

Governor Signs New Solar Law; Modifies the Renewable Portfolio Standard ("RPS")

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On Monday, July 23, 2012, the Governor signed S1925/A2966. The new law modifies the Renewable Portfolio Standard ("RPS"), a regulatory mechanism intended to promote the increased use of renewable energy, such as solar, in the State. The new law amends the solar RPS in an effort to stabilize the solar market and enable its continued growth. The new law also authorizes the Board of Public Utilities ("BPU") to exercise new regulatory oversight of solar projects in the State. The law takes effect immediately.

The RPS promotes the increased use of renewable energy by requiring electric power suppliers and providers to sell a set amount of electricity produced from renewable sources, such as solar, to their customers. The RPS requirements increase each Energy Year, which is the 12-month period running from June 1 through May 31 and numbered according to the calendar year in which it ends. The new law does not modify the requirements for Energy Year 2013, which began on June 1, 2012. However, beginning in Energy Year 2014, on June 1, 2013, the new law replaces the existing fixed gigawatt-hour requirements with percentage-based requirements starting at 2.050% and increasing to 4.100% of the electricity sold in Energy Year 2028. This change to a percentage-based system both increases the solar RPS requirements and provides some desired flexibility for electric power suppliers and providers. The new law also sets the value of the solar alternative compliance payment ("SACP") for each Energy Year with values decreasing from \$339 per megawatt-hour in Energy year 2014 to \$239 in Energy Year 2028. The decrease in the SACP complements the increase in the percentage-based requirements of the RPS and contributes to stabilizing the solar energy market. The SACP can function as a ceiling for the price of solar renewable energy certificates ("SRECs"), because the SACP is the alternative to purchasing solar power or SRECs to show compliance with the solar RPS requirements. Electric power suppliers or providers in the State, unless the provider is exempted by an existing contract, will now be required to meet these new RPS requirements by procuring solar electric power, procuring SRECs, or paying the SACP beginning on June 1, 2013.

Only solar electric facilities "connected to the distribution system in the State" are capable of generating SRECs. Lack of uniformity in defining the distribution system across the State has been an obstacle to solar development in the past. This new law defines "connected to the distribution system" broadly to include all net metered projects; all on site generation facilities; facilities qualified for aggregated net metering; facilities certified as being located on brownfields, historic fill areas, or properly closed sanitary landfills; facilities approved by the BPU to be owned and operated by an electric public utility; and grid-connected projects at 69kV or less, when the facility has been designated by the BPU. Thus, this new law creates an approval process whereby the BPU must designate a facility "connected to the distribution system" before that facility will be eligible for SRECs.

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For Energy Years 2014-16, beginning on June 1, 2013, certain grid-connected projects must seek the BPU's designation. The new law requires the BPU to make the designation within 90 days, when the facility has filed notice in writing with the BPU along with notice escrow of \$40,000 per megawatt ("MW") of the proposed capacity of the facility, but only if the capacity of the facility, when added to the capacity of other previously approved facilities, does not exceed 80 megawatts in the aggregate for each year. The new law also limits the capacity of any one designated solar electric power supply project to 10 MW. Once designated, the facility must commence commercial operations within two years or the designation is void. This approval requirement does not apply to all solar facilities: on-site generation facilities or facilities using net metering or aggregated net metering are exempt. In accord with the policy goals announced in the Energy Master Plan, projects certified as located on brownfields, areas of historic fill, or properly closed sanitary landfills are also exempt from BPU approval. Such projects will enjoy an advantage over other projects until Energy Year 2017, beginning June 1, 2016, when the new law requires all solar facilities, unless net metered or on-site generation, to obtain designation from the BPU. While promoting the development of solar facilities on brownfields and landfills, the law would also limit the development of solar on farmland in accord with the Energy Master Plan.

The overall goal of the new law is to bring stability to the solar market. Within two years, the BPU must complete an investigation into the approaches available to mitigate the volatility in the solar development market. Likewise, the BPU must register solar facilities and monitor project milestones. This investigation and monitoring, as well as the BPU's oversight, are intended to give the solar industry permanence in the State.

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