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Massachusetts Energy Bill Fosters Further Renewable Energy Development

Earlier this week, the Massachusetts Legislature passed new legislation that is currently awaiting Gov. Deval Patrick's signature and will provide further impetus for renewable energy development in the commonwealth. This new legislation, Senate Bill 2395, An *Act relative to competitively priced electricity in the Commonwealth* (the "Act"), will increase the amount of new renewable energy that would qualify for economically favorable treatment by utilities in Massachusetts. It also contains numerous other changes relating to electricity matters. This alert highlights key provisions in the Act affecting renewable energy generation. **Net Metering Cap** At its highest level, the concept of net metering allows electric customers to install generation on their property to serve their electric needs and to be paid in the form of credits on their bill by the local electric distribution company for electricity that generation produces in excess of the customer's needs. To qualify for net metering in Massachusetts, customers must install generating facilities within their distribution company's service territory that utilize either wind or solar or are used as part of an agricultural business. The amount of any electricity generated in surplus of a customer's needs in a month is reflected as a "Net Metering Credit" in that customer's future bills from its local electric distribution company. The amount of the Net Metering Credits depends upon both the generation output level and the technology employed to generate the electricity. The credits never expire and are assignable to others served by the same electric distribution company (with some other limits described below). In order to be able to net meter, a customer must apply for and be granted a net metering interconnection by its distribution company. Prior to the Act, there was a cap on the amount of new generation that each distribution company was required to allow for participation in the net metering program. That cap was set at 3 percent of the peak total energy demand from all customers in all service territories of the distribution company ("Peak Load"). The cap was allocated between the two types of net metering facilities?- facilities where the customer is a municipality or governmental entity ("Government Facilities") and facilities where the customer is a private party ("Private Facilities"). Government Facilities were allotted two-thirds of the cap amount (2 percent of the Peak Load) and Private Facilities the remaining one-third of the cap amount (1 percent of the Peak Load). The Act doubles the total net metering cap to 6 percent of each distribution company's Peak Load and changes the allocation between Government Facilities and Private Facilities. Under the Act, up to 3 percent of Peak Load can be covered by net metering from each type of facility. The Act is a significant boost for both developers of renewable energy projects and those that are financing the projects in Massachusetts. Prior to the Act, most if not all of the distribution companies had reached the 1 percent cap allocated to Private Facilities. The availability of net metering for Private Facilities has proven to be critical to the financeability of those facilities. Net Metering Credits are a key revenue component to support the financing, and the inability to net a generation facility's output against the host customer's consumption could eliminate the incentive to install a generation facility for customers seeking to primarily decrease energy costs long term. The Act aims to remedy the practical issue associated with the inability of distribution companies to provide up-to-date information to determine whether a new net metering interconnection application (known as a "Schedule Z") would fall under the relevant cap. To address this issue, the Act requires the Department of Public Utilities ("DPU") to approve an enforceable standard interconnection timeline to be implemented no later than November 1, 2013. Potentially of interest for smaller-scale projects, the Act also exempts Private Facilities that are 60 kW or smaller (defined as "Class I") from inclusion in the calculation of the aggregate Private Facility net metering cap. Additionally, Class I Private Facilities with 10 kW nameplate capacity or below on a single-phase circuit or 25 kW nameplate capacity or below on a three-phase circuit can net meter, regardless of the status of the cap. Last, anaerobic digestion (a technology that uses accelerated biodegradation of organic material to produce a biogas that can be used to produce energy) now qualifies as an acceptable generation technology for net metering. **Long-Term Renewable Energy Generation Contracting** The Act revises the procedures for contracting for renewable generation by distribution companies.

Prior to the Act, the renewable energy long-term contracting requirement for distribution companies was scheduled to conclude on July 1, 2013. The Act ended that period six months early, in favor of establishing a new renewable energy procurement process. Now, between January 1, 2013, and December 31, 2016, all distribution companies are required to twice solicit proposals from renewable energy developers through a competitive bidding process. The timetable and method for solicitation, as well as the execution of the resulting long-term (10- to 20-year) contracts, must be proposed by the distribution companies in consultation with the Massachusetts Department of Energy Resources ("DOER") and will be subject to DPU review and approval. Distribution companies may opt out of the joint solicitation and engage in individual competitive solicitations if they do so before the first joint solicitation and obtain specific approval from the DPU. The DPU will adopt regulations to implement the Act. Contracts proposed to be entered into are subject to the review and approval of the DPU. The renewable energy generation source to be used by a developer under its proposal must have a commercial operation date on or after January 1, 2013 (as determined by DOER). There are numerous additional criteria in the Act that must be met in order to obtain DPU approval to enter into a long-term contract. The renewable energy procured under the new long-term contracting process may not exceed 4 percent of each distribution company's Peak Load. In addition, 10 percent of the total long-term contracts must be reserved for distributed generation facilities that are small (not larger than 6 MW) or emerging (not solar, wind or anaerobic digestion) and for "diverse renewable energy generation facilities," as determined by DOER. Solicitation by the distribution company for the allotted 10 percent must be conducted using a separate competitive bidding process. **Commissioned Studies and Regulatory Proceedings** The Act also establishes the following regulatory initiatives in Massachusetts:

- A DPU investigation into the need, in the next 10 years, for additional electric generating capacity in Northeast Massachusetts ("NEMA"). If a determination is made that additional capacity in NEMA is needed, the DPU may order distribution companies to solicit competitive proposals from developers and enter into cost-effective, long-term contracts.
- A study by the Executive Office of Energy and Environmental Affairs, in consultation with DOER, to initiate a study on whether "useful thermal energy" (energy produced from direct heat, steam, hot water or other thermal forms) should be added to the list of alternative energy generating sources that may be used to meet RPS requirements.
- A DOER study on the process for reactivation of pre-existing hydroelectric power sites, focusing on how to expedite and streamline the permitting and approval processes.
- A DOER study to assess whether long-term contracting requirements reasonably support the renewable energy goals of the Commonwealth.

The Act contains several other provisions not summarized in this Alert. Further, the provisions discussed above are only summaries of the key provisions we discussed. Our attorneys have significant experience advising clients on assessing and complying with statutory and regulatory changes in the energy and utilities sector, as well as developing and financing renewable energy generation. If you have any questions concerning the Act or energy regulatory issues generally, please contact any of the attorneys listed in this Alert.