

Home-Grown or Imported: The Missouri Renewable Energy Credit Debate Continues

After two and a half years of public comments and hearings, the Missouri Public Service Commission issued what were thought to be the final rules implementing the renewable energy standards adopted by voter initiative in November 2008. However, during a procedural layover in the Joint Committee on Administrative Rules, two provisions governing the hotly debated issue of geographic sourcing were stripped from the final version before it was forwarded to the Secretary of State. As initially approved by the Public Service Commission, the rules required that any renewable energy credits (RECs) purchased by the state's four largest utilities to satisfy the new renewable energy standard must be produced in Missouri or, if not produced in the state, must be delivered to Missouri electric energy retail customers. In striking this requirement, the Joint Committee essentially opened the door to allow the covered utilities to purchase RECs from any location around the world to satisfy the portfolio standard.

As outlined in an earlier article discussing the opportunities for renewable energy development created by Missouri's renewable energy portfolio standard, geographic sourcing was one of several issues likely to have a significant impact on renewable energy development in the state. The portfolio standard requires Missouri's investor-owned utilities to obtain 15% of their electricity that is sold to Missouri consumers, from renewable resources by 2021, regardless of whether the power is self-generated or purchased from another source in or outside of the state.

Those opposed to restricting the sourcing requirement to power generation projects within the state argued that the cost of compliance outweighed the benefit in light of questions surrounding how to track and verify the delivery of

renewable energy production to Missouri customers, and the lack of clear statutory intent to restrict the location in which qualifying REC's are produced. Advocates, however, insisted that a meaningful renewable energy portfolio standard should support renewable power generation and the accompanying economic benefits associated with job creation and an emerging industry within the state. The impacted utilities generally supported limited sourcing requirements that qualified RECs generated from one of the regional transmission organizations that provide power to Missouri customers.

After extensive rulemaking proceedings that generated over 260 public comments, the Public Service Commission submitted its Revised Order of Rulemaking to the Joint Committee on Administrative Rules on June 2, 2010. In its Summary of Comments, the Commission provided the following response to the arguments raised on the issue of geographic sourcing:

Missouri voters passed a statute which specified that a renewable portfolio standard would apply to power sold to Missouri customers whether generated inside the state or outside. They did that because they wanted cleaner energy delivered to their homes and they wanted the economic advantages renewable energy generation will bring to the state. In order to achieve these goals, it is necessary to develop an in-state renewable energy industry. This rule recognizes that fact and sets its geographic sourcing in order to encourage and develop a wide range of renewable energy resources in the state in conjunction with the requirements of the statute.

On July 1, 2010, following several hearings, the Joint Committee issued a letter to the Missouri Secretary of State, Robin Carnahan, announcing that it had voted to disapprove those portions of the rule containing provisions that restricted geographic sourcing and approve the remaining portions. The Secretary did not publish the disapproved sections in the Missouri Register. Actions taken by the Joint Committee are not final. They must be approved by the General Assembly, meaning the issue will be before the General Assembly during 2011 unless it is resolved sooner. Also, the Joint Committee's purview over rules enacted based upon voter initiative as opposed to legislation is unclear.

What This Means To You

While the debate on geographic sourcing continues, the remainder of the rule will go into effect 30 days following its publication in the Missouri Code of State Regulations, which could happen as soon as September 30, 2010. Until the sourcing issue is resolved, however, the extent to which the covered utilities can satisfy the renewable energy standard by purchasing RECs generated from anywhere in the country or around the world will remain unclear.

Contact Info

We will continue to monitor the progress of these rules and proceedings that surround their adoption

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and implementation. If you would like additional information about Missouri's renewable energy standard or the legislative process, please contact your Husch Blackwell Sanders attorney.

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