

June 6, 2013

Governor Malloy Signs Connecticut Clean Energy Bill

On June 5, Governor Dannel P. Malloy signed into law significant energy legislation. This legislation modifies the state's renewable portfolio standard ("RPS"), which requires the state's electric suppliers and electric distribution companies ("EDCs") to obtain a portion of their power from renewable resources. Most significantly, the legislation expands and modifies the scope of the largest group of qualifying renewable energy sources which are defined as Class I renewable energy sources. The largest and perhaps most controversial change will allow large-scale hydropower from outside the region to count toward the state's RPS requirement in certain circumstances. The House passed Senate Bill No. 1138, *An Act Concerning Connecticut's Clean Energy Goals*, as amended, on May 28, 2013, by a vote of 112-33, and the Senate passed the bill on June 4, 2013, by a vote of 26-6. Proponents of the Act maintain it will benefit the state by providing cleaner, more reliable energy to consumers at lower costs. Opponents of the Act are concerned that permitting large-scale hydropower to satisfy the RPS would flood the market and reduce the value of new clean, renewable power in the state.

To access the energy legislation, please see <http://www.cga.ct.gov/2013/FC/pdf/2013SB-01138-R000879-FC.pdf>.

Summary of Significant Provisions

The legislation makes several modifications to the state's RPS, including five significant changes, each of which are described further below:

1. Expanding and modifying the definition of Class I renewable energy source;
2. Allowing large-scale hydropower to count toward a portion of the state's RPS in certain circumstances when the RPS could not otherwise be met;
3. Reducing for certain sources the value of renewable energy credits ("RECs"), which electric suppliers and EDCs use to demonstrate compliance with the RPS requirements;
4. Permitting the Department of Energy and Environmental Protection ("DEEP") Commissioner to solicit proposals for certain Class I renewable energy sources and for large-scale hydro facilities; and
5. Redirecting alternative compliance payment ("ACP") revenues, which are collected currently from suppliers and EDCs who do not have RECs to meet their RPS requirements and are currently used to develop renewable resources, instead to be used to offset existing ratepayer costs.

Changing the Definition of Class I Renewable Energy Sources. The legislation changes the scope of Class I renewable energy sources by expanding the definition to encompass new energy sources and by modifying certain existing requirements.

- **Expansion to include new energy sources.** The definition of Class I renewable energy sources is expanded to include geothermal, anaerobic digestion, or other biogas derived from biological sources, as well as thermal electric direct energy conversion.

- **Changes for eligible hydropower.** The legislation increases the capacity of hydropower facilities that can be classified as Class I renewable energy sources from 5 MW to 30 MW and eliminates the requirement that a facility not cause appreciable change in the river flow. The legislation also limits eligible hydropower facilities to those run-of-the-river facilities that began operation after July 1, 2003.
- **No double counting.** Energy sources that are counted toward another state's or province's RPS equivalent or renewable goals will be ineligible to meet Connecticut's RPS.

Using Large-Scale Hydropower to Meet the RPS. The legislation permits the use of large-scale hydropower for RPS compliance in certain circumstances when the RPS could not otherwise be met by Class I renewable energy sources within the state. Large-scale hydropower will include facilities with a generating capacity of more than 30 MW that began operation on or after January 1, 2003, and are located in or adjacent to the New England Power Pool geographic region (which would include the New York, Quebec and Maritimes electric control areas) and in certain electric control areas to the north of that region (e.g., in Newfoundland and Labrador).

For each calendar year beginning on January 1, 2014, large-scale hydropower will be eligible to meet the RPS only if and when four triggering events occurred:

1. **ACPs.** An ACP is paid by an electric supplier or EDC in lieu of meeting the RPS. Under the Act, such payment will raise the presumption that there is an insufficient supply of Class I renewable energy sources to meet the state's RPS that year.
2. **Material shortage of renewable energy.** Next, the DEEP Commissioner will need to confirm the presumption raised by the ACP by determining that the ACP resulted from a material shortage of Class I renewable energy sources and not from intentional or negligent action by the electric supplier or EDC that made the payment.
3. **Insufficient Class I renewable energy sources in the state.** If the DEEP Commissioner confirms the presumption that there is an insufficient supply of Class I renewable energy sources to meet the state's RPS that year, the commissioner will then need to determine whether there were, or soon would be, adequate Class I renewable energy sources in the state to meet the RPS in succeeding years.
4. **An RFP fails to fill the gap.** If the DEEP Commissioner determines that there is a present material shortage of renewable energy sources in the state and that there are inadequate resources to meet the RPS in succeeding years, the commissioner will then solicit proposals from providers of operational Class I renewable energy sources. The commissioner will be authorized to select the proposals necessary to ensure an adequate supply of Class I renewable energy sources to rectify any projected shortage and would then direct the EDCs to enter into power purchase agreements ("PPAs") based on the selected proposals for periods of up to 10 years.

If all four triggering events occur and the DEEP Commissioner is unable to obtain the proposals necessary to ensure an adequate supply of Class I renewable energy sources through an RFP, then the commissioner, beginning on January 1, 2016, may allow large-scale hydropower to meet limited portions of the RPS. Large-scale hydropower will be permitted to meet not more than one percentage point of the RPS by December 31, 2016. That limit will increase by an additional percentage point each year that the commissioner takes action to use large-scale hydropower to meet the RPS and is not allowed to exceed a total of five percentage points of the RPS by December 31, 2020. Large-scale hydropower selected through this process will be prohibited from trading in the New England REC market.

Reducing the Value of Biomass RECs. The Act directs the DEEP Commissioner to establish a schedule to gradually reduce the value of Class I RECs in Connecticut to all biomass or landfill methane gas facilities. Three types of biomass and landfill methane gas facilities will be excluded from this reduction:

1. anaerobic digestion and other biogas facilities;

2. facilities that entered into a PPA with an electric supplier or EDC before the Act became a law; and
3. facilities that entered into a PPA in accordance with this Act.

Soliciting Proposals from Class I Renewable Energy Sources and Large-Scale Hydropower Facilities. The legislation allows the DEEP Commissioner the option of soliciting three types of proposals (either individually or in conjunction with other New England states in a regional procurement):

1. **New facilities.** The commissioner may solicit proposals from facilities constructed on or after January 1, 2013, to meet up to 4 percent of the load from the state's EDCs and can direct EDCs to enter into PPAs with the selected facilities for not more than 20 years.
2. **Large-scale hydropower facilities or Class I sources.** The commissioner may solicit proposals from large-scale hydropower facilities or from Class I renewable energy sources to meet up to 5 percent of the load from the state's EDCs and can direct EDCs to enter into PPAs with selected hydropower facilities for not more than 15 years or with selected Class I renewable energy sources for not more than 20 years.
3. **Run-of-the-river-hydropower or landfill methane gas facilities.** The commissioner may solicit proposals from large-scale hydropower facilities to meet up to 4 percent of the load from the state's EDCs and can direct EDCs to enter into PPAs with those facilities for not more than 10 years.

Any PPA will be subject to review and approval by the Public Utilities Regulatory Authority, which review would occur on an accelerated timeline of 30 to 60 days. The EDCs will be required to sell the RECs obtained in those PPAs to another EDC or electric supplier to be used to satisfy the Connecticut RPS.

Alternative Compliance Payments. The legislation directs ACPs to be used to offset the costs to all EDC customers of the contracts entered into through certain renewable energy programs instead of to fund the development of Class I renewable energy sources through the Connecticut Clean Energy Finance and Investment Authority.

The changes created by this legislation could impact companies serving load in New England as well as those producing energy from renewable energy resources. For further information about this legislation, please contact any of the attorneys listed in this alert.