May 24, 2018

New Jersey Governor Signs Clean Energy Act

On May 23, New Jersey Governor Phil Murphy signed into law the Act Concerning Clean Energy (the act), Bill A-3723, establishing new clean energy and energy efficiency programs and modifying New Jersey's renewable energy portfolio standards (RPS). The act, which is effective immediately, directs the Board of Public Utilities (Board) to (i) increase the current RPS requirements; (ii) modify or replace the solar renewal energy credit (SREC) program; (iii) establish a process for achieving new energy storage goals; (iv) adopt energy efficiency and peak demand reduction programs; and (v) adopt community solar and remote net energy metering programs.

RPS Modifications

The act provides for significant increases to the New Jersey Class I RPS, which requires electricity suppliers in the state to source a portion of their load from solar, wind, geothermal, wave or tidal, landfill gas, renewable-fueled fuel cell, or certain biomass or small hydroelectric facilities. Beginning January 2020, the Class I requirement will increase from just over 16 percent to 21 percent. The requirement will continue to increase in the following years, to 35 percent by 2025 and 50 percent by 2030. The offshore wind carve-out, which requires that a portion of the Class I requirement be met with Renewable Energy Credits (RECs) from qualified offshore wind projects (ORECs), is also increased, from 1,100 MW to 3,500 MW across all load by 2030.

The Board is required to determine the specifics of how the RPS will be increased from current levels to those required by the act. In addition, the act requires the Board to ensure that the cost to customers of the Class I requirement, excluding the cost of ORECs, does not exceed 9 percent of the total paid for electricity by all customers in New Jersey for energy years 2019, 2020 and 2021, and does not exceed 7 percent of the total paid for electricity by all customers in New Jersey in any year thereafter. The Board is authorized to adjust the Class I requirement to ensure those caps are not exceeded.

The act also amends the RPS requirements so Class I resources may no longer be used to satisfy the Class II requirement, which means that the Class II RPS requirement of 2.5 percent can now be satisfied only through the use of large hydroelectric facilities.

Solar Incentive Transition

In the case of solar-specific incentives, the act accelerates the schedule of increases to solar RPS requirements beginning in 2019. However, it also ramps down those requirements beginning in 2023. In addition, it reduces the Solar Alternative Compliance Payment (SACP) from $300 to $268 in 2019. As was the case previously, the new SACP will decline each subsequent year, through 2023.

The act also requires the Board to complete a study by May 2020, that evaluates how to modify or replace the solar RPS program. The Board is required to close the SREC program to new applications once suppliers have met the solar RPS requirement of 5.1 percent, and to close the SREC program completely by June 1, 2021. Projects with a nameplate capacity greater than 25 kW applying for the SREC program will be required to post a notice escrow of $40 per kW, not to exceed $40,000, which would be forfeited if the project does not achieve commercial operation within two years following the date of designation by the Board. The act decreases SREC terms for new projects from 15 to 10 years.

The study required by the act provides that the Board will consult with stakeholders to determine whether the Board can modify the SREC program to:

- reduce costs of achieving solar energy goals;
- provide for an orderly transition to new/modified program;
- develop targets for different types of solar (on-site, community, grid-scale, etc.);
- establish and update market-based maximum incentive payment caps periodically;
- encourage market-based cost recovery through longer-term contracts and market sales; and
- use competitive processes (procurements, long-term contracts) if necessary to ensure cost recovery for any portion of solar facility.

Energy Storage

The act adds New Jersey to the growing number of states implementing energy storage requirements. By May 2019, the Board is required to submit a written report to the governor and the legislature concerning energy storage needs and opportunities in New Jersey. Six months after completing the report, the Board is required to initiate a proceeding to establish a process for achieving the goal of 600 MW of energy storage by 2021, and 2,000 MW of energy storage by 2030.

Energy Efficiency and Demand Reductions

In the area of load reduction, each utility will be required to establish energy efficiency programs and peak demand reduction programs to be approved by the Board, following guidance that the Board is required to adopt by May 2020. The utilities will be required to reduce the use of electricity or natural gas, as applicable, by customers within their territories. For electric utilities, reductions of at least 2 percent of the average annual usage in the prior three years must be achieved within five years of implementing the electric energy efficiency program. Gas utilities will be required to achieve reductions of at least 0.75 percent. The Board may increase those percentages based on a study it is required to complete to review energy savings targets every three years. Utilities will receive incentives for meeting reduction targets or be assessed penalties for failing to meet such targets.

Community Solar; Remote Net Metering

Finally, the act provides for the establishment of community solar and remote net metering programs in New Jersey. By December 19 (210 days after the act was enacted), the Board is required to adopt the rules establishing a community solar pilot program, to be converted into a permanent program within 36 months. The details of implementation have been left to the Board, although the act provides for a maximum project size of 5 MW and requires that projects be located within the same service territory as participating customers. The act also requires the Board to establish an application and approval process to certify public entities to act as a host customer for remote net metering generating facilities.

Conclusion

New Jersey has been a leader in the area of renewable energy for many years. The act has the potential to provide for continued, sustained development of renewables in the state and, along with the bill providing for support of nuclear generating facilities through Zero Emission Credit requirements signed by the governor the same day, has the potential to reshape the New Jersey energy market for years to come.

Authors



David T. Doot

Of Counsel

Hartford, CT | (860) 275-0102

dtdoot@daypitney.com



Paul N. Belval

Partner

Hartford, CT | (860) 275-0381

pnbelval@daypitney.com