

Energy and Clean Technology Alert: Massachusetts Announces New Rules for Renewable Portfolio Standards

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On December 31, 2008, the Massachusetts Department of Energy Resources ("DOER") released emergency regulations to encourage development of renewable and alternative energy resources, as mandated by the Green Communities Act of 2008 ("GCA"). The GCA required specific changes in the state's Renewable Portfolio Standards ("RPS") to promote cleaner energy in the Commonwealth. Specifically, the new regulations doubled the rate of increase in the use of new renewable energy, created a new Class II category to support older renewable generating facilities, and formed a new Alternative Energy Portfolio Standard to encourage innovative energy technologies.

These new regulations represent a strong commitment by the Commonwealth to expand renewable energy capacity and promote investment in cutting-edge clean energy technologies. In the Class I portfolio, the rate of increase in the amount of renewable energy required of utilities and other electricity suppliers from new renewable generating facilities will rise from 0.5% annually to 1% per year, resulting in a 4% requirement for 2009 and a goal of 15% by 2020. While the GCA mandated the 2020 timeframe, it was left to the DOER to determine the best way to achieve these goals.

Beginning on January 1, 2009 Class I eligible resources include:

- photovoltaics, solar-thermal electric;
- wind energy, ocean thermal, wave or tidal energy;
- fuel cells utilizing renewable fuels;
- landfill gas;
- energy generated by certain new hydroelectric facilities or certain incremental new energy from improvements at existing hydroelectric facilities;
- low emission advanced biomass power technologies (wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuels);
- marine or hydrokinetic energy; and
- geothermal energy.

The new technologies that were added to the Class I category pursuant to the regulations include geothermal, hydroelectric, and marine and hydrokinetic (including wave and tidal) energy sources.

Also effective January 1, 2009 are separate Class II standards designed to support the continued operation of older renewable energy facilities, *i.e.*, those that went online prior to December 31, 1997. Class II eligible resources are similar to those listed in Class I except that new or improved hydroelectric facilities are excluded and Class II also includes certain waste-to-energy facilities, which is a component of conventional municipal solid-waste plant technology in commercial use. The DOER has not yet clarified the details of this minimum waste-to-energy standard, but regulations should be forthcoming. Electricity suppliers are required to provide a minimum of 3.6% of kilowatt-hour sales to end-use customers from Class II renewables; otherwise, the Class II obligation can be fulfilled through ACPs at a rate of \$25 per megawatt-hour in 2009.

The DOER was also responsible for creating a new Alternative Energy Portfolio Standard ("AEPS") where eligible alternative energy generating sources include:

- gasification with capture and permanent sequestration of carbon dioxide;
- combined heat and power ("CHP");
- flywheel energy storage;
- any facility which substitutes any portion of its fossil fuel source with an equal or greater portion of an approved alternative, paper-derived fuel source;
- energy efficient steam technology; and
- any other alternative energy technology approved by the DOER.

The minimum amount of kilowatt-hour sales to be provided by utilities and other electricity suppliers under the AEPS is 0.75% of sales by December, 31, 2009, increasing to 5% of sales by 2020, and an additional 0.25% of sales each year thereafter.

A complete description of the changes included in the new regulations can be found in the DOER's press release from January 6, 2009.

The new rules were released as emergency regulations to meet the strict deadline directed by the GCA, which required that the changes in the RPS take effect by the start of the new year. The DOER will hold a hearing on Thursday, February 5, 2009 from 1:00 pm to 5:00 pm at 100 Cambridge Street, 2nd Floor, to accept and consider oral and written public comments on the proposed regulations. The formal rulemaking process required under M.G.L. Chapter 30A will be completed in the spring of 2009. In addition, DOER is expected to promulgate regulations on additional technologies mandated by the GCA under Class II and APS by this spring.

Mintz Levin and ML Strategies will continue to monitor developments relating to the new regulations and can provide additional information and guidance regarding the regulatory process upon request.

If you have any questions about the new regulations or the regulatory process, please call your Mintz Levin service professional or any of those listed below.

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