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Massachusetts Enacts Sweeping Energy Legislation

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On July 2, 2008, Massachusetts Governor Deval Patrick signed "An Act Relative to Green Communities" (S.B. 2678), also known as the Green Communities Act. Passed unanimously by both the Massachusetts House and the Senate, the Act contains an array of new requirements, authorizations, and objectives to promote energy efficiency, as well as the development of renewable and alternative energy projects and industries, in the Commonwealth. Utility companies, project developers, municipalities and consumers should be aware of the Green Communities Act and consider appropriate steps to capitalize on the numerous opportunities that are presented.

Benchmarks

The Green Communities Act establishes the following important goals for the Commonwealth:

- By 2020, at least 25% of the Commonwealth's electric load to be met with demand-side resources
- By 2020, 80% annual efficiency for combined heat and power systems
- By 2020, at least 20% of the Commonwealth's electric load to be met through new, renewable and alternative energy generation
- By 2020, 10% reduction (from 2007 levels) in the use of fossil fuel in buildings, through increased efficiency of both equipment and building envelopes
- By 2017, 10% reduction in total energy consumption in the Commonwealth through the development and implementation of the Green Communities Program

Energy Efficiency

Numerous provisions in the Act are intended to increase energy efficiency. In this regard, the Green Communities Act requires:

- New construction and substantial renovations of state buildings to incorporate energy efficiency, water conservation or renewable energy technologies whenever "economically feasible"

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- The Department of Public Utilities (DPU) to charge consumers 2.5 mills ($0.0025) per kilowatt-hour to fund energy efficiency programs, such as demand-side management programs
- DPU to ensure that all electric and natural gas resource needs are first met through available energy efficiency and demand reduction resources that are cost-effective or less expensive than the construction of new supply
- The integration of the International Energy Conservation Code (IECC) into the State Building Code

The Act also authorizes DPU to approve and fund gas energy efficiency programs proposed by gas distribution companies, including, but not limited to, demand-side management programs, combined heat and power and geothermal heating and cooling projects.

Renewable Energy Development

The Green Communities Act contains several provisions governing the development of renewable energy sources, and requires:

- DPU to charge electricity consumers 0.5 mill ($0.0005) per kilowatt-hour, for deposit into the Massachusetts Renewable Energy Trust Fund to support the development of renewable energy projects
- Retail electricity suppliers to provide minimum percentages of sales from new ("Class I") and pre-existing ("Class II") renewable energy generating sources
- DOER, with the Department of Environmental Protection (DEP), to set emission performance standards, including standards for CO2 emissions, permanent sequestration definitions and standards, and fuel conversion efficiency standards for alternative energy technologies
- All electric distribution companies, beginning July 1, 2009, to participate in a five-year pilot program to solicit proposals from existing renewable energy developers and enter into cost-effective long-term (10- to 15-year) power purchase contracts

The Act also authorizes municipalities to install renewable energy generating facilities (up to 10 MW) and sell any electricity and other marketable products (such as renewable energy certificates) from such facilities, financed by bonds or notes payable for 25 years.

New Authorities

The Green Communities Act establishes several new authorities in the Commonwealth, and requires:

- The new Department of Energy Resources (formerly the Division of Energy resources) to establish three new divisions: (1) a Division of Energy Efficiency; (2) a Division of Renewable and Alternative Energy Development; and (3) a Division of Green Communities
- Creation of an "Office of Ratepayer Advocacy" within the Attorney General's office, to act on

consumers' behalf in matters involving utility rates, charges, prices and tariffs

- Creation of an "Energy Efficiency Advisory Council"
- Creation of a governing board for the Massachusetts Renewable Energy Trust Fund (the Fund), responsible for developing detailed 5-year strategic plans and annual operational plans for the Fund to help overcome barriers facing renewable energy enterprises, institutions and projects in the Commonwealth, New England, and beyond
- Establishment of a special commission to investigate the burning of construction and demolition waste as it relates to the Commonwealth's renewable energy portfolio standard program
- Establishment of a "Green Building Plan Commission" to examine the environmental and economic impact of establishing a "Green Building Plan" for the Commonwealth
- Establishment of a commission to study the siting of energy facilities in the Commonwealth

Regional Greenhouse Gas Initiative (RGGI)

The Green Communities Act requires DEP and DOER to adopt rules and regulations establishing a cap and trade program to limit and reduce the total CO2 emissions released by electric generating stations and other sources. Under the cap and trade program, CO2 allowances will be auctioned in a multi-state market through RGGI. Auction proceeds will be deposited into a newly established RGGI Auction Trust Fund for use reimbursing municipalities for certain property tax losses caused by RGGI; funding the "Green Communities Program;" providing zero interest loans for municipal energy efficiency projects; promoting energy efficiency, conservation and demand response; and covering administrative costs. Up to 1% of the Commonwealth's annual allocation of allowances may be set aside to support the Voluntary Green Power Market. DEP is required to adopt regulations for implementation of the CO2 cap and trade program by March 1, 2009.

Financial Issues

The Act addresses an array of financial issues, and requires:

- Elimination of a 10-year limit on public contracts for energy management services, extending the permitted term for such services to 20 years for state agencies or building authorities

- Design and implementation of a bidding process for the competitive procurement of electric generation on behalf of public agencies procuring electricity from local distribution companies (LDCs) via basic service
- DPU to establish rules and regulations to implement net metering
- DPU to approve mergers and consolidations of certain utilities (not including steam distribution companies) and their holding companies, not including those already filed and approved by the Federal Energy Regulatory Commission
- All distribution companies to submit a plan for retail access to competitive sellers of renewable energy generation attributes, whether or not bundled with electricity
- DOER to provide grants and other financial incentives, from amounts collected through "Alternative Compliance Payments," for (1) the Green Communities Program; (2) renewable energy generation projects, energy generation demonstration and educational programs, or applied engineering teaching tools pertaining to energy generation at state or community colleges in the Commonwealth; (3) Commonwealth-based companies engaged in developing flywheel energy storage technologies; and (4) new and existing generation units for DEP-approved beneficial use determination paper-derived fuels manufactured by Massachusetts corporations
- DPU and DOER to review and assess the effects of allowing electric and distribution companies to construct, own or operate solar generation facilities, and produce a report of legislative and regulatory recommendations by June 30, 2011
- DOER, with advice from a commission of various government, industry, and consumer representatives, to study (by January 1, 2009) the fiscal impact, viability, statutory and regulatory barriers and long-term results of establishing and operating municipally owned electric utilities in the Commonwealth

Finally, the Act also authorizes:

- DPU to audit all companies subject to its jurisdiction, except steam distribution companies
- DPU to make an assessment against steam distribution companies under its jurisdictional control, based on each steam distribution company's annual operating revenues
- Municipalities to incur debt for energy conservation and alternative energy or renewable energy improvements with a payback period up to 20 years (not 10 years as previously authorized)
- Certain electricity customers to receive "net metering" credits on their bills.

Safety and Maintenance Issues

A number of safety and maintenance issues are addressed by the Act, which requires:

- Steam distribution companies to participate in the administration of a utility underground plant damage prevention system
- DPU to supervise steam distribution companies for public safety purposes and levy fines

for failure to comply with regulations promulgated by DPU

- DPU to establish reasonable rules and regulations for the construction and operation of steam distribution facilities and equipment used in manufacturing and transporting steam, and to conduct investigations as necessary to insure safe operation of facilities operated by a steam distribution company
- DPU to hold public hearings and issue reports, by July 1, 2009, on (1) the maintenance and improvements of gate boxes of gas utilities located in the streets, roads or sidewalks; and (2) maintenance and repair standards for distribution systems of investor-owned electric and gas utilities

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