

REPORT OF THE RENEWABLE ENERGY SUBCOMMITTEE

This report covers renewable energy developments in certain states in 2018.*

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I. DISTRICT OF COLUMBIA

On December 18, 2018, the DC Council voted unanimously in favor of the Clean Energy DC Omnibus Amendment Act of 2018.¹ The bill establishes a 100%

* The Subcommittee would like to thank the following members for their contributions to this report: Andrea Kells, Eric Wallace, Gabriel Tabak, Pari Kasotia, Alexander McDonough, and Zach Ramirez.

renewable energy target by 2032 with a 10% solar energy carve-out by 2040 as well as energy efficiency standards for new and existing buildings and funds DC's green bank and sustainability energy utility.²

On June 5, 2018, the DC Council voted unanimously in favor of the District of Columbia Green Finance Authority Establishment Act of 2017 which was signed by the DC Mayor on July 2, 2018.³ This established DC as the first city in the country to establish a Green Bank.⁴

II. CALIFORNIA

In September 2018, Governor Brown Signed SB 100, increasing the state's Renewable Portfolio Standard (RPS) from 50% to 60% by 2030 and requiring 100% clean energy, (made up of RPS-eligible and zero-carbon resources) by the end of 2045.⁵

The Legislature also passed and the Governor signed SB 700, extending the Self-Generation Incentive Program (SGIP) for another five years through 2023, and raising the budget for the program by another \$830 million.⁶ Having evolved with technology changes, the SGIP program provides rebates for qualifying "behind the meter" distributed energy resource systems, such as battery storage.⁷ The extension also includes new statutory requirements to ensure qualifying systems reduce greenhouse gases.⁸

In May, the California Energy Commission (CEC) adopted a first-in-the-nation requirement that nearly all new homes include solar systems beginning in 2020.⁹ The CEC included the requirement as part of an update to California's Building Energy Efficiency Standards, following a lengthy stakeholder process.¹⁰

1. Committee on Transportation and the Environment and Committee on Business and Economic Development, *B22-0904 – CleanEnergy DC Omnibus Amendment Act of 2018*, COUNCIL OF THE DISTRICT OF COLUMBIA (Jul. 10, 2018), <http://lims.dccouncil.us/Legislation/B22-0904?FromSearchResults=true>.

2. *Id.*

3. Committee on Transportation and the Environment, *B22-0257 – District of Columbia Green Finance Authority Establishment Act of 2017*, COUNCIL OF THE DISTRICT OF COLUMBIA (Apr. 25, 2017), <http://lims.dccouncil.us/Legislation/B22-0257>.

4. DC GREEN BANK, <https://dgreenbank.org> (last visited Feb. 2019).

5. 100% Clean Energy Act, S. 100, ch. 312 (Cal. 2018) (amending §§ 399.11, 399.15, 399.30, 454.53), available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB100.

6. Public Utilities Act, S. 700, ch. 839 (Cal. 2018) (amending § 379.6), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB700.

7. Jeff St. John, *California Bill to Extend \$800M in Incentives for Behind-the-Meter Batteries*, UTILITY DIVE (Aug. 31, 2018), <http://www.greentechmedia.com/articles/read/california-passes-bill-to-extend-incentives-for-behind-the-meter-batteries#gs.0WPM94wa>.

8. Peter Maloney, *California's BTM energy storage moves forward, but is it good for the climate?*, UTILITY DIVE (Sept. 4, 2018), <https://www.utilitydive.com/news/californias-btm-energy-storage-moves-forward-but-is-it-good-for-the-climate/531463/>.

9. Amber Paricha Beck, *Energy Commission Adopts Standards Requiring Solar Systems for New Homes, First in Nation*, CAL. ENERGY COMM'N (May 9, 2018), https://www.energy.ca.gov/releases/2018_releases/2018-05-09_building_standards_adopted_nr.html.

10. *Id.* The stakeholder process is 18 months long.

On September 21, 2018, Governor Brown signed SB 901, an omnibus law responding to the 2017 wildfires across California as well as PG&E's potential liability for the fires.¹¹ In particular, SB 901 included provisions to facilitate PG&E's cost recovery and payment of liability through Rate Recovery Bonds.¹² It also included provisions directing utilities to file wildfire recovery plans and comprehensive forestry provisions.¹³

III. FLORIDA

On May 17, 2018, the Florida Public Service Commission (FPSC) issued a declaratory statement that Sunrun, Inc.'s residential photovoltaic (PV) equipment leases do not constitute a retail sale of electricity and do not cause Sunrun to be regulated as a public utility under Florida law.¹⁴ The leases proposed to be offered by Sunrun in Florida include the following provisions: (1) payments are to be based on a negotiated rate of return, and would "be independent of electric generation, production rates, or any other operational variable of the leased equipment"; (2) once the equipment is installed, the lessee is responsible for maintaining and operating the equipment; and (3) Sunrun will hold legal title to the equipment and receive the tax credits and depreciation benefits associated with the equipment.¹⁵

IV. MINNESOTA

On May 19, 2018, Minnesota Governor Mark Dayton signed Senate File (SF 3245) into law as Minnesota Session Law Chapter 155.¹⁶ The law reauthorizes the Property Assessed Clean Energy (PACE) program for residential properties and it adds new requirements relating to providing consumer protections for residential property owners who participate in the program.¹⁷ The PACE program had been suspended by Minnesota Session Law Chapter 94, which provided that the program would remain suspended until the enactment of legislation establishing consumer protections.¹⁸ The new consumer protection provisions created by Session Law Chapter 155 include authorizing the Minnesota Department of Commerce to oversee residential PACE lending; requiring that PACE loans must be

11. Wildfires Act, S. 901, ch. 626 (Cal. 2018) (amending CIVIL CODE § 815.11 et. al), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB901.

12. See Senate Floor Analysis, Wildfires Act, S. 901, ch. 626 (Cal. 2018), https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB901.

13. *Id.*

14. Declaratory Statement, *In re Petition by Sunrun Inc. for declaratory statement concerning leasing of solar equipment*, Docket No. 20170273-EQ (Fl. Pub. Serv. Comm'n May 17, 2018), <http://www.floridapsc.com/library/filings/2018/03712-2018/03712-2018.pdf>.

15. *Id.* at 4.

16. Minnesota Legis. Office of the Revisor of Statutes, SF 3245 (2018), <https://www.revisor.mn.gov/bills/bill.php?b=Senate&f=SF3245&ssn=0&y=2018>.

17. Minnesota Senate Counsel, Research and Fiscal Analysis, SF 3245, Section 32 (Apr. 9, 2018), https://www.senate.mn/departments/scr/billsumm/summary_display_from_db.php?1s=90&id=5994.

18. MINNESOTA COMMERCE DEPT., MINNESOTA RESIDENTIAL PACE CONSUMER PROTECTION LEGISLATION TASK FORCE: REPORT TO THE LEGISLATURE 3 (Jan. 12, 2018), <http://mn.gov/commerce-stat/pdfs/pace-report-2018.pdf>.

based on what a property owner can afford; requiring lenders to provide specific disclosures to property owners; and requiring PACE lenders to inform property owners of energy-related programs operated through the State of Minnesota, such as weatherization and energy assistance programs.¹⁹

V. NEVADA

Nevada voters passed a ballot measure, Question 6, to amend Nevada's constitution to require utilities to generate or procure no less than 50 percent of their electricity from renewable energy resources by 2030.²⁰ This would raise the state's Renewable Portfolio Standard to 25% by 2025.²¹ Question 6 must pass again in 2020 in order to amend the constitution.

The Energy Choice Initiative ballot measure, Question 3, failed to receive a majority of votes required to go into effect and effectively inserted retail choice into Nevada's constitution.²² The measure passed by popular vote in November 2016, but was required to pass a second time before going into effect.

VI. NEW JERSEY

On May 23, 2018, the New Jersey Governor signed Renewable Energy Bill, A-3723 which established the renewable energy standard requiring 21% of the solar energy in the state be from Class I renewable energy sources by 2020, 35% by 2025, and 50% by 2030.²³ The bill also included provisions for creating a community solar program, development of 3500 MW of offshore wind by 2030, and 600 MW of energy storage by 2021 and 2,000 MW by 2030.²⁴ The bill also required each utility to implement energy efficiency measures to reduce electricity usage by 2% and natural gas by 0.75%.²⁵ The bill called for provisions to reform the state's solar program.²⁶

On May 23, 2018, the Governor also signed Bill S-2313 which establishes Zero Emissions Certificate (ZEC) program to maintain New Jersey's nuclear energy supply, which contributes close to 40% of the State's electric capacity.²⁷

The Governor also issued two executive orders. Executive Order 7 mandated the New Jersey Department of Environmental Protection and the Board of Public

19. Minnesota Senate Counsel, Research and Fiscal Analysis, *supra* note 17.

20. Mick Akers, *Nevada Ballot Questions: Voters reject breaking up NV Energy, pass Marsy's Law*, LAS VEGAS SUN (Nov. 7, 2018), <https://lasvegassun.com/news/2018/nov/07/nevada-ballot-questions-voters-reject-breaking-up/>.

21. Nevada Pub. Utils. Comm'n, *Renewable Portfolio Standard*, http://puc.nv.gov/Renewable_Energy/Portfolio_Standard/ (last visited Mar. 15, 2019).

22. Akers, *supra* note 20.

23. Assembly, No. 3723, 218th Leg. (N.J. 2018) ("Establishes and modifies clean energy and energy efficiency programs; modifies State's solar renewable energy portfolio standards.").

24. *Id.* at 2.

25. P.L. 2018, Assembly, No. 3723, Senate and Gen. Assembly of the State of N.J. (May 23, 2018), https://www.njleg.state.nj.us/2018/Bills/AL18/17_.PDF.

26. Assembly No. 3723, *supra* note 23, at 1.

27. SENATE BUDGET AND APPROPRIATIONS COMMITTEE, STATEMENT TO SENATE, NO. 2313: STATE OF NEW JERSEY (2018).

Utilities to begin the process of reentering New Jersey into the Regional Greenhouse Gas Initiative (RGGI).²⁸ Executive Order No. 28 directed state agencies to develop an updated Energy Master Plan (EMP) that provides a path to 100% clean energy by 2050.²⁹ The EMP is expected to be completed by June 2019.³⁰

VII. NORTH CAROLINA

A. Duke Energy Solar Rebate Program

Through a series of orders issued in 2018, the North Carolina Utilities Commission (NCUC) approved a solar rebate program proposed by Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (Duke) pursuant to the directive of North Carolina House Bill 589 (S.L. 2017-192), which was enacted into law on July 27, 2017.³¹ Among other things, that law requires Duke to develop for NCUC approval a program that offers incentives for residential customer-sited solar installations up to 10 kW in size and nonresidential customer-sited solar up to 100 kW in size.³² The law limits rebates annually to a total of 10,000 kW of installed solar capacity and, of that total, limits total nonresidential installed capacity rebates to 5,000 kW.³³ Additionally, the law requires that 2,500 kW of the 10,000 kW annual limit be reserved for use by nonprofit organizations.³⁴ All solar rebate incentives provided to customers and program administrative costs are allowed to be recovered over a 20-year amortization period through each Duke utilities' annual rider, to recover costs associated with compliance with the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (REPS).³⁵

B. Duke Energy Program for Competitive Procurement of Renewable Energy

House Bill 589 also requires Duke utilities to procure an aggregate 2,660 MW of renewable energy over a 45-month period via competitive solicitations offering 20-year PPAs.³⁶ The law mandates the program be administered by an "independent administrator" and allows Duke and its affiliates to submit bids, so long as they do not win more than 30% of the total capacity procured through the program.³⁷ Duke obtains the renewable energy attributes/ renewable energy certificates (RECs) associated with third party resources as well as "rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the

28. S. Res. 2313, 2018-2018 Regular Session (N.J. 2018), <https://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=S2313>.

29. Exec. Order No. 28 (N.J. Gov. May 23, 2018).

30. *Id.*

31. *Order Modifying and Approving Riders Implementing Solar Rebate Program*, Docket Nos. E-2, Sub 1167, E-7, Sub 1166 (N.C. Utils. Comm'n Apr. 3, 2018); *Order Modifying First Year of Solar Rebate Program*, Docket Nos. E-2, Sub 1167, E-7, Sub 1166 (N.C. Utils. Comm'n Sept. 20, 2018); *Order Granting Joint Motion to Amend*, Docket Nos. E-2, Sub 1167, E-7, Sub 1166 (N.C. Utils. Comm'n Dec. 3, 2018).

32. N.C. GEN. STAT. § 62-155 (f) (2018).

33. *Id.* § 62-155 (f)(1)-(2).

34. *Id.* § 62-155 (f)(3).

35. *Id.* § 62-155 (f); N.C. GEN. STAT. § 62-133.8 (h)(1)(d).

36. N.C. GEN. STAT. § 62-110.8 (a).

37. *Id.* § 62-110.8 §§ (b)(4), (d)-(e).

utility's own generating resources."³⁸ In response to these directives, Duke developed the Competitive Procurement of Renewable Energy Program (CPRE Program) to procure the required 2,660 MW through four "tranches" or requests for proposals (RFP).³⁹ The NCUC approved the CPRE Program on February 21, 2018.⁴⁰ On October 5, 2018, the NCUC approved modifications to the state's Generator Interconnection Standard to permit a system impact grouping study process to be used to study interconnection requests of generating projects that are participating in the CPRE Program.⁴¹

C. State Supreme Court Affirms Court of Appeals Decision on Solar PV PPA

As reported in the 2017 Report, the North Carolina Waste Awareness and Reduction Network (NC WARN) appealed a NCUC decision that held that NC WARN was operating as a public utility when it agreed to install and maintain a solar panel system on a church's property.⁴² The North Carolina Court of Appeals upheld the NCUC's decision, reasoning that NC WARN owned and operated "equipment and facilities" that provided electricity "to or for the public for compensation," consistent with the definition of "public utility" found in the Public Utilities Act.⁴³ 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.⁴⁴ On May 11, 2018, the North Carolina Supreme Court issued a per curiam opinion affirming the Court of Appeals' decision.⁴⁵

D. Renewable Energy and Energy Efficiency Portfolio Standard Update

In October 2018, the NCUC issued an order further modifying the NC REPS requirements for utilities to procure energy derived from swine and poultry waste.⁴⁶ For North Carolina electric utilities, the changes reduce the swine and poultry waste set-aside requirements for 2018 and delays scheduled increases in these set-asides to 2019.⁴⁷ Specifically, the NCUC reduced the 2018 requirement for North Carolina electric utilities to procure swine waste to 0.02% of their prior

38. *Id.* § 62-110.8 (b).

39. *Order Modifying and Approving Joint CPRE Program*, Docket Nos. E-2, Sub 1159, E-7, Sub 1156, 3 (N.C. Utils. Comm'n Feb. 21, 2018).

40. *Id.* at 30.

41. *Order Approving Interim Modifications to North Carolina Interconnection Procedures for Tranche 1 of CPRE RFP* at 8, Docket Nos. E-100, Sub 101, E-2, Sub 1159, E-7, Sub 1156, 8 (N.C. Utils. Comm'n Oct. 5, 2018).

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

43. *Id.* at 714; N.C. GEN. STAT. § 63-3 (23)(a) (2016).

44. *N.C. Waste Awareness and Reduction Network*, 805 S.E.2d at 716-17.

45. State ex rel. Utilities Commission v. N.C. Waste Awareness and Reduction Network, 812 S.E.2d 804, 804 (N.C. 2018).

46. *Order Modifying the Swine and Poultry Waste Set-Aside Requirements and Providing Other Relief*, Docket No. E-100, Sub 113, 6-7 (N.C. Utils. Comm'n Oct. 8, 2018).

47. *Id.*

year energy requirements, with that percentage rising to 0.07% in calendar years 2019-2020, to 0.14% in calendar years 2021-2023, and to 0.20% in 2024 and thereafter.⁴⁸ The swine waste procurements for electric membership corporations and municipalities were reduced to 0.00% for calendar year 2018, with the percentage increasing at the same level as for electric utilities in subsequent years.⁴⁹ With regard to poultry waste, the set-aside requirement for all power suppliers for 2018 was reduced to 300,000 MWh, with the increase to 700,000 MWh postponed until calendar year 2019, and the increase to 900,000 MWh postponed to 2020 and thereafter.⁵⁰ Electric power suppliers are also allowed to bank any swine or poultry waste RECs previously or subsequently acquired for use in future compliance years and to replace compliance with the swine and poultry waste set-aside requirements in 2018 with other compliance measures, including the use of solar RECs beyond the requirements of the REPS.⁵¹

VIII. OREGON

The potential adoption of a greenhouse gas cap-and-trade program, with a significant focus on electricity-sector decarbonization, continues to be a major issue in Oregon. In 2018, Oregon's Legislature met for an abbreviated session (as it does in all even-numbered years), and the Senate considered, but did not pass, a bill that would have implemented a cap-and-trade program beginning in 2021.⁵² However, the Legislature's Joint Interim Committee on Carbon Reduction continued holding stakeholder meetings and developing legislative options after the conclusion of the session.⁵³ In November, Governor Kate Brown won reelection, and Democrats won a supermajority in both chambers of the Legislature.⁵⁴ Cap-and-trade has been identified as a top priority for the 2019 legislative session,⁵⁵ which will run for up to 160 days as an odd-numbered year. Additionally, the state's Carbon Policy Office issued a White Paper in late November 2018 indicating state priorities for attaining environmental goals, including a cap-and-trade program,

48. *Id.* at 6.

49. *Id.*

50. *Id.* at 7.

51. *Order Modifying the Swine and Poultry Waste Set-Aside Requirements*, *supra* note 34, at 6-7.

52. S.B. 1507, 79th Leg. Assemb., Reg. Sess. (Or. 2018), <https://olis.leg.state.or.us/liz/2018R1/Measures/Overview/SB1507>.

53. Oregon State Legislature, 2017-2018 Joint Interim Committee on Carbon Reduction, <https://olis.leg.state.or.us/liz/2017I1/Committees/JCCR/Overview>.

54. Andrew Selsky, *Democrat Kate Brown Wins Re-Election as Oregon Governor* (Nov. 7, 2018), <https://www.usanews.com/news/best-states/Oregon/articles/2018-11-06/gop-hopes-for-a-rare-win-in-oregon-gubernatorial-race>.

55. Ted Sickenger, *Will 2019 be the year Oregon gets climate change bill to finish line?*, THE OREGONIAN/OREGONLIVE, https://www.oregonlive.com/politics/index.ssf/2018/12/will_2019_be_the_year_oregon_g.html (last visited Feb. 2, 2019).

increasing electric vehicle infrastructure and incentives, decarbonizing the electricity system, and climate resilience, with all initiatives potentially being brought under a new Oregon Climate Authority office.⁵⁶

2017's SB 978 directed Oregon Public Utility Commission (PUC) to "investigate 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."⁵⁷ Among other areas of inquiry, the Oregon PUC was empowered to examine incentives for the state's utilities and customers to develop and purchase renewable energy, and to examine the impact of variable and distributed energy resources on the state's utilities.⁵⁸ In September 2018, the Oregon PUC issued its report recommending that the Legislature provide a clear mandate to reduce greenhouse gas emissions as part of utility regulation, and to consider equity and affordability of energy.⁵⁹ Other areas of potential regulatory reform addressed in the report include properly valuing customer and competitive options, implementing performance-based regulation for utilities, regional market development, and expanding engagement and participation for stakeholders.⁶⁰

Finally, in November the Oregon Department of Energy (DOE) issued its first biennial energy report to the Legislature.⁶¹ The report provides detailed information on Oregon's energy use, production, expenditures, and assesses strategies for addressing climate change.⁶² It also covers renewable energy expansion, transportation, energy efficiency, and equity considerations.⁶³ The Oregon DOE recommends expanding its data collection and analysis, continuing assessment of the potential creation of a regional grid operator, and evaluating state incentives for electric vehicles and renewable natural gas.⁶⁴

IX. PENNSYLVANIA

On June 12, Governor Wolf signed Senate Bill 234, which established the Property Assessed Clean Energy program, a financing mechanism that enables low-cost and long-term funding for energy efficiency, renewable energy, and water conservation upgrades.⁶⁵

56. Kate Brown & Kristen Sheeran, *Oregon Climate Agenda: A Strong, Innovative, Inclusive Economy While Achieving state Climate Emissions Goals*, Gov. (2018), <https://www.oregon.gov/gov/Documents/Governor%20Kate%20Brown%20Climate%20Agenda.pdf>.

57. S.B. 978, 79th Leg. Assemb., Reg. Sess. (Or. 2017).

58. *Id.*

59. *S.B. 978: Actively Adapting to the Changing Electricity Sector*, OREGON PUB. UTILS. COMM'N (2018), <https://www.puc.state.or.us/Renewable%20Energy/SB978LegislativeReport-2018.pdf>.

60. *Id.* at 3.

61. *2018 Biennial Energy Report*, OR. DEP. OF ENERGY (2018), <https://www.oregon.gov/energy/Data-and-Reports/Documents/2018-Biennial-Energy-Report.PDF>.

62. *Id.* at i.

63. *Id.*

64. *Id.*

65. S.B. 234, Leg. 30 Sess. (Pa.).

On November 28, 2018, Pennsylvania Department of Environmental Protection issued Pennsylvania Solar Future Plan, which provides strategies to increase electricity generation from in-state solar energy.⁶⁶

X. VERMONT

On May 2018, the Governor signed H.676/Act 163.⁶⁷ This Act allows the Vermont Public Utility Commission (PUC) to require a setback for solar generation facilities on areas used for parking vehicles, eliminates certain application fees for roof-mounted photovoltaic systems up to 500kW, and allows for vegetation management and pollinator benefits to be considered in site selection for solar generation.⁶⁸

Also, on May 2018, the Vermont PUC updated its solar net metering rule which will gradually reduce rates for Renewable Energy Credit sales from net-metered resources and gradually bring those rates closer to the state's standard-offer solar program.⁶⁹ The net metering rate will fall by \$0.02 between 2018 and 2020.⁷⁰ Based on the growth of solar distributed energy and the higher prices for net-metered resources, the Vermont PUC found that reductions were appropriate and would better align the costs and benefits of net metered solar.⁷¹

XI. VIRGINIA

A. Renewable Energy Legislation

1. SB 966 – Grid Transformation and Security Act

The Grid Transformation and Security Act - SB 966 - repealed controversial rate freeze legislation in 2015 Senate Bill 1349 and modified several provisions of Virginia's 2007 Re-Regulation Act, which is codified at Title 56 (Public Service Companies) of the Code of Virginia.⁷² The Grid Transformation and Security Act addressed many different code provisions, including: (1) modifying the definition of "public utility" to exclude certain electric storage companies; (2) revising distribution line undergrounding provisions, creating a new pilot program for undergrounding; (3) calling for utility investment in "electric distribution grid transformation projects" to support integration of renewable resources, distribution grid reliability and security, energy efficiency, advance metering, and other grid en-

66. David Althoff Jr., & Robert Altenburg, *Pennsylvania's Solar Future Plan*, PA. DEP'T OF ENVTL. PROT. (Nov. 2018), <http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=1413595&DocName=PENNSYLVANIA%26%2339%3bS%20SOLAR%20FUTURE%20PLAN.PDF%20%20%3cspan%20style%3D%22color:blue%3b%22%3e%28NEW%29%3c/span%3e#>.

67. 2018 Vt. Acts & Resolves 676.

68. *Id.*

69. *In re: biennial update of the net-metering program*, Case No. 18-0086-INV (State of Vt. Pub. Util. Comm'n 2018).

70. *Id.* at 47.

71. *Id.* at 4.

72. S.B., 2018 Leg., Gen. Assemb. Reg. Sess. (Va. 2018).

hancements; (4) ending utility rate freezes through modified rate review provisions, including a change from biennial to triennial rate reviews; and (5) providing a path for utility investment in 5,000 MW of new renewable generation (deemed to be in the public interest); and (6) modifying the schedule for integrated resource planning proceedings from every two to every three years.⁷³ SB 966 went into effect on July 1, 2018.⁷⁴

2. HB 1451 – Public School Net Metering Pilot Program

HB 1451 established a 10 MW net metering pilot program for Virginia public schools.⁷⁵ HB 1451 went into effect on July 1, 2017.

B. 2018 Virginia Energy Plan

On October 2, 2018, Governor Northam released the Commonwealth of Virginia's 2018 Energy Plan.⁷⁶ The non-binding plan expresses the Administration's energy policy goals, largely tracking the policies reflected in SB 966. The Energy Plan includes recommendations to increase the deployment of renewable energy and energy efficiency.⁷⁷ The policy proposals include relaxing restrictions on renewable power purchase agreements, raising net metering caps, requiring investor owned utilities to conduct annual requests for proposals for solar and wind generation in Virginia, and expanding utility renewable energy tariff offerings for commercial customers.⁷⁸

C. Virginia State Corporation Commission (“Commission”) Decisions

1. Appalachian Power Company's West Virginia and Ohio Wind Acquisition Costs Rejected

On April 2, 2018, the Commission rejected Appalachian Power Company's (APCo's) request for a rate adjustment clause to recover costs associated with acquisition of West Virginia and Ohio wind generation facilities.⁷⁹ The Commission found that the capacity and energy from the facilities was not needed to serve Virginia customers.⁸⁰

73. *Id.*

74. *Id.*

75. H. 1451, 2018 Leg., Gen. Assemb., Reg. Sess. (Va. 2018).

76. OFFICE OF THE SEC'Y OF COMMERCE AND TRADE, DEPT. OF MINES, MINERALS, AND ENERGY, THE COMMONWEALTH OF VIRGINIA'S 2018 ENERGY PLAN (2018).

77. *Id.*

78. *Id.*

79. Final Order, *Application of Appalachian Power Co.*, no. PUR-2017-00031 (Commw. Va. State Corp. Comm'n Apr. 2, 2018).

80. *Id.* at 2.

2. Dominion 100% Renewable Energy Tariffs Rejected

On May 7, 2018, the Commission rejected Virginia Electric and Power Company's (Dominion's) proposed 100% renewable energy tariffs for commercial customers with demand greater than 1 MW.⁸¹ The Commission clarified its holding on reconsideration.⁸²

3. Revised Dominion IRP Ordered

On December 7, 2018, the Commission ordered Dominion to correct and re-file its 2018 Integrated Resource Plan (IRP).⁸³ The Commission found that Dominion failed to include a least-cost plan in the IRP and did not address all the mandates in SB 966.⁸⁴ The Commission also took issue with the load forecast and solar capacity factor used in the IRP, directing Dominion to use revised figures in its updated submission.⁸⁵ The Commission directed Dominion to re-run its analyses and re-file the corrected results within 90 days.⁸⁶

4. Dominion Offshore Wind

On November 2, 2018, the Commission approved Dominion's proposal to develop two 6 MW offshore wind generation facilities about 27 miles off the coast of Virginia Beach.⁸⁷ The project is expected to begin operations in December 2020 and cost approximately \$300 million.⁸⁸ The Commission approved the proposal despite the price tag, which is many times more expensive than other offshore wind, new solar, new onshore wind, new combined-cycle natural gas, and 26 times greater than purchasing energy from the wholesale market.⁸⁹ The Commission's decision discussed the General Assembly's policy statements in SB 966 in favor of offshore wind development as the justification for approving a project that would not have been approved under historical prudence review.⁹⁰

XII. WISCONSIN

On December 4, 2018, Sunrun Inc. filed a petition with the Wisconsin Public Service Commission (WPSC), requesting that the WPSC issue a declaratory ruling that Sunrun's standard residential solar equipment lease will not cause Sunrun to

81. Final Order, *Application of Virginia Electric and Power Company*, No. PUR-2017-00060 (Commw. Va. State Corp. Comm'n May 7, 2018).

82. Order on Reconsideration, *Application of Virginia Electric and Power Company*, No. PUR-2017-00060 (Commw. Va. State Corp. Comm'n June 20, 2018).

83. Order, *Commw. of Virginia, ex rel. State Corp. Comm'n*, No. PUR-2018-00065 (Commw. Va. State Corp. Comm'n Dec. 7, 2018).

84. *Id.* at 4.

85. *Id.* at 9.

86. *Id.* at 5.

87. Final Order, *Application of Virginia Electric and Power Company*, No. PUR-2018-00121 (Commw. Va. State Corp. Comm'n Nov. 2, 2018).

88. *Id.* at 4.

89. *Id.* at 11.

90. *Id.* at 15-19.

be deemed a public utility under Wisconsin law.⁹¹ As of January 2019, the petition remained pending before the WPSC, and comments supporting the petition had been submitted by the Environmental Law and Policy Center, while comments opposing the petition had been submitted by the Wisconsin Utilities Association and Fair Rates of Wisconsin's Dairyland, Inc.⁹²

The petition was submitted in response to the WPSC's previous order in Docket 9300-DR-102, in which the WPSC declined to issue a declaratory ruling in response to a petition by the Wisconsin Solar Energy Industries Association (WiSEIA).⁹³ The petition by WiSEIA sought a declaratory ruling that WiSEIA's members will not be deemed to be public utilities under Wisconsin law when executing agreements with the following characteristics: (1) the solar photovoltaic (PV) system is located on the customer's property; (2) the system is installed behind the customer's point of connection with the electric grid; (3) the system is sized to offset a portion of the customer's load; (4) the customer enters into a private contract with the WiSEIA member for energy-related services; (5) the system is interconnected to the local utility's system; (6) the system provides power solely to the customer upon whose property it is located; and (7) if the system's generation exceeds the customer's load, the system delivers power to the electric utility to which it is interconnected.⁹⁴

In declining to issue a declaratory ruling in response to WiSEIA, the WPSC stated that the petition "raise[d] significant policy considerations that the Commission believes are better left for the Legislature's determination."⁹⁵

91. Verified Petition, *Leasing of Solar Equipment in Wisconsin* (Pub. Serv. Comm'n of Wi. Dec 4, 2018).

92. Letter from Bradley D. Jackson, Att'y for Wis. Util. Ass'n, Quarles & Brady LLP (Dec. 26, 2018) (on file with the Pub. Serv. Comm'n of Wi.); Letter from Mark Meyer, Exec. Dir., Fair Rules for Wisconsin's Dairyland (Dec. 26, 2018) (on file with the Pub. Serv. Comm'n of Wi.); Response, *Verified Petition of Sunrun Inc.*, Do. No. 9300-DR-103 (on file with the Pub. Serv. Comm'n of Wi. Dec. 22, 2018).

93. *Id.*

94. Final Order, *Applicability of Wisconsin Statute*, Do. No. 9300-DR-102 (Pub. Serv. Comm'n of Wi. Dec. 22, 2017).

95. *Id.*

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