

Legislature Passes a Revised RPS and New BPU Approval Process for Solar

By: [Cynthia L. M. Holland, Esq.](#)

On June 25, 2012, the State Legislature passed S1925/A2966. The bill modifies the Renewable Portfolio Standard ("RPS"), a regulatory mechanism intended to promote the increased use of renewable energy, such as solar, in the State. In particular, the bill amends the solar RPS in an effort to stabilize the solar market and enable its continued growth. The bill also authorizes the Board of Public Utilities ("BPU") to exercise new regulatory oversight of solar projects in the State. Once signed by Governor Christie, the bill will take effect immediately.

The RPS promotes the increased use of renewable energy by requiring that electric power suppliers and providers 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 bill would 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 bill 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 bill 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. The SACP can function as a ceiling for the price of SRECs, because the SACP is the alternative to purchasing solar power or SRECs to show compliance with the solar RPS requirements. Once the bill is signed, electric power suppliers or providers in the State, unless the provider is exempted by an existing contract, will be required to meet these new RPS requirements by procuring solar electric power, procuring solar renewable energy certificates ("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 bill 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, the bill creates a new approval process whereby the BPU must designate a facility "connected to the distribution system" before that facility will be eligible for SRECs.

For Energy Years 2014-16, beginning on June 1, 2013, certain grid-connected projects must seek the BPU's designation. The bill 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 bill 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 bill 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 bill would also limit the development of solar on farmland in accord with the Energy Master Plan.

The overall goal of the bill is to bring stability to the solar market. Within two years of the bill's enactment, the BPU is required to complete an investigation into the approaches available to mitigate the volatility in the solar development market. Likewise, the bill requires the BPU to 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.

For more information contact [William F. Harrison, Esq.](mailto:wharrison@genovaburns.com) in the [Commercial Real Estate, Redevelopment and Environmental Law Practice Group](#) at wharrison@genovaburns.com or (973) 535-4430.