

Insights

GOVERNOR PRITZKER SIGNS CLIMATE AND EQUITABLE JOBS ACT LAUNCHING ILLINOIS INTO A RENEWABLE ENERGY FUTURE

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“Decarbonization” and “Electrification” are the buzzwords floating around Illinois following Governor Pritzker’s signing of the [Climate and Equitable Jobs Act](#) (the “Act”) on September 15, 2021. As the largest and most ambitious energy legislation in Illinois history, the Act will have a widespread impact on individuals and businesses throughout the state. The Act ushers Illinois into the carbon-free power sector club, which includes California, Hawaii, New Mexico, New York, Virginia, and Washington. This Alert gives a high-level overview of some of the changes coming to the state over the coming years as aspects of the new law take effect.

Decarbonization

Over the next twenty-four years, Illinois will go through a staged transition from fossil fuels to carbon neutral energy sources. The Act mandates that all private electric utility generating units and large greenhouse gas-emitting units¹ that use coal or oil as a fuel (e.g., coal-fired power plants) permanently reduce all carbon dioxide emissions to zero no later than January 1, 2030. All such units that are public must reduce carbon dioxide emissions by 45% by 2035 and to zero by 2045. The Act provides that these requirements may be achieved by either retiring the unit or by using 100% green hydrogen or other similar technology that is commercially proven to achieve zero carbon emissions. The Act incentivizes owners of retired or retiring coal-fired power plants, through renewable energy procurement contracts, to develop renewable energy and/or energy storage facilities at and adjacent to the old coal-fired plants. The first such procurement event will take place no later than March 31, 2022 (unless delayed by the Illinois Power Agency) and the second will take place between September 30, 2022 and October 31, 2022.

The Illinois legislature found nuclear power to be necessary for the State’s transition to 100% clean energy (defined as energy generation that is 90% or greater free of carbon dioxide emissions). To support the continued operation of Illinois nuclear plants the state will award approximately \$694 million in carbon mitigation credits² through procurement contracts for a five-year period. These tradeable carbon mitigation credits are available to generation facilities that (1) are fueled by nuclear power; and (2) are interconnected to PJM Interconnection, LLC. Under this definition, the

targeted facilities to benefit from this program are Exelon Generation's nuclear power plants in Illinois, and this has led to Exelon Generation reversing course on shutting down its Byron and Dresden Generating Stations.

The cornerstone of the Act is its ambitious new renewable energy (wind and solar) procurement goals and increased renewable energy spending objectives of an estimated \$580 million a year. The Illinois Power Agency is charged with attempting to procure 40% renewable energy by 2030 and 50% by 2040, more than five times what it is required to procure today (Illinois currently procures around 8% renewable energy). The Act further emphasizes procurements from new projects and charges the agency to consider, in addition to competitive procurements, other approaches that can be used to procure renewable energy credits from brownfield site photovoltaic projects. To boost renewable energy funding, the Act invests over \$350 million a year in various programs—notably increasing the Illinois Solar for All program's funding from \$10 million to \$50 million—and creates a device by which utilities collect a fee from ratepayers, titled the Coal to Solar and Energy Storage Initiative Charge. This new charge will fund renewable energy procurement and the installation of energy storage facilities.

Importantly, the Act further establishes greater renewable energy market certainty by ensuring electric utilities are better equipped to honor procurement contract payment obligations, recently a concern to the renewable energy industry and related financing entities given the [Illinois Power Agency's 2021-2022 delivery year budget shortfall](#). To ensure a similar budget shortfall does not occur in the future, the Act provides the excess funds eligible to be credited back to retail customers must first be reduced by an amount equal to payment obligations under utility procurement contracts, regardless of the delivery year in which those payment obligations were incurred. To address the Illinois Power Agency's current budget shortfall, the Act provides that the Illinois Power Agency's unspent funds as of May 31, 2021, will no longer be required to be credited back to retail customers until payment obligations under current procurement contracts have been paid.

Electrification

A substantial part of the Act focuses on the development of infrastructure that supports growth in electric vehicle use in Illinois and sets a goal of increasing the adoption of 1,000,000 electric vehicles in the state by 2030. To this end, the Act mandates that electric utilities file a plan to support infrastructure electrification with the Illinois Commerce Commission by 2023, requires the Illinois Environmental Protection Agency to award rebates or grants that fund up to 80% of the cost of the installation of charging stations, and provides for electric vehicle rebates beginning July 1, 2022 of up to \$4,000 for the purchase of an electric vehicle by Illinois residents.

Environmental Justice and Labor Standards

Environmental justice and equity considerations permeate throughout the Act. Notably, the Act creates a displaced energy workers bill of rights that supports workers through the energy transition

and provides other transition programs and assistance, funded through the \$180 million Energy Transition Assistance Fund. The Act also establishes a jobs and environmental justice grant program that provides upfront capital to support the development of community renewable energy projects (awards up to \$1 million per application) and encourages the development of electric vehicle infrastructure in environmental justice communities.

As noted above, one of the primary goals of the Act is to dramatically increase the number of new wind and solar power generation facilities in Illinois. Companies interested, or currently involved, in planning or constructing such renewable energy generation facilities must be mindful of the Act's incorporation of Project Labor Agreements and the Illinois Prevailing Wage Act, which will likely impact the personnel hired for the construction or expansion of wind power facilities, utility-scale solar facilities, electric generation plants, transmission facilities, and the like. The Project Labor Agreements required by the bill are collective bargaining agreements between a project's owner and/or general contractor and labor unions that address the terms and conditions of employment for a specific project, including minimum wages, benefits, labor disputes and minority hiring practices. In conjunction, by incorporating the existing Illinois Prevailing Wage Act, the Act similarly sets wages for non-union employees. These provisions of the Act necessitate that any company involved in the expansion of Illinois' renewable energy facilities be mindful of engaging its workforce in a manner that is compliant with the Act.

Conclusion

Big changes are coming to Illinois' energy landscape, lauded by renewable energy advocates as a "win" for solar and wind development, and lamented by business community leaders as market-disrupting legislation. Indeed, as solar and wind energy projects are poised to receive swaths of new funding, industrial and residential energy customers will likely bear the brunt of the associated costs on their monthly energy bills (estimates range from \$3 to \$15 increases over the next five years for residential customers and 7-10% increases estimated for industrial customers). Moreover, the business community is concerned about electricity reliability as the grid transitions to renewable energy sources that depend on access to resources like sunlight and wind. However, reliability issues may be at least partially addressed by the additional support keeping Illinois nuclear plants running. BCLP will continue to monitor implementation and provide insight on the rollout of the Act. If you have questions specific to your company's situation, please contact any of the authors identified under Meet the Team or your BCLP relationship attorney.

1. Defined by the Act as "a unit that is an electric generating unit or other fossil fuel-fired unit that itself has a capacity or serves a generator that has a nameplate capacity greater than 25 MWe and that produces electricity, including but not limited to, coal-fired, coal-derived, oil-fired, natural gas-fired, and cogeneration units."

2. Pursuant to the Act, carbon mitigation credit means “a tradable credit that represents the carbon emission reduction attributes of one megawatt-hour of energy produced from a carbon-free energy resource.”

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