May 29, 2018

Connecticut Governor Signs An Act Concerning Connecticut's Energy Future

On May 24, Connecticut Governor Dannel Malloy signed into law An Act Concerning Connecticut's Energy Future (the act), Public Act 18-50. The act, signed just one day after New Jersey enacted a similarly sweeping overhaul of its clean energy law, moves the state closer to the goals established in the most recent Comprehensive Energy Strategy (CES) issued by the Connecticut Department of Energy and Environmental Protection (DEEP) in February of this year.

The most significant changes initiated by the act include replacing the state's net metering program with new tariff-based programs and appreciably increasing the requirements of the state's renewable portfolio standard (RPS).

Transition from Net Metering

As signaled by the CES, the act provides for the end of the state's net metering program, to be replaced by the zero-emission, low-emission and shared clean energy procurement programs described below, which will compensate eligible on-site and shared clean energy projects through a tariff rather than through net metering credits. New residential projects will no longer be eligible for net metering when the state's residential solar investment program expires, which will be the earlier of December 31, 2022, or when the program has deployed 300 megawatts of residential solar installations. Net metering will be ended for all other new projects when the Public Utilities Regulatory Authority (PURA) approves procurement plans for the new zero-emission, low-emission and shared clean energy programs described below. Customers who are currently net metered or who begin net metering before their program expires can continue to receive net metering credits through December 31, 2039, by which time PURA is required to establish a tariff rate for the electric distribution companies (EDCs) to buy electricity from those projects.

To replace net metering for new projects, the act requires PURA, by September 1, to open proceedings (i) to establish procurement plans for zero-emission, low-emission and shared clean energy facilities for each EDC; and (ii) to establish tariffs that provide for 20-year terms for zero-emission and low-emission facilities. By that same deadline, DEEP is required to establish program requirements and tariff proposals for shared clean energy facilities. By September 1, 2019, PURA is required to open a proceeding to establish tariff rates for residential renewable projects with a capacity of 25 kilowatts or less.

Procurement plans will provide for an annual solicitation or solicitations to purchase energy and renewable energy certificates (RECs) from eligible projects, and may give a preference to technologies developed or manufactured in Connecticut. Low-emission and zero-emission projects will be new Class I generation projects (defined below) that customers own or develop on their own property and are under two megawatts in size. Projects must be sized so they do not exceed the on-site load of the customer; however, in the case of state, municipal and agricultural customers, up to five beneficial accounts that are either state, municipal or agricultural accounts or are critical facilities connected to a microgrid may be aggregated for purposes of determining maximum project size.

Shared clean energy facilities will be new Class I generation projects that are four megawatts or less and have at least two subscribers. DEEP is required, among other things, to establish consumer protections for project subscribers, including required customer disclosures, and to limit subscribers to low- and moderate-income customers, small businesses, state or municipal customers, commercial customers, and other residential customers who can demonstrate they are unable to participate in the residential renewable energy program.

Procurements will be subject to a price cap and capacity cap each year. PURA is required to establish the price cap for the first year, subject to change in subsequent years if PURA determines circumstances have changed. Program capacity is capped at 10 MW per year, 50 MW per year and 25 MW per year for the low-emission, zero-emission and shared clean energy programs, respectively, for years one through six of the applicable tariffs. Megawatts not used in any year will not be rolled over to subsequent years, and the cap is subject to adjustment by PURA "to maintain competitiveness."

RECs purchased by EDCs under these new programs may either be retired on behalf of all customers to satisfy a portion of the RPS obligations as described below, or sold, depending on what PURA determines is in the best interest of customers. The costs of these programs will be recovered through a non-bypassable charge assessed on all customers.

RPS Modifications

Consistent with the goals set forth in the CES, the act significantly increases the Class I RPS, which requires electricity suppliers in the state to source a portion of their load from solar, wind, geothermal, fuel cell, landfill gas or other biogas, wave or tidal power, low emission advanced renewable energy conversion technologies, or certain biomass or hydroelectric facilities. Beginning January 2020, the Class I requirement will increase from 20 percent to 21 percent; it will increase to 22.5 percent in 2021; and it will increase to 24 percent in 2022. After that, it will continue to increase by two percentage points each year until 2030, when the Class I requirement will reach 40 percent, double the 2020 RPS of 20 percent. Contracts entered into before the effective date of the act are exempt from the increase taking place in 2020, but will be subject to the subsequent increases.

The RPS increase will be accompanied by a decrease in the payment associated with a failure to meet the requirement, from five and one half cents per kilowatt hour of deficiency to four cents per kilowatt hour. In addition, PURA may reduce the RPS requirements if RECs purchased by EDCs under the new renewable energy programs described above are retired and not used for compliance in any jurisdictions.

Conclusion

With the signing of this latest energy act, Connecticut joins a growing number of states that are transitioning away from net energy metering toward tariff-based programs as a way to compensate on-site and other distributed energy resources. Important details of these programs, including pricing, will continue to be fleshed out in upcoming PURA proceedings. We will continue to monitor developments in this area and inform our clients and friends as appropriate. If you have questions, please call any of us.

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