NORTH CAROLINA GENERAL ASSEMBLY ACTIVE ON RENEWABLE ENERGY ISSUES IN 2015 LONG SESSION

Date: 13 May 2015

Energy Alert

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TWO BILLS WITH SIGNIFICANT RENEWABLE ENERGY PROVISIONS WERE AMONG THOSE THAT SURVIVED THE NORTH CAROLINA GENERAL ASSEMBLY'S SELF-IMPOSED "CROSSOVER" DEADLINE OF APRIL 30, 2015. MOST SUBSTANTIVE BILLS MUST PASS AT LEAST ONE HOUSE OF THE LEGISLATURE BEFORE THE CROSSOVER DEADLINE IN ORDER TO REMAIN ELIGIBLE FOR CONSIDERATION IN THE 2015-16 LEGISLATIVE BIENNIUM. HOWEVER, SOME BILLS AND PORTIONS OF BILLS THAT DO NOT MAKE CROSSOVER CAN STILL BE INCLUDED IN THE BUDGET OR AS AMENDMENTS TO BILLS THAT DID BEAT THE DEADLINE.

The two energy bills that made it through crossover provide for (i) a very limited extension of North Carolina's renewable energy tax credit, and (ii) a reduction of the only mandatory renewable energy portfolio standard in the southeast. The bill providing for a limited extension of the state renewable energy tax credit was signed into law by Governor Pat McCrory and went into effect immediately. The portfolio standard reduction has passed the House and is being debated in the Senate as of this writing. Both bills are described below.

LIMITED TAX CREDIT EXTENSION BECOMES LAW

Senate Bill 372 / Session Law 2015-11, the "Renewable Energy Safe Harbor," is one of only 11 bills that have become law this session out of over 1,000 proposals. Most renewable energy projects placed into service on or after January 1, 2016, will no longer qualify for North Carolina's renewable energy tax credit. However, in an effort to preserve some renewable energy investments, the Renewable Energy Safe Harbor allows projects to qualify for the credit even if they are not placed into service before January 1, 2016, as long as they can satisfy the following conditions:

- By October 1, 2015, the taxpayer must apply for the credit and pay an application fee of $1,000 per megawatt of capacity to be installed;

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- By January 1, 2016, the project must be at least 80% complete, meaning that 80% of costs must have been incurred and 80% of the physical construction is complete (these percentages drop to 50% if the project will have 65 MW or more of capacity);
- By March 1, 2016, the taxpayer must submit a written certification stating that the 80% (or 50%) thresholds for costs incurred and physical construction have been met, along with notarized reports from an independent licensed engineer and from a certified public accountant confirming, respectively, that the completion-of-construction and cost-incurred thresholds have been met; and
- By December 31, 2016, the project must be placed into service.

If all of these conditions are satisfied, the taxpayer is eligible to take the credit. Otherwise, the December 31, 2015, expiration date will apply.
Several other extension proposals were introduced, including an extension through 2019 (Senate Bill 329) and two different bills that would have extended the credits through 2020 (House Bill 454/Senate Bill 447 and Senate Bill 562); however, these bills never got out of committee. A similar fate met bills that would have created tiered rates and a renewable energy loan program (Senate Bill 483/House Bill 377) or would have allowed for third-party ownership of renewable energy facilities (House Bill 245).

ROLLBACK OF RENEWABLE ENERGY PORTFOLIO STANDARDS POSSIBLE

North Carolina's renewable energy portfolio standards, referred to colloquially as Senate Bill 3, are the only mandatory renewable energy portfolio standards between Maryland and Texas. This year, as part of House Bill 760, the General Assembly's seemingly annual regulatory reform legislation, the North Carolina House has adopted language that would roll back some of the standards set by Senate Bill 3 in 2007. The law currently requires utilities to obtain 6% of their energy from renewable sources in 2015, 10% by 2018, and 12.5% by 2021. A quarter of those requirements can be met through energy efficiency and demand management programs.

The regulatory reform bill in its current form would cap the renewable energy quota at 6% and allow up to half of the requirement to be met by energy-efficiency programs. In addition, the bill would cap the amount of incremental costs that can be recovered from user accounts, require that standard-form power purchase agreements between utilities and small power producers not obligate a utility to pay for capacity in years in which the utility does not have a capacity need, and set up a joint legislative committee to study further changes to the portfolio standard.

The regulatory reform bill is subject to further tinkering in the Senate and could go to a conference committee if the House does not concur with any changes the Senate might make. The bill is likely to make it past both houses in some form, after which it will be sent to Governor McCrory for his signature or veto.

THE PATH AHEAD

The crossover deadline limits the number of items on the General Assembly's plate, but, as one legislator rather pointedly put it, "[n]othing is dead" at this point, and legislation can still be included or modified through amendments. Experienced attorneys and government affairs counselors at K&L Gates continue to monitor

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activity at the General Assembly and will provide further updates as key events occur. Those same attorneys and government affairs counselors also are available to assist in monitoring, advancing, and modifying legislation in the current biennium and beyond.

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