature passed several amendments to the state's RPS in 2013. SB 325, sponsored by Senator Alan Olsen (R), expanded the definition of "eligible renewable resource" to include chemically treated wood pieces used at facilities with a capacity of no more than 5 MW.[108] SB 45, sponsored by Senator Jim Keane (D), expanded the term to include expansions at existing

97. *Id.*

98. *Id.* § 11.

99. S.B. 1087, 27th Leg., Reg. Sess. § 5 (Haw. 2013).

100. *Id.*

101. *Id.* (amending HAW. REV. STAT. § 269-121).

102. Press Release, Idaho Governor's OER, OER Awarded Grant to Develop Statewide Wood Energy Team (Sept. 12, 2013), *available at* http://energy.idaho.gov/informationresources/d/2013_56.pdf.

103. *Id.*

104. *Id.*

105. IDAHO POWER CO., INTEGRATED RESOURCE PLAN 18 (2013), *available at* https://www.idahopower.com/pdfs/AboutUs/PlanningForFuture/irp/2013/2013IRP.pdf.

106. *Id.*

107. *Id.*

108. S.B. 325, 63d Leg., 2013 Sess. § 1 (Mont. 2013).

hydroelectric projects that increase the project's capacity.[109] Finally, SB 164, also sponsored by Senator Keane, exempted utilities serving fifty or fewer customers from the definition of "public utility" for RPS purposes.[110]

8. Nevada

The Nevada Legislature adopted two bills with impacts on renewable energy in the state.[111] SB 123 requires electric utilities in highly populated counties to file with the "Public Utilities Commission of Nevada [PUCN] a comprehensive plan for [reducing] emissions from coal-fired electric generating plants" and for replacing lost generation "with increased capacity from renewable energy facilities and other electric generating plants."[112] Second, AB 428 makes changes to the renewable energy incentive programs by placing statewide limits on the incentives paid for the solar, wind, and water programs.[113]

9. New Mexico

On November 20, 2013, the New Mexico Public Regulation Commission (NM PRC), by a 3-2 vote, made significant changes to the way in which the RPS is regulated.[114] Consistent with the Renewable Energy Act, NMSA 1978, section 62-16-1 to 62-16-10, the Commission retained the requirement that the RPS shall consist of no less than 15% for each plan year from 2015 through 2019 of the utility's plan year total retail energy sales, and no less than 20% for the plan year 2020 and thereafter of the utility's plan year total retail energy sales.[115] While the statute does not define what the makeup of the diversity requirements are, under the NM PRC's rules codified at rule 17.9.572 of the New Mexico Administrative Code, a fully diversified renewable energy portfolio consists of no less than 30% of the RPS requirement to be met using wind energy, no less than 20% to be met using solar energy, and no less than 5% to be met using one or more of the other renewable technologies.[116] Other renewable technologies include geothermal, fuel cells that are not fossil fueled, and biomass resources such as agricultural or animal waste, small diameter timber, landfill gas and similar vegetation-based resources.[117] Renewable technologies do not include nuclear energy.[118]

The NM PRC made two major significant changes when looking at a company's portfolio.[119] First, it determined that utilities would receive double the credit for every kilowatt-hour of solar power that is produced and triple

109. S.B. 45, 63d Leg., 2013 Sess. § 1 (Mont. 2013).

110. S.B. 164, 63d Leg., 2013 Sess. § 1 (Mont. 2013).

111. S.B. 123, 77th Reg. Sess. (Nev. 2013); A.B. 428, 77th Reg. Sess. (Nev. 2013).

112. Nev. S.B. 123.

113. Nev. A.B. 428.

114. Amending Rule 17.9.572 NMAC, Renewable Energy for Electric Utilities, Case No. 13-00152-UT, ¶ 2 (N.M. Pub. Reg. Comm'n Nov. 20, 2013) (final order).

115. *Id.* exhibit A.

116. *Id.* ¶ 18.

117. *Id.* exhibit A.

118. *Id.*

119. *Id.*

credit for other (non-fossil fueled) alternative energies, such as geothermal or biomass.[120] The second major change made by the NM PRC expanded the factors used to calculate the cost of renewables.[121] Utilities will now be required to include both the savings and the costs incurred by changes to the entire system when establishing a new renewable energy generation facility.[122] The calculation will include existing generation, operation and maintenance expenses and costs of backup energy systems that might be needed when renewable facilities are not producing electricity.[123]

10. Oregon

In July, Oregon's governor signed legislature passed HB 3169, which related to green energy technology in public buildings.[124] Specifically, the act updates the existing requirement for a public body constructing or renovating a building to now spend 1.5% of the total contract price on green energy technology.[125]

11. Utah

The Utah legislature enacted two bills in its 2013 session with significant impacts on renewable energy in the state. First, SB 221, authorizes local governments to adopt Commercial Property Assessed Clean Energy (C-PACE) financing programs which provide financing for businesses to pursue energy efficiency (EE) and renewable energy improvements on their commercial properties.[126] Under this program, local governments can create "voluntary assessment areas" at the request of property owners in that area.[127] The government may then issue bonds to raise money for EE and renewable energy projects and collect payments for the projects through a special property tax assessment on properties within the voluntary assessment area.[128] This type of financing is intended to encourage EE and renewable energy projects because it aligns the benefits of the project with the responsibility for paying for it—both belong to the property owner regardless of transfers.[129]

Second, the Utah legislature enacted HB 176, allowing local governments to issue Industrial Revenue Bonds or Industrial Development Bonds to fund EE upgrades and renewable energy projects by expanding the definition of eligible projects under the Utah Industrial Facilities and Development Act.[130] This amendment will allow municipalities to work with private lenders to create low

120. *Id.* ¶ 27.
121. *Id.* ¶ 12.
122. *Id.*
123. *Id.*
124. H.B. 3169, 77th Leg. Assemb., Reg. Sess. (Or. 2013).
125. *Id.* § 1(2)(a).
126. S.B. 221, 2013 Gen. Sess. (Utah 2013).
127. *Id.* § 11-42-102(52).
128. *Id.* § 11-13-218(1), (2)(a).
129. *Id.*
130. H.B. 176, 2013 Gen. Sess. (Utah 2013).

interest programs for homeowners to finance EE and renewable energy projects.[131]

12. Washington

The Washington legislature passed SB 5400, which expanded the total pool of resources eligible to satisfy the state's RPS.[132] Specifically, the bill allows utilities serving customers in Washington and also in other states to use eligible renewable resources in their other states to comply with RPS.[133]

C. The South

1. Florida

The Florida legislature passed, and the governor signed, HB 277, providing a property tax exemption for residential photovoltaic systems, wind energy systems, solar water heaters, and geothermal heat pumps installed on or after January 1, 2013.[134]

2. Georgia

Many of the developments in Georgia relating to renewable energy that took place in 2013 occurred at the Georgia Public Service Commission (GPSC). In May, the GPSC approved Georgia Power Company's request for proposals (RFP) for 60 MW of utility scale solar resources in the state with a target in-service date of January 1, 2015.[135] The RFP is part of the Company's Advanced Solar Initiative that will add a total of 210 MW of solar energy to the company's generation mix.[136] Georgia Power will seek an additional 60 MW of utility scale solar in 2014, accompanied by 90 MW sourced from distributed solar facilities.[137]

In July, the GPSC approved both a stipulated agreement that resolved all issues related to Georgia Power's 2013 Integrated Resource Plan (IRP)[138] as well as a motion proposed by a Commissioner that requires Georgia Power to include 525 MW of solar energy by 2016 (a combination of both utility scale and distributed generation facilities).[139] The stipulated agreement also includes a provision that allows Georgia Power to develop a small wind demonstration project.[140]

131. *Id.* § 11-17-3(1)(c).

132. S.B. 5400, 63d Leg., Reg. Sess. § 1(11)(d) (Wash. 2013).

133. *Id.*

134. H.B. 277, 115th Reg. Sess. § 193.624(1) (Fla. 2013).

135. Order Approving Georgia Power Company's 2013 GPASI Utility Scale RFP Documents, Docket No. 36325, 2013 Ga. PUC Lexis 51, at *1 (Ga. P.U.C. May 7, 2013).

136. *Advanced Solar Initiative*, GA. POWER, http://www.georgiapower.com/about-energy/energy-sources/solar/asi/advanced-solar-initiative.cshtml (last visited Feb. 13, 2014).

137. *Order Approving Georgia Power's 2013 GPASI RFP*, 2013 Ga. PUC Lexis 51, at *1.

138. Georgia Power Company's 2013 Integrated Resource Plan and Application for Decertification, Docket Nos. 36498, 36499, 2013 Ga. PUC Lexis 62, at *86 (Ga. P.U.C. July 11, 2013).

139. *Id.* at 47-48.

140. *Id.* at 43.

3. Louisiana

The Louisiana legislature, through HB 705, made several significant changes to the state's Tax Credit for Solar Energy Systems on Residential Property.[141] The tax credit now expires at the end of 2017 and no longer applies to wind energy systems or residential rental apartments.[142] The legislation also enacted new provisions for leased facilities, reducing the value of the credit for leased systems installed after December 31, 2013, to 38% of the first $25,000 of the cost of each system.[143] Furthermore, leased systems can be no larger than 6 kilowatts (kW) to qualify for the credit.[144]

D. The Mid-Atlantic

1. Maryland

Maryland revised its RPS with the passage of the Offshore Wind Energy Act of 2013 creating a resource carve-out for offshore wind facilities.[145] The carve-out is stated as a maximum percentage of 2.5% of retail electricity sales in 2017 and beyond, with the actual requirements to be determined by the Maryland Public Service Commission (Md. PSC), subject to the 2.5% limitation.[146] The definition of a qualifying offshore wind facility is limited to facilities located on the outer continental shelf between ten and thirty miles off the coast of Maryland in a U.S. Department of Interior designated leasing zone.[147] Facilities must interconnect to PJM Interconnection at a point on the Delmarva Peninsula and are subject to Md. PSC approval.[148]

2. North Carolina

North Carolina HB 484, approved May 17, 2013, introduced statewide permitting requirements for wind energy facilities.[149] Any wind turbine or collection of wind turbines located within a half mile of each other with a collective rated capacity of 1 MW or greater must receive a permit from the North Carolina Department of Environment and Natural Resources before starting construction.[150] The legislation provides details regarding the process and timeline for obtaining a permit, siting considerations, approval criteria, fees, and other requirements.[151]

141. H.B. 705, 39th Reg. Sess. (La. 2013).
142. *Id.*
143. *Id.*
144. *Id.*
145. H.B. 226, 433d Gen. Assemb. (Md. 2013).
146. *Id.* § 7-703.
147. *Id.* § 7-701.
148. *Id.*
149. H.B. 484, 2013 Gen. Assemb., 2013 Reg. Sess. (N.C. 2013).
150. *Id.* § 143-215.119(a)(4).
151. *Id.*

3. Virginia

The Virginia General Assembly created net metering programs for agricultural customers of investor-owned utilities (IOUs) and electric cooperatives.[152] Customers of IOUs will be eligible to participate beginning on July 1, 2014, while the program will start for customers of electric cooperatives on July 1, 2015.[153]

On February 14, 2013, Virginia revised its voluntary RPS program.[154] Under the revisions, the RPS targets are as follows: RPS Goal I: 4% of base year sales in 2010; RPS Goal II: average of 4% of base year sales in 2011 through 2015, and 7% of base year sales in 2016; RPS Goal III: average of 7% of base year sales in 2017 through 2021, and 12% of base year sales in 2022; RPS Goal IV: average of 12% of base year sales in 2023 and 2024, and 15% of base year sales in 2025.[155] IOUs can gain approval to participate in the program if the utility demonstrates that it has a reasonable expectation of achieving the 12% target in 2022.[156]

Under HB 2305, enacted on March 14, 2013, the Virginia Condominium Act and the Virginia Property Owners' Association Act were amended to require "a statement setting forth any restriction, limitation, or prohibition on the right" of an owner to install or use solar energy collection devices on his property.[157] In addition, the bill adds to a seller's representation to a prospective purchaser of residential property under the Virginia Residential Property Disclosure Act a statement that the seller "makes no representations with respect to the [purchaser's] right to install or use solar energy collection devices on the property.[158]

E. The Midwest

1. Illinois

The Illinois Finance Authority, charged with administering the Qualified Energy Conservation Bond Program and disbursing funds, announced that the funding allocation on behalf of the state was exhausted.[159] Limited funding is still available via municipalities.[160]

In April, the Center for Renewable Energy of Illinois State University and Wind Powering America published a comprehensive study on the wind industry in Illinois, including technical, policy, and economic considerations.[161] In May,

152. H.B. 1695, 2013 Reg. Sess. (Va. 2013).

153. *Id.*

154. H.B. 2261, 2013 Reg. Sess. (Va. 2013).

155. *Id.* § 56-585.2(D).

156. *Id.* § 56-585.2(B).

157. H.B. 2305, 2013 Reg. Sess. § 55-79.97(C)(d)(17) (Va. 2013).

158. *Id.* § 55-519(B)(9).

159. ILL. FIN. AUTH., QUALIFIED ENERGY CONSERVATION BOND PROGRAM 1 (2013), *available at* http://www.il-fa.com/sites/default/files/energy_qualified_energy_conservation_bond_program_summary.pdf.

160. *Id.*

161. CTR. FOR RENEWABLE ENERGY, ILL. STATE UNIV., ILLINOIS WINDY CITY, PRAIRIE POWER: WIND FARMS AND GROWTH (2013), *available at* http://renewableenergy.illinoisstate.edu/downloads/publications/041913_%20Wind_Farms_in_IL_Report_2013.pdf.

the Center published a study on technological and capacity issues related to solar.[162] In December, the Center published a study which assessed the economic impact of solar from manufacturing to project finance.[163]

2. Michigan

In February, the Michigan Public Service Commission, in accordance with Public Act 295 of 2008, issued its report on the implementation and cost-effectiveness of the state RPS.[164] The report concludes that progress toward the 10% by 2015 goal is going "smoothly" and that a substantial increase of the RPS to 30% is achievable.[165]

In June, Judge Posner of the U.S. Court of Appeals for the Seventh Circuit asserted in dicta that the Michigan RPS violated the Commerce Clause in that it discriminated against out-of-state energy.[166] Before the court was the matter of the Federal Energy Regulatory Commission's (FERC) order for cost-spreading of high-voltage transmission facilities by the Midcontinent Independent Transmission System Operator (MISO).[167]

In February, State Representative Jim Ananich introduced a bill creating a grant and loan program for renewable energy and energy efficiency.[168] It is currently in the Committee on Energy and Technology.[169] Also in February, State Representative Kevin Daley introduced a bill to provide property tax exemptions for certain renewable projects.[170] It is currently in the Committee on Tax Policy.[171] In April, State Senator Hopgood introduced a bill to increase the state RPS.[172] The bill is currently in the Committee on Energy and Technology.[173] Finally, in May, State Representative Ray Franz introduced a

162. CTR. FOR RENEWABLE ENERGY, ILL. STATE UNIV., TECHNICAL POTENTIAL FOR SOLAR PHOTOVOLTAICS IN ILLINOIS (2013), *available at* http://renewableenergy.illinoisstate.edu/downloads/publications/2013SolarReport.pdf.

163. CTR. FOR RENEWABLE ENERGY, ILL. STATE UNIV., ECONOMIC IMPACT POTENTIAL OF SOLAR PHOTOVOLTAICS IN ILLINOIS (2013), *available at* http://renewableenergy.illinoisstate.edu/downloads/publications/FINAL%20Solar%20Economic%20Impact%20Report%20Dec%202013.pdf.

164. DEP'T OF LICENSING & REGULATORY AFFAIRS, MICH. PUB. SERV. COMM'N, REPORT ON THE IMPLEMENTATION OF THE P.A. 295 RENEWABLE ENERGY STANDARD AND THE COST-EFFECTIVENESS OF THE ENERGY STANDARDS (2013), *available at* http://www.michigan.gov/documents/mpsc/implementation_of_PA295_renewable_energy_411615_7.pdf?20131219140305.

165. *Id.* at 31.

166. Illinois Commerce Comm'n v. FERC, 721 F.3d 764, 776 (7th Cir. 2013).

167. *Id.* at 772-73.

168. H.B. 4232, 97th Leg., Reg. Sess. (Mich. 2013).

169. *House Bill 4232 (2013)*, MICH. LEGIS. WEBSITE, http://www.legislature.mi.gov/(S(psgawiz3znjpmq55efxpik55))/mileg.aspx?page=GetObject&objectname=2013-HB-4232 (last visited Mar. 13, 2014).

170. H.B. 4245, 97th Leg., Reg. Sess. (Mich. 2013).

171. *House Bill 4245 (2013)*, MICH. LEGIS. WEBSITE, http://www.legislature.mi.gov/(S(psgawiz3znjpmq55efxpik55))/mileg.aspx?page=getobject&objectname=2013-HB-4245 (last visited Mar. 13, 2014).

172. S.B. 322, 97th Leg., Reg. Sess. (Mich. 2013).

173. *Senate Bill 0322 (2013)*, MICH. LEGIS. WEBSITE, http://www.legislature.mi.gov/(S(psgawiz3znjpmq55efxpik55))/mileg.aspx?page=getObject&objectName=2013-SB-0322 (last visited Mar. 13, 2014).

bill to prohibit leases for deep water wind in the Great Lakes bottomlands.[174] It is currently in the Committee on Energy and Technology.[175]

3. Minnesota

In May, Governor Mark Dayton signed into law the Solar Energy Jobs Act, as part of a lager omnibus economic development bill.[176] The new law requires that 1.5% of electricity generated in the state come from solar by 2020.[177] The law also stipulates that 10% of the solar generation must come from projects under 20 kW.[178] Additionally, the law provides for "solar gardens" where consumers can opt-in to own a piece of an array.[179] These projects must be under 1 MW and require at least five owners.[180]

4. Missouri

Missouri legislators enacted HB 142 in July 2013, exempting solar energy systems from state, county, and local property taxes.[181] This 100% exemption applies only to solar energy systems not held for resale.[182]

5. Nebraska

In Nebraska, Legislative Bill (LB) 104 was enacted in June 2013 making refundable those sales and use taxes paid for renewable energy systems used to produce electricity for sale.[183] Qualified investments must exceed $20 million.[184] Eligible renewable energy sources include, but are not limited to wind, solar, geothermal, hydroelectric, and biomass.[185] The first 1.5% of municipal taxes are not refundable.[186]

II. FEDERAL DEVELOPMENTS

A. IRS

Under the American Taxpayer Relief Act of 2012, signed into law on January 2, 2013, the placed-in-service deadline for 50% first-year bonus depreciation was extended by one year, from December 31, 2012, to December

174. H.B. 4778, 97th Leg., Reg. Sess. (Mich. 2013).

175. *House Bill 4778 (2013)*, MICH. LEGIS. WEBSITE, http://www.legislature.mi.gov/(S(psgawiz3znjpmq55efxpik55))/mileg.aspx?page=getObject&objectName=2013-HB-4778 (last visited Mar. 13, 2014).

176. H.F. 729, 88th Leg., 1st Reg. Sess. (Minn. 2013).

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. H.B. 142, 97th Gen. Assemb., 1st Reg. Sess. (Mo. 2013).

182. *Id.*

183. L.B. 104, 103d Leg., 1st Reg. Sess. (Neb. 2013).

184. *Id.*

185. *Id.*

186. *Sales and Use Tax Exemption for Renewable Energy Property*, EPA, http://www.epa.gov/chp/policies/incentives/nesalesandusetaxexemptionforrenewableenergyproperty.html (last updated Apr. 22, 2014).

31, 2013.[187] Under the program, businesses may recover investments through depreciation deductions in eligible property such as solar-electric and solar-thermal technologies, fuel cells and microturbines, geothermal electric, direct-use geothermal and geothermal heat pumps, small wind, and combined heat and power facilities.[188]

The American Taxpayer Relief Act of 2012 also extended the deadline for taxpayers eligible for the federal renewable electricity production tax credit (PTC) to take the federal business energy investment tax credit (ITC) instead.[189] Under the revision, projects had to begin construction by the end of 2013 to qualify for the ITC.[190] This replaced the requirements that projects had to be placed in service by the end of 2013 in order to qualify.[191] The IRS issued guidance on how it will evaluate whether construction has commenced for the purpose of the year-end 2013 deadline.[192] The guidelines establish two paths for meeting this benchmark.[193] Under one path, a project is considered to have begun construction when "physical work of a significant nature" has started.[194] Under the other path, construction of a facility is considered to begin when 5% of the total cost of the facility has been incurred by the taxpayer and the taxpayer makes continuous efforts to complete the facility thereafter.[195] The guidance also provides that in certain circumstances the evaluation can take place on a project-wide basis rather than separately for each individual piece of equipment.[196]

B. FERC

In a decision issued in November, the FERC adopted changes to the Small Generator Interconnection Procedures (SGIP).[197] The FERC stated that the changes, which take effect in 2014, will "reduce the time and cost to process small generator interconnection requests . . . , maintain reliability, increase energy supply, and remove barriers to the development of new energy resources."[198] Notably, the changes in the SGIP will raise the cap on the SGIP's Fast Track application process from 2 MW to 5 MW.[199] In addition, energy storage devices have been added to the definition of a Small Generating Facility.[200]

187. H.R. 8, 112th Cong. (2013).

188. *Id.*

189. *Id.* § 407.

190. *Id.*

191. *Id.*

192. I.R.S. Notice 2013-29, 2013-1 C.B. 1085; I.R.S. Notice 2013-60, 2013-2 C.B. 431.

193. I.R.S. Notice 2013-29.

194. *Id.*

195. *Id.*

196. *Id.*

197. Order No. 792, *Small Generator Interconnection Arguments and Procedures*, 145 F.E.R.C. ¶ 61,159, 78 Fed. Reg. 73,240 (2013).

198. *Id.* at P 3.

199. *Id.* at P 97.

200. *Id.* at P 1.

Order No. 784,[201] issued in July of 2013, requires high-voltage interstate transmission operators to recognize the value of energy storage systems that can quickly and precisely dampen potentially dangerous disturbances in electrical frequencies.[202] The order allows a third-party seller holding market-based-rate authority to sell energy imbalance and generator imbalance services and operating reserves (spinning and supplemental).[203] This capability boosts storage systems' competitiveness against traditional power generation that cannot react as quickly or accurately when the grid faces sudden imbalances.[204] The FERC rule expands on a 2011 decision, Order No. 755, which increased the return that battery and energy flywheel operators get for grid support.[205] Coupled with Order No. 792, Order No. 784 gives energy storage providers ample opportunities to quickly compete and sell power into the grid, further enhancing storage's market position.[206]

201. Order No. 784, *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, 144 F.E.R.C. ¶ 61,056, 78 Fed. Reg. 46,177 (2013) (to be codified at C.F.R. pts. 35, 101, 141).

202. *Id.* at P 56.

203. *Id.* at P 54.

204. *Id.* at P 44.

205. Order No. 755, *Frequency Regulation Compensation in the Organized Wholesale Power Markets*, 137 F.E.R.C. ¶ 61,064, 76 Fed. Reg. 67,260 (2011) (to be codified at C.F.R. pt. 35).

206. Order No. 784, *supra* note 201.

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