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Massachusetts Issues New Clean Energy Standard Affecting the Electricity Sector

With new regulations issued last Friday, August 11, Massachusetts continues to strengthen investment opportunities for new renewable/clean energy in the Northeast. Those regulations were issued by the Massachusetts Department of Environmental Protection (DEP) and are referred to as the Clean Energy Standard.[1] They are designed to substantially increase energy supply in Massachusetts from new clean energy sources in order to further the Commonwealth's goal of reducing carbon dioxide (CO2) emissions from power generators serving Massachusetts consumers. The reduction in CO2 emissions (also referred to as greenhouse gas (GHG) emissions), is required by the Massachusetts Global Warming Solutions Act. Specifically, that statute requires that the DEP take steps to reduce GHG emissions in Massachusetts to *80 percent below* 1990 levels by 2050, with interim targets for reductions along the way. Those requirements were reinforced in a May 2016 decision from the Massachusetts Supreme Judicial Court[2] and in a September 2016 executive order from Governor Baker.[3] The Clean Energy Standard became effective upon issuance of the regulations and requires that DEP review the program every 10 years beginning in 2021.

The Clean Energy Standard seeks to accomplish the statutory goals by establishing minimum percentages of clean energy that must be procured by electric distribution companies and competitive suppliers serving retail customers in Massachusetts. The percentages begin at 16 percent in 2018 and increase 2 percent annually to 80 percent in 2050. The regulations establish the criteria for what resources will meet the Clean Energy Standard, which are generally the criteria for Renewable Portfolio Standard (RPS) Class I compliance.[4] The regulations, though, also will allow generators that are not otherwise RPS compliant to be eligible clean energy generators if they (1) demonstrate net life cycle GHG emissions of at least 50 percent below those from the most efficient natural gas generator; (2) are located in the ISO New England control area, or are located in an adjacent control area and utilize new transmission capacity; and (3) have commenced commercial operation after December 31, 2010. As with RPS compliance, utilities and competitive suppliers will demonstrate compliance with the regulations either by procuring Clean Energy Credits or making alternative compliance payments. The new rules provide some transition mechanisms to address existing supply resource commitments and some exceptions, primarily to address municipal utilities.

The Clean Energy Standard also expressly requires reduction in GHG emissions from power plants in Massachusetts, setting annually declining limits on aggregate GHG emissions from 21 large fossil fuel-fired power plants in Massachusetts. The new rules require an 80 percent reduction between 2018 and 2050 in GHG emissions – from 8.96 million metric tons of CO2 in 2018 down to 1.8 million metric tons in 2050. Beginning in 2019, the generators will be able to demonstrate their reduction through GHG emissions allowance auctions. The new rules allow compliance flexibility through limited allowance banking and a "deferred compliance" option to address electricity grid reliability.

The Clean Energy Standard, along with many other initiatives in the electricity sector in New England, are rapidly changing the industry and creating significant opportunities for new investment in this sector in the Northeast. Day Pitney lawyers are closely following these changes at both the state and federal levels and provide counsel on successfully managing the changes. If you have any questions about the Clean Energy Standard or other energy matters, please contact any of the lawyers listed on this Alert.

[1] The new regulations are contained in 310 CMR 774 and 310 CMR 775.

[2] *See* the court's decision here.

[3] *See* Executive Order 569 here.

[4] The RPS Class I resource eligibility criteria are set forth in 225 CMR 14.05 and include the following types of generating resources: wind, solar, biomass, hydroelectric, ocean thermal, wave or tidal energy, fuel cell, and landfill methane gas.

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