

REPORT OF THE RENEWABLE ENERGY SUBCOMMITTEE

This report covers the following developments in selected states during 2017.*

* The Subcommittee would like to thank the following members for their contributions to this report: Jasmine C. Hites; Jim Horan; Andrea Kells; Pari Kasotia; Alexander McDonough; John Povilaitis; Zach Ramirez; Katie Ryan; Gabriel Tabak; and Eric Wallace.

I. CALIFORNIA

On July 27, 2017, the California Legislature passed, and Governor Jerry Brown signed, a bill extending the state's cap-and-trade program for greenhouse gas emissions permits from when it was first enacted in 2006 through 2030.[1] Additionally, the Governor signed legislation capping fees for commercial and residential solar permitting; streamlining energy storage permitting; strengthening consumer protection disclosures for residential solar projects; strengthening consumer protection requirements for Property Assessed Clean Energy financed projects; and to increase storage deployment in Los Angeles.[2]

In the regulatory arena, Pacific Gas & Electric (PG&E) and Southern California Edison (SCE) submitted applications in December 2017 to the California Public Utilities Commission (CPUC) seeking approval of 175 megawatts (MW) of new energy storage resources, in a step towards satisfying legislation enacted in 2010 mandating procurement of 1,325 MW of energy storage by 2020.[3] In April 2017, the CPUC approved an order implementing $166 million of funding for the Self-Generation Incentive Program (SGIP) – double what the program provided in previous years.[4] Eighty-five percent of SGIP program incentives were allocated to energy storage projects, and the remaining 15% for specific categories of renewable generation.[5]

1. A.B. 398, 2017-2018 Reg. Sess. (Cal. 2017).

2. A.B. 1414, 2017-2018 Reg. Sess. (Cal. 2017); A.B. 546, 2017-2018 Reg. Sess. (Cal. 2017); A.B. 1070, 2017-2018 Reg. Sess. (Cal. 2017); S.B. 242, 2017-2018 Reg. Sess. (Cal. 2017); S.B. 801, 2017-2018 Reg. Sess. (Cal. 2017).

3. Brian Orion & Xiaowan Mao, *California IOUs Request Approval of 175 MW of New Energy Storage Resources*, STOEL RIVES: RENEWABLE + LAW (Dec. 13, 2017), https://www.lawofrenewableenergy.com/2017/12/articles/cleantech/california-ious-request-approval-of-175-mw-of-new-energy-storage-resources.

4. CAL. PUB. UTIL. COMM'N, DECISION REVISING THE SELF-GENERATION INCENTIVE PROGRAM PURSUANT TO ASSEMBLY BILL 1637 AND GRANTING THE PETITION FOR MODIFICATION OF DECISION 16-06-055 BY THE CALIFORNIA SOLAR ENERGY INDUSTRY ASSOCIATION (Apr. 13, 2017).

5. Eric Wesoff, *Will California's New Subsidy Accelerate Energy Storage, Just as the CSI Drove Solar?* GREENTECH MEDIA (Apr. 13, 2017), https://www.greentechmedia.com/articles/read/will-californias-new-bigger-sgip-subsidy-accelerate-energy-storage#gs.X2X2KI4.

II. DELAWARE

On August 28, 2017, Delaware Governor John Carney signed Executive Order 13, which established an Offshore Wind Working Group ("Working Group") to study potential environmental and economic development benefits of offshore wind development.[6] In December 2017, the Working Group submitted a memorandum to the Governor outlining its process to date and noting the anticipated completion and delivery of final report by mid-2018.[7] The report will include (1) reports on the relevant laws, regulations, benefits, costs, barriers and opportunities for developing offshore wind to serve Delaware; (2) recommendations for shorter- and longer-term strategies for procuring offshore wind power to serve Delaware; (3) recommendations for plans to develop job opportunities for Delaware in the offshore wind industry; and (4) a draft of any necessary implementing legislation including possible amendments to Delaware's Renewable Energy Portfolio Standards Act.[8]

The Working Group ruled out the option to move on the immediate procurement of offshore wind energy from a project already approved by another state.[9] Additionally, the Working Group adopted a second resolution outlining specific options that deserve further consideration, as well as additional questions that must be answered to address the options.[10]

III. DISTRICT OF COLUMBIA

On January 25, 2017, the D.C. Public Service Commission (DCPSC) released Order No. 18673, which issued for public comment a staff report on Modernizing the Energy Delivery System for Increased Sustainability (MEDSIS).[11] On February 28, 2017, DCPSC also held a Community Town Hall on MEDSIS where the DCPSC staff provided an overview of the Initiative and the report.[12] The Commission also took comments from the public on how the $25 million MEDSIS Subaccount Fund established in the Pepco-Exelon Merger can be used to implement District-appropriate pilot and demonstration projects.[13]

On May 18, 2017, the D.C. Department of Energy and Environment (DOEE) and the Department of Employment Services partnered with Grid Alternatives by competitively awarding $950,000 to develop Solar Works DC, a new low-income solar installation and job training program.[14] Solar Works DC is expected to prepare residents to enter careers in solar and related industries and increase solar

6. Exec. Order 13 (2017).

7. Memorandum from Bruce Burcat, Chairman of the Offshore Wind Working Group, to Governor John Carney (Dec. 15, 2017).

8. *Id.*

9. *Id.*

10. *Id.*

11. Press Release, Pub. Serv. Comm'n of the Dist. of Columbia, DCPSC Releases Staff Report on Modernizing the Energy Delivery System for Increased Sustainability (Jan. 25, 2017).

12. Press Release, Pub. Serv. Comm'n of the Dist. of Columbia, DCPSC Hosts Community Town Hall on Grid Modernization Proceeding (Mar. 1, 2017).

13. *Id.*

14. Press Release, D.C. Dep't of Energy & Env't Press Release, DOEE and DOES Launch Solar Works DC (May 18, 2017).

capacity in the District and reduce energy costs for qualified low-income District homeowners by installing solar system on their homes.[15]

In 2017, DOEE also funded several projects from Solar for All Innovation and Expansion Grants intended to expand solar energy in the District, provide benefits to low-income residents, develop solutions to program challenges and identify solutions DOEE can use to establish an effective medium-term program.[16]

IV. FLORIDA

The application window for the Florida Renewable Energy Tax Incentives closed in 2017.[17] These incentives consisted of three tax incentive programs: (1) "[t]he Florida Renewable Energy Technologies Sales Tax Refund, which provided $1 million per fiscal year" to a taxpayer "for a refund of previously paid Florida sales tax for eligible expenditures;" (2) "[t]he Florida Renewable Energy Technologies Investment Tax Credit, which provided $10 million per fiscal year" to a taxpayer for "an annual corporate tax credit equal to 75% of all eligible costs made in connection with the production, storage and distribution of biodiesel, ethanol and other renewable fuel;" and (3) "[t]he Florida Renewable Energy Production Credit, which provided $5 million for the first fiscal year of the program and $10 million for subsequent years for an annual corporate tax credit equal to $0.01/kWh of renewable electricity produced."[18] These programs provided a total of $89 million in tax credits or refunds.[19]

V. GEORGIA

Georgia General Assembly House Bill 238 became law on April 17, 2017, easing restrictions on solar generating facility installations in Georgia by permitting property to be withdrawn from a conservation use covenant for purposes of development a solar generation plant.[20] Under the new law, such withdrawals will still constitute a breach of covenant as to the portion of the property to be used for solar development, and will be subject to a reduced penalty, but will not result in a breach of the covenant for the remainder of the property that remains subject to the covenant.[21]

VI. IDAHO

Idaho Power requested that the Idaho Public Utilities Commission (IPUC) eliminate net metering tariff for new small and residential customers, who own

15. *Id.*

16. DEP'T OF ENERGY & ENV'T, SOLAR FOR ALL (2018).

17. *Fla. Renewable Energy Tax Incentives*, FLA. DEP'T OF AGRICULTURE & CONSUMER SERVS., http://www.freshfromflorida.com/Business-Services/Energy/Florida-Renewable-Energy-Tax-Incentives.

18. *Id.*

19. *Id.*

20. H.B. 238, 154th Leg., Reg. Sess. (Ga. 2017).

21. GA. CODE ANN. § 48-5-7.4(p) (2018).

systems totaling 25 kilowatts (kW) or less, and replace it with two new customer classifications by the end of 2017.[22]

VII. MASSACHUSETTS

A. SREC II Extension

On March 21, 2017, the Department of Energy Resources ("DOER") revised the SREC Factor Guideline in accordance with the Emergency Regulation to extend the Solar Carve-out II (SREC II) program, filed on April 8, 2016.[23] The emergency regulation intends to "address market uncertainty and establish a smooth transition from SREC II to the next incentive program."[24]

B. Offshore Wind and Hydroelectric/Wind Resource Procurements

Pursuant to sections 83C and 83D of An Act Relative to Green Communities, as amended by An Act Relative to Energy Diversity ("Energy Diversity Act"), the DOER, jointly with the state's electric distribution companies, issued requests for proposals for two long-term clean energy projects.[25] These proposals are part of a state plan to reduce greenhouse gas emissions by 25% below 1990 levels by 2020 and an 80% reduction by 2050.[26]

Under section 83D, the EDCs are required to enter into long-term contracts to procure 9.450 million MWh of electricity annually from clean energy sources by December 31, 2022.[27] This RFP was issued on March 31, 2017 with proposals due on July 27, 2017.[28] Final contracts are due to be submitted to the Massachusetts Department of Public Utilities ("DPU") for review and approval on April 25, 2018.[29] Eligible proposals may include hydroelectric generation, offshore wind generation, and new Class I RPS resources, either standalone or firmed up with hydroelectric generation.[30]

Section 83C requires the EDCs to enter into long-term contracts to procure 1,600 MW of offshore wind energy generation by June 30, 2027.[31] The RFP for these projects was issued on June 29, 2017 with proposals due on December 20,

22. IPC-E-17-13 (July 27, 2017), http://www.puc.idaho.gov/fileroom/cases/elec/IPC/IPCE1713/20170727APPLICATION.PDF (last visited Feb. 21, 2018).

23. Renewable Energy Portfolio Standard Guideline, 225 C.M.R. 14.00 (2017); ENERGY & ENVTL. AFFAIRS, SREC II EMERGENCY RULEMAKING (last visited Feb. 21, 2018).

24. *Id.*

25. Green Communities Act, ch. 169 (Mass. 2008); Promote Energy Diversity Act, ch. 188 (Mass. 2016).

26. REQUEST FOR PROPOSALS FOR LONG-TERM CONTRACTS FOR CLEAN ENERGY PROJECTS, MASS. DEP'T OF ENERGY RES. 2 (Mar. 31, 2017) [hereinafter RFP Clean Energy].

27. *Id.* at 1.

28. *Id.* at 39.

29. *Id.*

30. *Id.* at 2.

31. REQUEST FOR PROPOSALS FOR LONG-TERM CONTRACTS FOR OFFSHORE WIND ENERGY PROJECTS, MASS. DEP'T OF ENERGY RES. 1 (June 29, 2017) [hereinafter RFP Offshore Wind].

2017 and final contracts are due to be submitted to the DPU for review and approval on July 31, 2018.[32] Proposals must have a nameplate capacity of 400 MW and may be combined with energy storage systems.[33]

For both project categories, proposals will be evaluated by the RFP evaluation team based on their capacity to enhance electricity reliability, reduce winter price spikes, avoid line loss and mitigate transmission costs, and create jobs and enhance economic development in the Commonwealth.[34]

C. Energy Storage

On June 30, 2017, the DOER adopted 200 MWh as the energy storage target for electric distribution companies (EDCs), to be achieved by January 1, 2020.[35] This nonbinding target emanates from the Energy Diversity Act, which directed the agency to analyze energy storage opportunities and set a target if appropriate.[36] The DOER has requested EDCs submit annual reports to inform the state of the quantity of energy storage procured, the type of storage utilized, the cost-effectiveness of the projects and recommendations for future energy storage projects and policies, which the DOER will use to determine if future targets should be set.[37]

D. Reducing Greenhouse Gas Emissions

On May 17, 2016, the Supreme Judicial Court of Massachusetts issued a ruling in *Kain v. Massachusetts Department of Environmental Protection* which ordered the Massachusetts Department of Environmental Protection (MassDEP) to promulgate regulations required by section 3(d) of the Global Warming Solutions Act (GWSA).[38] The question before the court was whether MassDEP had fulfilled its mandate under the GWSA to "promulgate regulations establishing a desired level of declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions."[39]

As a consequence of the *Kain v. MassDEP* ruling, MassDEP amended six regulations on August 11, 2017 to "assist the Commonwealth in achieving the greenhouse gas emissions reduction goals adopted pursuant to [Mass. Gen. Laws ch.] 21N."[40] The regulations set annually declining limits for sulfur hexafluoride

32. *Id.* at 41.

33. *Id.* at 12.

34. RFP Clean Energy, *supra* note 26, at 28; RFP Offshore Wind, *supra* note 31, at 26-27, 30.

35. Letter from Judith F. Judson, Commissioner, Massachusetts Department of Energy Resources, to Conference Committee Members (June 30, 2017).

36. *Id.*

37. *Id.*

38. Kain v. Dep't of Envtl. Prot., 474 Mass. 278, 279 (2016); Global Warming Solutions Act, 2008 Mass. Acts 298 [hereinafter Global Warming Solutions Act].

39. Global Warming Solutions Act, *supra* note 38, § 3(d).

40. Reducing Sulfur Hexafluoride Emissions from Gas-Insulated Switchgear, 310 MASS. CODE REGS. 7.72(1) (2017); Reducing Methane Emissions from Natural Gas Distribution Mains and Services, 310 MASS. CODE REGS. 7.73(1) (2017); Reducing CO2 Emissions from Electricity Generating Facilities, 310 MASS. CODE REGS. 7.74(1) (2017); Clean Energy Standard, 310 MASS. CODE REGS. 7.75(1) (2017); Global Warming Solutions Act Requirements for Transportation, 310 MASS. CODE REGS. 60.05(1) (2017); CO2 Emission Limits for State Fleet Passenger Vehicles, 310 MASS. CODE REGS. 60.06(1) (2017).

emissions from gas-insulated switchgears, methane emissions from natural gas distribution mains, and aggregate carbon dioxide emissions from twenty-one fossil fuel-powered plants.[41] They also include the establishment of the Clean Energy Standard, which sets an annually increasing minimum percentage of electricity sales required to come from clean energy sources.[42]

E. SMART Program

On August 11, 2017, the DOER filed the proposed final regulations for the Commonwealth's Solar Massachusetts Renewable Target (SMART), a program emanating from An Act Relative to Solar Energy.[43] The program's purpose is to "establish a statewide solar incentive program to encourage the continued use and development of generating units that use solar photovoltaic technology by residential, commercial, governmental and industrial electricity customers throughout the Commonwealth."[44]

SMART transitions the compensation structure for solar generation from a variable to a fixed compensation structure, i.e., from energy plus the value of renewable energy credits to energy plus fixed prices for certain attributes.[45] The program will provide fixed compensation rates for at least ten years for qualifying solar generating units, supporting up to 1,600 MW of new capacity.[46] The program will utilize a block model with eight equally-sized capacity blocks where base compensation rates decline by 4% as each block's capacity is met.[47] Initial base compensation rates will be determined by a one-time competitive procurement, the results of which will be announced by the DOER no later than January 11, 2018.[48]

VIII. MINNESOTA

The Minnesota Legislature passed a Jobs and Energy Omnibus Bill in May 2017 making changes to the Renewable Development Fund, the Conservation Improvement Program, and the biomass fuel requirement.[49] The bill amends Minnesota Statute 16B.323, ending the "Made in Minnesota" solar program that provided additional incentives for solar components manufactured in the state.[50] The bill made changes to Minnesota Statute 116C.779, the Renewable Development Fund, by renaming the program the Clean Energy Advancement Fund (C-LEAF).[51] The C-LEAF program will focus on grid modernization and projects

41. 310 MASS. CODE REGS. 7.72(1); 310 MASS. CODE REGS. 7.73(1); 310 MASS. CODE REGS. 7.74(1).

42. 310 MASS. CODE REGS. 7.75(5), (6) (2017).

43. COMMONWEALTH OF MASSACHUSETTS, DEVELOPMENT OF THE SOLAR MASSACHUSETTS RENEWABLE TARGET (SMART) PROGRAM (2017); Solar Energy Act, 2016 Mass. Acts 75.

44. 225 MASS. CODE REGS. 20.01(1) (2017).

45. 225 MASS. CODE REGS. 20.07(1) (2017).

46. 225 MASS. CODE REGS. 20.05(1) (2017); 225 MASS. CODE REGS. 20.07(1) (2017).

47. *Id.* at 6, 14.

48. COMMONWEALTH OF MASSACHUSETTS, SMART COMPETITIVE PROCUREMENT, https://www.mass.gov/service-details/smart-competitive-procurement (last visited Dec. 8, 2017).

49. S.F. 1937, 90th Leg., Reg. Sess. (Minn. 2017).

50. *Id.*

51. *Id.*

that increase system efficiency and flexibility.[52] The bill changed the Conservation Improvement Program (CIP) in Minnesota Statute 216B.241 to exempt small cooperative (under 5,000 members) and small municipal (1,000 retail customers) utilities from the requirements of the program.[53] The CIP reporting requirements set goals for spending and saving goals for utility energy efficiency.[54] The bill also adjusted the biomass fuel requirement in Minnesota Statute 216B.2424 to allow for amending or termination of biomass power purchase agreements under certain circumstances.[55]

IX. MONTANA

In May 2017, H.B. 219 was signed into law, directing public utilities to study the costs and benefits of customer-generators.[56] After submission of these studies, the Public Service Commission (Commission) may make a determination, as part of a utility's general rate case, that customer-generators should be served under a separate class of service with separate rates.[57] Should the Commission make such a determination, existing net metering customers will be grandfathered under current rates for a certain length of time. [58]

H.B. 20, signed by the Governor on March 30, 2017, eliminates requirements that entities file renewable energy credit (REC) reports with the Montana Departments of Revenue and Energy.[59] The legislation also eliminates the penalties for not filing and provides retroactive applicability.[60] The legislation amends Montana Code sections 69-3-2009 and 69-3-2010.[61]

X. NEVADA

The Nevada Legislature passed over a dozen bills, directly or indirectly impacting renewable energy, most of which were signed into law by Governor Brian Sandoval. Bills passed included legislation expanding the state's Renewable Portfolio Standard (vetoed), restoring net energy metering (NEM) for residential solar and distributed energy (enacted), reforming integrated resource planning (enacted),establishing a distributed resource planning process (enacted), and providing incentives for energy storage, electric vehicles, and low-income energy efficiency (enacted).[62]

52. *Id.*
53. *Id.*
54. S.F. 1937.
55. *Id.*
56. H.B. 219, 65th Leg., Reg. Sess. (Mont. 2017).
57. *Id.*
58. *Id.*
59. H.B. 20, 65th Leg., Reg. Sess. (Mont. 2017).
60. *Id.*
61. *Id.*
62. Riley Snyder & Jackie Valley, *Sandoval Vetoes Bills to Create Medicaid-like Plan Available to All, Ramp Up Nevada's Renewable Energy Ambitions*, THE NEVADA INDEPENDENT (Jun. 16, 2017), https://thenevadaindependent.com/article/sandoval-vetoes-bills-to-create-medicaid-like-plan-available-to-all-ramp-up-nevadas-renewable-energy-ambitions; A.B. 206, 79th Leg., Reg. Sess. (Nev. 2017); A.B. 405, 79th Leg., Reg. Sess. (Nev. 2017); S.B. 65, 79th Leg., Reg. Sess. (Nev. 2017); S.B. 146, 79th Leg., Reg. Sess. (Nev. 2017); S.B. 145, 79th Leg., Reg. Sess., (Nev. 2017); S.B. 150, 79th Leg., Reg. Sess. (Nev. 2017).

On August 31, the Public Utilities Commission of Nevada took the final step implementing A.B. 405, which replaced a December 2015 decision, that eliminated NEM, with a framework that reinstates NEM at a slight reduction below the retail rate.[63]

XI. NEW JERSEY

On September 22, 2017 the N.J. Board of Public Utilities (NJBPU) directed the staff to open a 2017 Solar Proceeding to review the state of the solar market in New Jersey and solicit input from all stakeholders in the solar industry.[64] The topics to be addressed in this proceeding include "the cost differential between residential and utility scale solar projects and the potential for designing different incentives for grid projects than those for residential and business customers to minimize or eliminate the impact of grid projects on the residential and commercial solar marketplace."[65] Similarly, the NJBPU has directed its staff to examine solar incentives for cost effectiveness, equity, and efficiency.[66]

XII. NEW YORK

A. Reforming the Energy Vision: Initiatives.

New York is continuing to expand the "Reforming the Energy Vision" ("REV") initiative promulgated in 2016.[67] Categories of specific state-wide renewable projects include:

(1) exploring a wide range of innovative bio-gas based power generation technologies;

(2) sustainably utilizing biomass;

(3) installing fuel cells at buildings to reduce electricity needed to be purchased from the utility grid;

(4) utilizing hydroelectric power;

(5) utilizing solar power;

(6) utilizing land-based wind power; and

(7) utilizing offshore wind turbines.[68]

63. Order Granting in Part and Denying in Part Joint Application by NV Energy on Assembly Bill 405, Docket No. 17-07026 (Nev. Pub. Utils. Comm'n, Sept. 1, 2017), http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2015_THRU_PRESENT/2017-7/23611.pdf.

64. BD. OF PUB. UTILS., NEW JERSEY'S CLEAN ENERGY PROGRAM 2017 SOLAR PROCEEDINGS (2017).

65. Press Release, New Jersey Board of Public Utilities, N.J. Board of Public Utilities to Begin State of Solar Market Review (Sept. 22, 2017).

66. *Id.*

67. Order Adopting a Ratemaking and Utility Revenue Model Policy Framework, Case 14-M-0101 (N.Y. Pub. Serv. Comm'n, May 19, 2016).

68. ENERGY TO LEAD: REFORMING THE ENERGY VISION, https://rev.ny.gov/resources (last visited Feb. 18, 2018).

Furthermore, New York's six investor-owned utilities are currently working with energy innovators to design new replicable business models through REV Demonstration Projects.[69] These projects will (1) help figure out the most effective ways to utilize distributed energy resources such as rooftop solar, energy storage, and microgrids; (2) test new approaches to assess value and stimulate innovation; and (3) deliver results and information within a reasonable timeframe.[70]

B. ESCO Investigation.

The New York Supreme Court, Appellate Division, Third Department issued a decision on July 27, 2017, holding that the New York Public Service Commission ("PSC") had jurisdiction to issue an order ("Reset Order") resetting retail energy markets and establishing future contracts between energy service companies ("ESCOs") and mass market customers to guarantee savings (1) in comparison to what the customer would have paid as a full-service utility customer; or (2) provide at least 30% renewable electricity.[71] The court reasoned that the PSC had broad statutory jurisdiction over the sale of gas and electricity, which allowed it to impose the above limitations.[72] The Appellate Division found that the lower court erred to the extent that it found that ESCOs have a property interest in continued access to utility systems; however, the "PSC failed to comply with the notice requirements of the State Administrative Procedure Act in adopting the Reset Order."[73]

XIII. NORTH CAROLINA

A. H.B. 589 and Executive Order 11

On July 27, 2017, North Carolina Governor Roy Cooper signed H.B. 589 into law.[74] The bill, known as the Competitive Energy Solutions Plan, establishes a competitive bidding program and a solar leasing program that allows consumers to work with private entities.[75] Specifically, the bill introduces the Green Source Rider Program, which allows high-consumption customers to utilize renewable energy to offset their electricity usage.[76] Additionally, the bill required the North Carolina Utilities Commission ("Commission") to set revised net metering rates, which "would be established after an investigation of the costs and benefits of customer-sited generation" was concluded.[77] The bill directs the Commission "to establish rates that ensure net metering customers pay their full fixed cost of service and the rates may include fixed monthly charges."[78] Retail customers that

69. REV DEMO PROJECTS, https://rev.ny.gov/rev-demo-projects-1 (last visited Feb. 18, 2018).

70. *Id.*

71. Retail Energy Supply Ass'n v. Pub. Serv. Comm'n, 152 A.D.3d 1133 (N.Y. App. Div. 2017).

72. *Id.* at 1138.

73. *Id.* at 1139.

74. H.B. 589, Gen. Assemb., (N.C. June 6, 2017); Kelsey Misbrener, *North Carolina Governor Signs Comprehensive Energy Legislation HB 589*, SOLAR POWER WORLD (July 27, 2017), https://www.solarpowerworldonline.com/2017/07/north-carolina-hb589.

75. H.B. 589 at 1.

76. *Id.* at 4.

77. *Id.* at 6.

78. *Id.*

are currently on an approved net metering rate would be grandfathered in until January 1, 2027.[79]

H.B. 589 places an eighteen-month moratorium on permits for new wind energy projects; however, the Governor simultaneously issued an executive order that directed state officials to continue planning for development.[80] The executive order directs North Carolina's Department of Environmental Quality ("DEQ") to continue permitting, as well as focus on recruiting wind energy investments.[81]

B. Renewable Portfolio Standard Update

North Carolina Sustainable Energy Association ("NCSEA") appealed a June 2016 decision from the North Carolina Utilities Commission ("NCUC") that held that a toppling cycle combined heat and power ("CHP") system does not constitute an energy efficiency measure under North Carolina's renewable energy portfolio standards statute, except to the extent that the waste component is used and meets the definition of an energy efficiency measure.[82] The North Carolina Court of Appeals reversed the decision, holding that for the purposes of classifying a topping cycle CHP as an energy efficiency measure, the state statute is unambiguous.[83] The Court of Appeals reasoned that a plain reading of the statute includes the entire topping cycle CHP system, and the NCUC misread the plain language of the statute, finding an ambiguity where none existed.[84]

C. Solar PV Power Purchase Agreement Holding Update

North Carolina Waste Awareness and Reduction Network ("NC WARN") appealed an April 2016 decision from the North Carolina Utilities Commission ("NCUC") that held that it was operating as a public utility when it agreed to install and maintain a solar panel system on a church's property.[85] The North Carolina Court of Appeals upheld the NCUC's decision, reasoning that NC WARN owned and operated "'equipment and facilities' that provide[d] electricity 'to or for the public for compensation,'" consistent with the definition of "public utility" found in the Public Utilities Act.[86] The Court of Appeals reasoned that while the General Assembly declared the policy of North Carolina is to promote the development of renewable energy, the policy must co-exist with the state's "well-established ban on third-party sales of electricity rather than supersede it."[87]

79. *Id.*

80. Exec. Order No. 11 at 2 (July 27, 2017).

81. *Id.*

82. State ex rel. Util. Comm'n v. N.C. Sustainable Energy Ass'n, 803 S.E.2d 430, 431 (N.C. Ct. App. 2017).

83. *Id.* at 432-33.

84. *Id.* at 433.

85. State ex rel. Util. Comm'n v. N.C. Waste Awareness & Reduction Network, 805 S.E.2d 712, 713 (N.C. Ct. App. 2017).

86. 2015 N.C. GEN. STAT. § 62-3(23)(a); *N.C. Waste Awareness and Reduction Network*, 805 S.E.2d at 714.

87. *Id.* at 716-17.

XIV. NORTH DAKOTA

On April 13, 2017, the Governor signed into law H.B. 1181, which places termination and abandonment timelines on wind option agreements, easements and leases, effective August 8, 2017.[88]

XV. OREGON

In 2017, Oregon enacted several pieces of energy legislation. Following the expansion of the state's renewable portfolio requirement in 2016's S.B. 1547 (requiring 50% renewables by 2040), the legislature has clarified certain aspects of RPS eligibility.[89] S.B. 339, effective on June 22, 2017, clarified that the RPS requirement that 8% of utility sales come from small-scale renewable facilities should allow for the eligibility of biomass projects not individually exceeding 20 MW in capacity, preserving room for other categories of small-scale generation.[90] S.B. 328, effective on June 6, 2017, clarifies that biomass facilities registered on or after January 1, 2011 are eligible for Renewable Energy Credits.[91]

Other legislation focused on expanding local capabilities to deploy renewable energy in Oregon. H.B. 2132 extends the state's Property-Assessed Clean Energy (PACE) program, allowing local government funding and property-owner payback for clean energy investments, to include energy storage, smart electric vehicle charging infrastructure, and water efficiency.[92] H.B. 2111 prohibits planned communities from including provisions (such as in a homeowners' association agreement) that would prohibit or restrict the use of solar energy systems, and allows homeowners presently subject to such provisions to petition for their removal.[93] Homeowners' associations are permitted to impose "reasonable size, placement, or aesthetic requirements" on solar panel installation and use under the bill.[94] H.B. 2510 and H.B. 2511 allow commercial and residential tenants to install and use electric vehicle charging stations at an assigned parking spot, with the charging equipment to be installed, maintained, and removed at tenant expense.[95]

Following the trend of states examining whether utility regulatory models require changes, S.B. 978 was enacted, directing the Oregon Public Utilities Commission (PUC) to "investigat[e] how developing industry trends, technologies and policy drivers in the electricity sector might impact the existing regulatory system and incentives currently employed by the commission."[96] Among other areas of inquiry, the PUC is empowered to examine incentives for the state's utilities and customers "to develop . . . and purchase renewable energy," and to examine the

88. N.D. LEGISLATIVE BRANCH, BILL ACTIONS FOR HB 1181, http://www.legis.nd.gov/assembly/65-2017/bill-actions/ba1181.html (last visited Feb. 21, 2017); H.B. 1181, 65th Leg., Reg. Sess. § 3(1) (N.D. 2017).

89. S.B. 1547, 78th Leg., Reg. Sess. § 5(h) (Or. 2016).

90. S.B. 339, 79th Leg., Reg. Sess. §§ 1(1), (2) (Or. 2017).

91. S.B. 328, 79th Leg., Reg. Sess. § 1 (Or. 2017).

92. H.B. 2132, 79th Leg., Reg. Sess. (Or. 2017).

93. H.B. 2111, 79th Leg., Reg. Sess. § 2(1) (Or. 2017).

94. *Id.* § 2(3).

95. H.B. 2510, 79th Leg., Reg. Sess. §§ 1(2)-7(b) (Or. 2017); H.B. 2511, 79th Leg., Reg. Sess. § 2(1) (Or. 2017).

96. S.B. 978, 79th Leg., Reg. Sess. § 1(1) (Or. 2017).

impact of variable and distributed energy resources on the state's utilities.[97] The PUC is instructed to explore potential changes to the state's regulatory system in light of its findings, with a report due to the legislature by September 15, 2018.[98] Finally, S.B. 1070 – which would have required the implementation of a statewide greenhouse gas cap-and-trade program – was not enacted in the 2017 session, but appears likely to be reintroduced in 2018.[99]

On the regulatory front, the PUC is continuing an inquiry into the Resource Value of Solar (RVOS) for the state's utilities, which will inform how solar facilities are treated in utility planning.[100] In a September order, the PUC ordered each of the state's utilities to open a separate docket to evaluate their particular proposals, with the goal of a PUC staff report providing recommendations to the commissioners by April 2018.[101] The PUC also continues to evaluate energy storage proposals from the state's utilities, including evaluations of storage potential on their respective systems, with proposals presently under consideration by the commission.[102]

XVI. PENNSYLVANIA

On October 30, 2017, the Governor signed Act No. 40, which amended the Administrative Code of 1929 to close the border for the solar energy market in Pennsylvania.[103] Under the new law, power companies can no longer use renewable energy credits from out-of-state projects to fulfill requirements that they get a portion of the energy bill they sell from solar sources.[104]

On March 2, 2017, the Pennsylvania Department of Environmental Protection kicked off *Finding Pennsylvania's Solar Future Project,* a thirty-month scenario planning and stakeholder engagement project to identify Pennsylvania's future solar development and investment strategies.[105] Four stakeholder meetings took place in 2017, and the modeling was conducted by Vermont Energy Investment Corporation, which will be followed with a draft report for public comment and independent academic review. [106]

XVII. SOUTH DAKOTA

On February 16, 2017, the Governor signed H.B. 1012, placing the same easement requirements on solar facilities that are currently in place for wind facilities in South Dakota.[107]

97. *Id.* §§ 1(2)(c)(C), 1(3)(a), (b).

98. *Id.* §§ 1(4), (6).

99. S.B. 1070, 79th Leg., Reg. Sess. §§ 6(1), 10(1) (Or. 2017).

100. Order No. 17-357, Investigation to Determine the Resource Value of Solar, Docket No. UM-1716, at 1 (Pub. Util. Comm'n of Or. Sept. 15, 2017).

101. *Id.*

102. *Id.* at 3.

103. H.B. 118, 2017 Gen. Assemb., Reg. Sess. (Pa. 2017).

104. *Id.* §§ 2804(1)(i)-(iii).

105. PA. DEP'T OF ENVTL. PROT., FINDING PENNSYLVANIA'S SOLAR FUTURE PRESENTATION (Dec. 7, 2017).

106. PA. DEP'T OF ENVTL. PROT., FINDING PENNSYLVANIA'S SOLAR FUTURE: MEETING (Feb. 18, 2018).

107. H.B. 1012, 2017 Leg., § 43-13-17 (S.D. 2017).

XVIII. TENNESSEE

In May 2017, Tennessee General Assembly H.B. 438 became law, creating the Tennessee Energy Policy Council, which is tasked with, among other things, developing an "ongoing comprehensive state energy policy plan to achieve maximum effective management and use of present and future sources of energy," which:

> [M]ay include energy efficiency, renewable and alternative sources of energy, research and development into alternative energy technologies, and improvements to the state's energy infrastructure and energy economy, including smart grid and domestic energy resources, [including,] but not limited to, natural gas, coal, hydroelectric power, solar, wind, nuclear energy, and biomass.[108]

The thirteen-member council will be appointed by the governor and leaders of the state House and Senate, and will include one representative of environmental groups and one representative with expertise in energy efficiency and conservation.[109]

Tennessee H.B. 1021 also became law in May 2017, which imposes a moratorium until July 1, 2018 on any construction, operation, or redevelopment of a wind energy facility, or initiation of a wind energy facility expansion, in the state.[110] The moratorium does not apply to counties and municipalities that have already established local siting regulations for wind facilities.[111] The new law also created a special joint legislative study committee, composed of three members of the state Senate and House, to evaluate and make recommendations relative to the siting of wind energy facilities and "report its findings and recommendations, including any potential legislation, to the energy, agriculture and natural resources committee of the [S]enate and the agriculture and natural resources committee of the [H]ouse of [R]epresentatives, by January 1, 2018."[112]

XIX. TEXAS

On June 8, 2017, the Texas Legislature enacted S.B. 277, which amends the state's tax code to prohibit owners of wind farms located near military aviation facilities from receiving certain tax incentives.[113] Under the new law, which took effect September 1, 2017, if a "wind-powered energy device" is placed within twenty-five nautical miles (28.7695 miles) of a military aviation facility located in Texas, the owner cannot receive an exemption from property tax under a tax abatement agreement or under a limitation on appraised value agreement (LAVA) entered into on or after September 1, 2017.[114] The law includes exceptions for

108. H.B. 438, 110th Gen. Assemb., 2017 Sess., § 68-204-103 (b)(2) (Tenn. 2017).
109. *Id.* § 68-204-108 (a) (Tenn. 2017).
110. H.B. 2021, 110th Gen. Assemb., 2017 Sess. § 4 (Tenn. 2017).
111. *Id.* § 3.
112. *Id.* § 5.
113. S.B. 277, §§ 312.0021(b), 313.024 (b)(1), 85th Leg., Reg. Sess. (Tex. 2017).
114. *Id.*

existing wind farms – if a wind-powered energy device is installed or constructed within twenty-five nautical miles of a military aviation facility as part of an expansion or repowering of an existing project, the prohibition on receiving tax exemptions under a tax abatement agreement executed after September 1, 2017, does not apply; the prohibition on receiving exemptions under LAVAs executed after September 1, 2017 does not, however, make this exception.[115] The law also excludes from the prohibition tax abatement agreements and applications for LAVAs for which approval is pending on September 1, 2017.[116]

On December 16, 2016, the Texas Public Utilities Commission (PUC) adopted an amendment to PUC Rule section 25.11 (Interconnection of On-Site Distributed Generation) previously proposed in June 2016.[117] The amendment, which the PUC made specifically to the Agreement for Interconnection and Parallel Operation of Distributed Generation (Interconnection Agreement or IA) provided in the rule, allows the end-use customer either to be the non-utility party to the IA or to elect one of the following entities to be the non-utility party to the IA on their behalf: (1) the entity who owns the distributed generation (DG) facility but is not the end-use customer, (2) the owner of the premises at which the DG facility is located, or (3) the person who by contract is assigned ownership rights to energy produced by the DG facility.[118]

XX. VERMONT

In May, Governor Phil Scott signed S.B. 52 (Act 53) into law, instructing the Commissioner of Public Service to submit a report on energy storage – identifying state, regional, and national initiatives, jurisdictional issues, opportunities and barriers for deployment in Vermont – to the legislature by November 15, 2017.[119] On that date, the Department of Public Service submitted the report, in which it recommends that storage be integrated into utility planning requirements in Vermont, that the state plan for deployment of private behind-the-meter storage systems, and recommending legislative changes to explicitly make injections to the electric grid from storage systems subject to PUC jurisdiction.[120] The report does not recommend a storage procurement target at this stage.

The Vermont PUC approved rules on noise from wind turbines.[121] Rule 5.700, adopted in November, set daytime limits of forty-two decibels and nighttime limits of thirty-nine decibels for new projects, measured at a distance of 100 feet from a landowner not participating in a wind project.[122] Additionally, the

115. *Id.*

116. *Id.* § 1.

117. PUB. UTIL. COMM'N OF TEX., ORDER ADOPTING AN AMENDMENT TO § 25.211 (Dec. 16, 2016).

118. *Id.*

119. S.B. 52 (Vt. 2017) [hereinafter Act 53].

120. VT. DEP'T OF PUB. SERV., ACT 53 REPORT: A REPORT TO THE VERMONT GENERAL ASSEMBLY ON THE ISSUE OF DEPLOYING STORAGE ON THE VERMONT ELECTRIC TRANSMISSION AND DISTRIBUTION SYSTEM (Nov. 15, 2017).

121. VT. PUB. UTIL. COMM'N, RULE ON SOUND LEVELS FROM WIND GENERATION FACILITIES (Nov. 22, 2017).

122. *Id.*

PUC adopted new net metering rules for the state.[123] Among other changes, the regulation gives Vermont's utilities default ownership of RECs from net-metered systems unless owners opt out, and streamlines the interconnection process for smaller net-metered systems, and removes an aggregate cap on net metering.[124]

Finally, in January 2017, the Vermont Supreme Court rejected arguments that aesthetic concerns related to solar panels could constitute a private nuisance.[125] Landowners alleged that two solar arrays affected local property values; the court found that "private nuisance law in Vermont does not encompass a cause of action for aesthetic harm alone" and upheld the lower court's decision of summary judgment for the solar companies.[126]

XXI. VIRGINIA

A. Joining RGGI

On November 16, 2017, the Virginia State Air Pollution Control Board published draft regulations to link Virginia to the Regional Greenhouse Gas Initiative (RGGI), establishing a carbon cap and an emissions trading program, while committing to reduce Virginia's carbon emissions by 30% between 2020 and 2030.[127] The draft regulations responded to Governor McAuliffe's Executive Directive 11, which directed the Virginia Department of Environmental Quality to develop a proposed regulation to "abate, control, or limit carbon dioxide emissions from electric power facilities," ensuring (1) Virginia is "trading-ready" to participate in RGGI, and (2) abatement mechanisms are established to match the carbon dioxide emissions caps of other states with emissions caps.[128]

B. Appalachian Power Company "Green Tariff" Proposal Rejected by State Corporation Commission

On September 13, 2017, the Virginia State Corporation Commission (VSCC) entered a final order rejecting a renewable energy tariff proposal filed by Appalachian Power Company.[129] The tariff was intended to offer customers the option to purchase 100% renewable energy, rather than energy from coal and gas-fired facilities.[130] If the tariff had been approved, it would have largely foreclosed competition for renewable energy, blocking Appalachian Power's customers from purchasing renewable generation from competitive suppliers.[131] Under Virginia law, most customers may only purchase renewable energy from third parties if their

123. VT. PUB. UTIL. COMM'N, RULE PERTAINING TO CONSTRUCTION AND OPERATION OF NET-METERING SYSTEMS (July 1, 2017) .

124. *Id.*

125. Myrick v. Peck Elec. Co., 164 A.3d 658, 665 (Vt. 2017).

126. *Id.*

127. STATE AIR POLLUTION CONTROL BD., TENTATIVE AGENDA & MINIBOOK, (Nov. 16, 2017) [hereinafter Regulation for Emissions Trading].

128. Executive Directive 11: Reducing Carbon Dioxide Emissions from Electric Power Facilities and Growing Virginia's Clean Energy Economy (May 16, 2017).

129. Final Order, *Petition of Appalachian Power Co. for Approval of a 100% Renewable Energy Rider*, Case No. PUE-2016-00051 (Sept. 13, 2017).

130. *Id.*

131. *See* VA. CODE ANN. § 56-577 (A)(5) (2010).

incumbent electric utility does not have an approved tariff for 100% renewable energy.[132] The VSCC is currently considering a similar renewable energy tariff proposal, filed by Dominion Energy Virginia (Dominion).[133]

C. Renewable Energy and Energy Efficiency Bills

1. S.B. 1393 – Utility Community Solar Program

On March 16, 2017, Virginia Governor Terry McAuliffe signed into law a bill requiring Virginia's largest two investor-owned utilities, Dominion and Appalachian Power, to conduct three-year community solar pilot programs.[134] For solar facilities placed into service on or after July 1, 2017, the pilot programs provide for the utilities to purchase facilities with a generating capacity up to two MW or, for larger facilities, enter into power purchase agreements for up to two MW per solar facility.[135]

2. S.B. 1395 – Expansion of Virginia's "Permit by Rule" Option for Renewable Developers

S.B. 1395 expanded Virginia's permit by rule option, enabling renewable facility developers to reduce the time and expense of attaining necessary state approvals.[136] S.B. 1395 increased the facility size cap from 100 MW to 150 MW for wind and solar facilities.[137] S.B. 1395 allows public utilities that own or operate small renewable facilities to use the permit by rule process, so long as project costs are not recovered from utility ratepayers.[138]

3. H.B. 2390 – Pilot Program for Appalachian Power Customers to Purchase Renewable Energy

An existing pilot program allows customers in Dominion's service territory to purchase renewable energy from on-site facilities owned by third parties.[139] H.B. 2390 expands the pilot program to allow non-profit institutions of higher education in Appalachian Power's service territory to participate as well.[140] The program is capped at seven MW for non-profit customers in Appalachian Power Company's service territory.[141]

132. *Id.*

133. Application of Virginia Electric & Power Co. for Approval of 100% Renewable Energy Tariff Pursuant to §§ 56-577 (A)(5), 56-234 of the Code of Virginia, Case No. PUR-2017-00060 (May 9, 2017).

134. S.B. 1393, 2017 Va. Acts 580, Reg. Sess. (Va. 2017).

135. *Id.*

136. S.B. 1395, 2017 Va. Acts 368, Reg. Sess. (Va. 2017).

137. *Id.*

138. *Id.*

139. 2013 Va. Acts 382, Reg. Sess. (Va. 2013).

140. H.B. 2390, 2017 Va. Acts 803, Reg. Sess. (Va. 2017).

141. *Id.*

4. S.B. 1394 – Renewable Energy for Agricultural Customers

S.B. 1394 establishes a buy-all, sell-all program enabling agricultural customers operating renewable energy facilities on their property to sell their electricity output to their electric utility, while continuing to purchase 100% of their electricity from their utility.[142] Utilities must purchase the renewable energy output at the avoided cost rate set by the state VSCC.[143] Renewable generating facilities operated by participating customers are capped at 1.5 MW.[144]

5. S.B. 990 – Reporting on Progress Toward Virginia's Energy Efficiency Goals

S.B. 990 directs the Virginia Department of Mines, Minerals and Energy to report annually on Virginia's progress towards its energy efficiency goals.[145] Virginia has a goal to reduce its energy consumption by 10% by 2022.[146]

XXII. WASHINGTON

A. Solar Jobs Bill

On July 7, 2017, Engrossed Substitute Senate Bill (ESSB) 5939 was signed into law.[147] ESSB 5939 extends incentives for solar unit ownership, encouraging jobs in the local renewable energy industry.[148] Previously, homeowners who installed solar were eligible to receive payments from a state fund through 2020; however, these funds have been running low.[149] ESSB 5939 has extended the program through 2030 and provided updates to the funding mechanism.[150] ESSB 5939 also includes what is described as a "first-in-the-nation" requirement for manufacturers to finance and manage a recycling program for used solar units.[151] Under the program, solar manufacturers must provide regional locations where solar modules can be delivered for proper recycling at no cost to the last owner of the unit.[152]

B. Energy Independence Act

The state's Energy Independence Act (EIA), as revised in 2015, requires qualifying electric utilities to obtain a certain percentage of their electricity from

142. S.B. 1394, 2017 Va. Acts 581, Reg. Sess. (Va. 2017).

143. *Id.*

144. *Id.*

145. S.B. 990, 2017 Va. Acts. 568, Reg. Sess. (Va. 2017).

146. *Id.* The 10% reduction is from 2006 base year.

147. S.B. 5939, 65th Leg., 3rd Spec. Sess. (Wash. 2017).

148. *Id.*

149. Kara Carlson, *Solar Incentives Bill has Industry Seeing Sunny Days*, SEATTLE TIMES (July 10, 2017), https://www.seattletimes.com/business/solar-incentives-bill-has-industry-seeing-sunny-days.

150. *Id.*

151. Press Release, Nw. Product Stewardship Council, First-in-the-Nation Legislation Requiring Manufacturers to Recycle Used Solar Units Signed into Law (July 18, 2017).

152. *Id.*

eligible renewable resources, including wind, solar, and hydropower.[153] As part of the EIA requirements, Avista, Pacific Power, and Puget Sound Energy filed reports detailing their renewable portfolios with the Washington Utilities and Transportation Commission (WA UTC).[154] The WA UTC has again found that each of the subject utilities had successfully complied with the standard and was on track to achieve the renewable energy target of supplying at least nine percent of their electric load for 2016 through renewable sources.[155]

XXIII. WISCONSIN

A. Renewable Portfolio Standard

On July 14, 2017, the Wisconsin Public Service Commission found that all Wisconsin electric providers were in compliance with Wisconsin's renewable portfolio standard requirements for the prior year, 2016.[156]

On August 2, 2017, Wisconsin Governor Scott Walker signed 2017 Wisconsin Act 53, which expanded the definition of "renewable resource" under Wisconsin law to include "[h]eat that is a byproduct of a manufacturing process."[157] As a result, electricity derived from this type of heat qualifies as "renewable energy" for purposes of Wisconsin's renewable portfolio standard.[158] Additionally, the Act provides that such heat qualifies for the creation of a renewable resource credit if it is used to provide thermal energy for another purpose and it displaces the use of electricity derived from conventional resources.[159]

From January 1 through December 12, 2017, the Wisconsin Public Service Commission (WPSC) certified seventeen new facilities as renewable facilities, the energy from which may be used to satisfy Wisconsin's renewable portfolio standard or to generate renewable resource credits, when the energy is sold by a Wisconsin electric provider to a Wisconsin retail customer.[160] The seventeen facilities included fifteen solar photovoltaic generating facilities with total capacity of 178.95 MW and two wind turbine generating facilities with a total capacity of 178 MW.[161] In addition, the WPSC certified an increase in capacity from 6.0 MW to 9.0 MW for one hydroelectric facility.[162]

153. Press Release, Wash. Utils. & Transp. Comm'n, Washington Electric Companies on Track to Meet 2017 Renewable Energy Targets (Aug. 17, 2017).

154. *Id.*

155. *Id.*

156. Order, *Electric Provider Renewable Portfolio Standard Compliance for 2016*, Docket No. 5-RF-2016 (Wis. Pub. Service Comm'n July 14, 2017).

157. S.B. 144, Reg. Sess. (Wis. 2017).

158. *Id.*

159. *Id.*

160. WIS. STAT. § 196.378 (2)(a) (2017).

161. Orders for Docket Nos. 1515-RF-130, 1515-RF-131, 1515-RF-133, 1515-RF-134, 1515-RF-135, 1515-RF-136, 1515-RF-137, 1515-RF-138, 1515-RF-139, 1515-RF-140, 1515-RF-141, 1515-RF-143, 1515-RF-144, 1515-RF-146, 1515-RF-147, 4220-RF-257, 4220-RF-258, 6630-RF-134 (Wis. Pub. Service Comm'n).

162. Order, *Wis. Elec. Power Co.'s Certification & Registration of Twin Falls Hydroelec. Facility as a Renewable Energy Facility*, Docket No. 6630-RF-134 (Feb. 10, 2017).

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