

ALERTS

Energy And Environmental Law Alert - New Energy Legislation In Michigan Effective In April 2017

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Significant Michigan energy legislation will become effective April 20, 2017, after Michigan Gov. Rick Snyder signed Public Acts 341 and 342 into law in late December. Many years of heated discussions, legislative drafting and re-drafting, negotiations among the various stakeholders, and other activities resulted in this comprehensive new Michigan energy legislation, embodied in Public Acts 341 and 342, totaling almost 250 pages of text. The energy policy overhaul establishes a new long-term planning process for traditional utilities as they aim to retire power plants and consider replacements for coal; increases renewable energy portfolio and efficiency expectations; addresses the MPSC contested case procedures; and retains much of Michigan's electric choice program.

Some of the key changes and compromises accomplished by this legislation are highlighted below.

Electric Choice

The current 10% electric choice program continues under the new legislation, but there are additional requirements which must be met by alternative electric suppliers which could potentially increase costs for suppliers and thereby reduce savings for customers. There is also a potential Midcontinent Independent System Operator (MISO) capacity charge that may be assessed against energy providers (therefore also likely on the electric choice customers); however, the final version of the legislation establishes a Michigan Public Service Commission (MPSC) process to determine this MISO capacity charge. This correlates with the MPSC requirements for each electricity provider to have adequate capacity for its projected load with a reserve margin.

Integrated Resource Planning (IRP) and Certificate of Necessity (CON)

Evaluating future energy needs and planning for electric generation will be part of the new Integrated Resource Planning (IRP) process, which involves various stakeholder representatives. IRP Plan requirements include electricity sales and peak demand forecasts; renewable energy produced or purchased; generation technology and fuel costs; and more. The Michigan Department of Environmental Quality (DEQ) advises MPSC on air emissions as part of this IRP review process. Increased accountability for cost-effective utility investments is the goal of the improved Certificate of Necessity (CON) process contained in the new law for projects of \$100 Million or more or greater than 225 MW generation. Although not exactly a competitive bidding process, feasible alternatives will need to be considered, cost overruns presumed not

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reasonable or prudent, and interested stakeholders may intervene in MPSC proceedings. Judicial review of final MPSC rulings will be by the Michigan Court of Appeals.

Renewable/Alternative Energy

The new law sets a “goal” that 35% of the State’s electric needs should be met by renewable energy sources and energy efficiency or energy waste reduction, with 2008 as the baseline for calculating this percentage. The current renewable portfolio standard of 10% is extended to 2018 and increased to 12.5% by 2019 and 2020 and to 15% by 2021. Renewable energy facilities qualifying for the Renewable Portfolio Standard must still be located within the state of Michigan (with limited exceptions for Indiana, Ohio and Wisconsin non-profit renewable energy suppliers). Revised renewable energy plans will be reviewed in MPSC contested case hearings. Renewable Portfolio Standard calculations may include new and expanded waste-to-energy facilities. The renewable fuels definition is also expanded to include other municipal solid waste such as non-recyclables plastics. Energy efficiency will now be known as “energy waste reduction,” which will be addressed in utility Renewable Energy and Energy Waste Reduction Plans to be reviewed in MPSC contested case hearings. Co-generation facilities that produce both electricity and thermal energy (heat or steam) are encouraged by including them in the renewable energy program (at kWh equivalent) if they are more efficient than separate production of those forms of energy and utilities must include these resources in their future planning process.

MPSC Ratemaking Process

Ratemaking cases are shortened from 12 to 10 months and utilities can no longer “self-implement” rate increases after 6 months. Moreover, a study will be conducted of “performance-based regulation” whereby utilities rates would not be based solely on the amount of their investment, but could also consider performance metrics. Revenue decoupling – where utility profits could be protected regardless of reduced consumption (e.g., due to conservation) – was considered but rejected in this legislation, except for energy waste reduction by very small electric utilities.

Energy Ombudsman

An “energy ombudsman” will be established within the Michigan Agency for Energy (MAE) as a liaison on energy issues between businesses and individuals and MPSC/MAE. The energy ombudsman will facilitate dispute resolution by making sure problems are addressed by the appropriate entity and also will convene regular meetings for sharing of energy information.

This new Michigan energy legislation is significant because its passage follows a lengthy and hotly contested legislative process. The full significance of this new energy regime will not be felt by utilities and consumers until well into 2017 and beyond. Due to the history of Michigan’s energy program and the vicissitudes of drafting contested legislation, many issues will need to be further fleshed out, and Barnes & Thornburg will stay abreast of developments.

For more information on utility law, renewable energy, air emissions and related regulatory matters, contact the Barnes & Thornburg attorney with

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