



**Jennifer Utter Heston**

## **Michigan Requires More Clean, Renewable, and Efficient Energy**

**by Jennifer Heston**

There was considerable debate within the halls of the Legislature this session concerning Michigan's energy policy. The debate culminated in the passage of a three bill package of energy legislation, which the Governor signed into law on October 6. Part of that package is Public Act 295 of 2008, a new law to be known as the "Clean, Renewable, and Efficient Energy Act." Among other things, that Act establishes new energy standards for all electricity providers serving retail customers in Michigan. One standard requires all retail electricity providers to provide or promote renewable energy. A second standard requires certain retail electricity and natural gas providers to achieve specified levels of energy savings through energy optimization programs. Achieving these standards will impact all Michiganders. Both residential and business customers will see changes in their energy bills and customers should begin preparing to take advantage of new opportunities created by the law.

Michigan's new renewable energy standard requires electricity providers to provide or promote renewable energy by acquiring a minimum amount of renewable energy capacity, or by acquiring a minimum amount of renewable energy credits ("RECs"). Generally speaking, RECs will be granted to owners of renewable energy systems for power generated from renewable energy resources. Renewable energy resources are those which replenish over time.

Renewable energy resources recognized under the Act are biomass, solar energy and solar thermal energy, wind energy, energy derived from moving water (e.g. tidal or hydroelectric), geothermal, municipal solid waste, and landfill gas produced by municipal solid waste.

Each investor-owned electric utility, alternative electric supplier, electric cooperative utility, and municipal utility in Michigan must file a plan with the Public Service Commission describing how

the electricity provider will achieve the new renewable energy standard. Most providers must file their plans with the Commission no later than March 2009. Municipal utilities must file their plans no later than April 2009. To meet the standard, all providers must achieve a level of renewable energy credits equal to 10 percent of the total number of megawatt-hours of electricity sold by the provider to retail customers in this state by the year 2015. Detroit Edison and Consumers Energy Company must also acquire renewable energy capacity either by owning new renewable energy systems themselves, or by purchasing renewable energy from others under new power contracts.

Utilities must include in their plans the expected additional costs to comply with the renewable energy standard. Once a plan is approved, the Public Service Commission must determine customer charges to recover the additional costs of compliance. The Legislature capped these new charges at \$3.00 per month per meter for residential customers, \$16.58 per month per meter for commercial secondary customers, and \$187.50 per month per meter for commercial primary customers and industrial customers. Customers should expect to see these new itemized charges on their bills in the Fall of 2009. Residential customers earning less than \$65,000 a year, or \$130,000 if married filing jointly, will be able to claim a portion of these new charges paid to their electricity provider as a new Michigan income tax credit.

Anyone can own a renewable energy system, and investment in renewable energy systems is clearly facilitated by the policies adopted in the new Act. The new REC program should provide owners of renewable energy systems with additional revenues to offset the costs of investing in those energy systems. Previously uneconomic investments in renewable energy may become economic once additional REC revenues are factored into the pay-back equation. For instance, homeowners or businesses may install solar panels or wind turbines, and then obtain RECs for the electricity produced. The Public Service Commission is responsible for certifying and tracking RECs, which can then be traded, sold, or otherwise transferred. The Act creates for Michigan both new demand for RECs, and a new market for valuing those assets. The Act will promote additional private investment in renewable energy in Michigan.

In addition to the renewable energy standard, the Act creates a new standard for energy optimization. Energy optimization includes energy efficiency, load management programs that reduce overall energy usage, and energy conservation. The overall goal of energy optimization is to reduce future energy costs by delaying the need for new energy resources.

Each electric utility, natural gas utility, electric cooperative utility, and municipal utility that chooses to manage its own energy optimization programs must file an energy optimization plan with the Public Service Commission. The utility may combine its energy optimization plan with its renewable energy plan. The energy optimization plan must include a set of programs designed to achieve the energy optimization standard. The statutory standard requires providers to achieve incremental energy savings each year through at least 2015. In 2015, the Public Service Commission must issue a report evaluating whether the energy optimization programs were cost effective, and make any recommendations the Commission may have for the continuation, expansion, or reduction of the energy optimization standard.

Utilities must include in their plans the expected level of funding necessary to achieve the desired level of energy savings. Once a plan is approved, the Commission must determine customer charges to recover the costs of implementing the energy optimization plan. The costs are to be recovered from natural gas customers and residential customers through volumetric charges, from all other metered customers through a per meter charge, and for unmetered customers through an appropriate charge. These charges will appear as new itemized charges on customers' bills. The total costs of these programs may vary significantly among individual customers.

A utility, however, may choose to have its energy optimization program administered by another party. Through a competitive bidding process, the Public Service Commission is responsible for selecting a nonprofit organization to serve as an independent energy optimization program administrator. The utility then pays up to 2 percent of its total utility sales revenues to the

independent administrator who then uses the money to administer programs for that utility. The utility may recover the costs of the payment to the administrator through customer charges.

A business customer may avoid some of these additional charges by filing with its electric utility a self-directed energy optimization plan. The self-directed plan must outline how the customer intends to achieve incremental energy savings that meet or exceed the energy optimization standard for electricity. Self-directed plans are not available for natural gas customers. Except for very large customers, the Public Service Commission shall require customers to use approved energy optimization service companies to develop and administer the self-directed plans. The Commission must establish a process for approving energy optimization service companies by September 1, 2010. Customers that choose to self-direct will still incur some additional charges to recover the electric utility's costs to review and evaluate the self-directed plans and to support low-income energy optimization programs.

Achieving Michigan's new renewable energy and energy optimization standards will affect all Michigan citizens. Customers will see new charges on their energy bills to recover the cost of investing in Michigan's energy future. Michigan's Clean, Renewable, and Efficient Energy Act creates new opportunities in renewable energy and energy efficiency, which customers should carefully examine.

***About the author . . .***

*Jennifer Heston is with the law firm of Fraser Trebilcock Davis & Dunlap, P.C., and a member of the firm's Energy, Utilities, and Telecommunications Department. She previously served as a policy advisor with the Michigan Senate Majority Policy Office and an attorney with the Michigan Public Service Commission. She may be reached at 517.377.0802. Her email is: [jheston@fraserlawfirm.com](mailto:jheston@fraserlawfirm.com)*