# 309 - Legislative Update on Energy Issues

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# Faculty Biographies

**Thomas P. Bishop**

Thomas P. Bishop is vice president and associate general counsel for Southern Company Services, Inc., in Atlanta. His responsibilities at Southern include multi-jurisdictional litigation, commercial transactions, computer/technology, and intellectual property. He joined Southern Company as staff attorney, moving through several positions, including managing attorney.

Prior to joining Southern Company, Mr. Bishop was in private practice.

Mr. Bishop is a member of ACC and serves as secretary of the Energy Committee. Mr. Bishop is a member of the corporate counsel, trial practice, and computer and technology sections of the Georgia State Bar. He also serves as chairman of the board for the Pro Bono Partnership of Atlanta and as chairman of the board for the State YMCA of Georgia. He is past national president and a lifetime trustee and secretary of the national Kappa Sigma Endowment Fund.

Mr. Bishop graduated from Mercer University with a B.A., summa cum laude. He received his J.D., cum laude, from Walter F. George Law School, Mercer University. He was editor of the eleventh circuit survey edition of the *Mercer Law Review*.

**Douglas Crowther**

Douglas E. Crowther is a partner in Fraser Milner Casgrain LLP and is a member of the firm's regulatory department in the Calgary, Alberta office. His practice includes the representation of industry interests before such tribunals as the Alberta Energy and Utilities Board and the National Energy Board of Canada. Mr. Crowther acts as counsel in respect of electric and gas utility regulation as well as facility approval and other matters. He has appeared as counsel in numerous significant proceedings before the Alberta Energy and Utilities Board including those arising from the restructuring of the Alberta electricity industry and the setting of electricity rates and tariffs. He has appeared before the National Energy Board in major pipeline proceedings as counsel for pipeline companies and shippers. He also advises developers of independent electric power projects.

Mr. Crowther is recognized in The Canadian Legal Expert Directory as a leading practitioner for energy (electricity) regulatory matters and is listed in Best Lawyers in Canada (bestlawyers.com).

Mr. Crowther received a B.A. from the University of Calgary and a LLB from the University of British Columbia.

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**Debra Raggio Bolton**

Debra Raggio Bolton is assistant general counsel and vice president for regulatory, governmental and external affairs for Mirant Corporation. Ms. Bolton is in charge of Mirant's Washington, DC office and is responsible for all regulatory, governmental, and external affairs, as well as all legal regulatory energy-related matters.

Prior to joining Mirant, Ms. Bolton was an attorney with the law firm of Baker Botts, LLP, in Washington, DC, specializing in regulatory and transactional energy matters. She clerked for the Supreme Court of Texas for Chief Justice Tom R. Phillips, and she was a natural gas marketer with Tenngasco Corporation and a petroleum landman with Tenneco Oil Company.

Ms. Bolton earned her B.S. magna cum laude, from the University of Colorado, her M.B.A. from the University of Houston, and her J.D. from the University of Texas.

**Robert Schwentker**

Robert B. Schwentker is senior vice president and general counsel for North Carolina Electric Membership Corporation (NCEMC), in Raleigh, North Carolina. Mr. Schwentker supervises corporate legal services, human resources, power supply contracts development, wholesale rate proceedings, litigation, and environmental matters for NCEMC.

Prior to joining NCEMC, his practice concentrated in representation of electric membership cooperatives at the firm of Crisp, Davis, Schwentker, Page & Currin in Raleigh, North Carolina. He served as an instructor for the National Rural Electric Cooperative Association's legal seminars and has spoken at a number of other conferences on issues concerning the electric utility industry.

He is on the boards of the North Carolina Citizens for Business and Industry and the Electric Cooperative Bar Association, and is a council Mmmber of the ABA's section of public utility, communications, and transportation law. He also serves as chief operating officer and general counsel for the North Carolina Association of Electric Cooperatives (NCAEC). In this capacity he oversees trade association activities including lobbying and government relations; training and education; public relations; safety; economic development; publications; and corporate event planning.

Mr. Schwentker earned his J.D. from the University of North Carolina at Chapel Hill.

## Legislative Update on Energy Issues

### Canadian Electricity-Related Legislation and Regulations

**Douglas E. Crowther**
**Fraser Milner Casgrain LLP**



## Legislative Update on Energy Issues

Canadian Climate Change Legislation

## Canadian Climate Change Legislation

- Background
  - Canada 7th overall in $CO_2$ emissions worldwide
  - 2% of total GHG emissions
  - .5% of world's population
  - = Very high $CO_{2e}$ intensity



## Canadian Climate Change Legislation

- Background cont.
  - Alberta = 1/3 of Canada's GHG emissions
  - Alberta leading energy producer in Canada
    - Natural gas, conventional crude oil and synthetic crude oil from oil sands
    - Approx. 2/3 of Canada's crude oil and equivalent production – and increasing

## Canadian Climate Change Legislation

- Background cont.
  - 1.19 million bbl/d of Alberta crude oil and petroleum products to U.S. (2005)
    - (Mexico = 1.56 million bb/d; Saudi Arabia = 1.45 million bbl/d); Venezuela = 1.24 million bbl/d)
  - 2.58 Tcf/year of Alberta natural gas to U.S. (2005)

Source: Alberta Energy



## Canadian Climate Change Legislation

- Background cont.
  - Alberta large producer of coal-fired electricity
    - Approx. 12,500 MW total installed capacity
    - 6,200 MW (50%) coal
    - 4,600 MW (37%) natural gas

## Canadian Climate Change Legislation

- Background cont.
  - United Nations Framework Convention on Climate Change
    - Canada a signatory
  - Kyoto Protocol
    - Canada ratified December 2002
      - Committed to 6% GHG reduction (from 1990 levels) by 2012
    - Protocol in force February 2005



## Canadian Climate Change Legislation

- Background cont.
  - Canada's 1990 GHG emissions = 596 Mt $CO_{2e}$
  - 2005 GHG emissions = 747 Mt $CO_{2e}$ (25% > 1990 and 33% > Kyoto target)
  - 2012 GHG emissions ("business as usual") = 809 Mt $CO_{2e}$ (36% > 1990 and 45% > Kyoto target)
  - "Kyoto Gap"

Source: Government of Canada: *Canada's Greenhouse Gas Inventory, 2005* (submitted to UNFCC)

## Canadian Climate Change Legislation

- Background cont.
  - Significant increases in oil and gas production (including exports to U.S.) = 162% increase from 1990 in GHG emissions from production and transportation of fuel for export (73 Mt vs. 28 Mt)



## Canadian Climate Change Legislation

- Background cont.
  - The environment gets "hot"
    - Minority government in Ottawa
    - Climate change resonates with Canadian voters
    - Pre-emptive strike in Alberta
    - Re-tooled Federal approach

## Canadian Climate Change Legislation

- Alberta Legislation
  - *Climate Change Emissions Management Act*
    - Reporting requirements since 2003
  - *Climate Change and Emissions Management Amendment Act*
    - In force April 20, 2007
  - *Specified Gas Emitters Regulation*
    - In force April 20, 2007

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## Canadian Climate Change Legislation

- Principal Features
  - Objective = intensity reduction (not absolute reduction)
  - Subsection 3(1) *Climate Change and Emissions Management Act*:

> 3(1) The specified gas emission target for Alberta is a reduction by December 31, 2020 of specified gas emission relative to Gross Domestic Product to an amount that is equal to or less than 50% of 1990 levels.

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## Canadian Climate Change Legislation

- Emissions intensity = quantity of specified gases released by a facility per unit of production from that facility



## Canadian Climate Change Legislation

- Facilities emitting > 100,000 tonnes CO2e/year
- Industrial process emissions not affected
  - "industrial process emissions" = direct emissions from industrial process involving chemical or physical reactions other than combustion, where primary purpose of process not energy production

## Canadian Climate Change Legislation

- Beginning July 1, 2007 established facilities required to reduce *net emissions intensity* by 12% from baseline
- Baseline (established facility) = average of intensity for 2003 through 2005
  - Alternate method can be approved if standard method inappropriate
- Baseline (new facility) = intensity for 3rd year of commercial operation
  - Alternate method can be approved if standard method inappropriate



## Canadian Climate Change Legislation

- Net emissions intensity =

$$\frac{TAE - (EO+FC+EPC)}{P}$$

TAE = total annual emissions from facility

EO = allowable emissions offsets

FC = allowable fund credits

EPC = emission performance credits

P = production for year

## Canadian Climate Change Legislation

- Emissions offsets
  - Reductions in $CO_{2e}$ emissions
  - In Alberta
  - Reduction from action not otherwise required by law
  - Reduction occurring after January 1, 2002 and from action taken since that date
  - Real and demonstrable
  - Quantifiable and measurable



## Canadian Climate Change Legislation

- Fund Credits
  - Obtained by contributing $ to Climate Change and Emissions Management Fund
  - $15 (CAD)/tonne $CO_{2e}$
  - Credits in Q1 only usable against prior year
  - Credits after Q1 only usable against current year

## Canadian Climate Change Legislation

- Emission Performance Credits
  - If actual emissions intensity < specified limit
  - "Bankable"
    - Can be used by another facility during same year
    - Can be used by same facility in subsequent year
  - Can only be used once
  - If jointly held – use on a pro rata basis



## Canadian Climate Change Legislation

- Penalties for Non-Compliance
  - Failing to meet intensity limits
    - maximum fine = \$200/tonne $CO_{2e}$ over intensity limit
  - Other offences (e.g., failing to apply to set baseline)
    - maximum fine (individual) = \$50,000
    - maximum fine (corporation) = \$500,000

## Canadian Climate Change Legislation

- Climate Change and Emissions Management Fund
  - "May be used only for purposes related to reducing emissions . . . or improving Alberta's ability to adapt to climate change"
    - energy conservation and efficiency
    - new technologies for reducing gas emissions
    - gas capture, use and storage technology
    - development of opportunities for sequestration and sinks
    - climate change adaptation programs and measures

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## Canadian Climate Change Legislation

- New Federal Plan
  - Regulatory Framework for Air Emissions
  - Draft Regulations under *Canadian Environmental Protection Act* expected Spring 2008
  - Regulations expected in force 2010

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## Canadian Climate Change Legislation

- Facilities engaged in:
  - Electricity generation from combustion
  - Oil and gas
  - Forest products
  - Smelting and refining
  - Iron and steel
  - Iron ore pelletizing
  - Cement
  - Lime
  - Chemical production



## Canadian Climate Change Legislation

- Intensity based
- Intended to achieve absolute reduction of 150 Mt $CO_{2e}$ by 2020
- Excludes fixed process emissions

## Canadian Climate Change Legislation

- 18% intensity reduction starting 2010
  - Escalating 2%/year
- Baseline based on 2006 emissions
- 3-year exemption for new facilities
  - 2%/year reductions thereafter



## Canadian Climate Change Legislation

- Comply through:
  - Emissions reductions
  - Purchase of technology fund credits:
    - $15/tonne (through 2012); $20/tonne (2013); inflation adjusted thereafter
    - Phased-out by 2018
  - Domestic offsets (unlimited)
  - International (Kyoto) credits (up to 10% of reduction requirements)
  - Performance credits (bankable)
  - Early action credit

## Canadian Climate Change Legislation

- Issues/Concerns Re: New Federal Plan
  - Harmonization with provincial programs, e.g., Alberta
  - Limits on use of technology fund credits
  - Rules for offset program – clarity required



## Legislative Update on Energy Issues

### "Federal Energy Legislation—From The Trenches"

Debra Raggio Bolton, Vice President and Assistant General Counsel
Federal and State Affairs
Mirant Corporation

## Main Concerns – A Merchant Generator's Perspective

- Level Playing Field between entities that rely on the market for return on investment and entities that do not
- Incentives for investment in generation
- Supply/Demand imbalance
- Environmental Outlook



## Energy Policy Act 2005

- Repeal of the Public Utility Holding Company Act of 1935 (PUHCA)
- Amendments to Federal Power Act (FPA) that authorize FERC review of mergers, acquisitions and asset dispositions in the electric industry
- Elimination of restrictions on ownership of QFs by electric utilities
- $14.5 billion in tax incentives for capital investments in new technology, plant and equipment.

## Energy Policy Act 2005 (cont.)

- New rules on enforcement and consumer protection – increased FERC's oversight of markets and enforcement authority
- Established a new Electric Reliability Organization (ERO) to develop and enforce national and regional electric reliability standards
- DOE required to designate "national interest electric transmission corridors (NIETC)" where transmission lines should be built to relieve congestion costs
- FERC given backstop transmission siting authority for projects in DOE designated NIETC

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## Impact of EPAct 2005 on Merchant Generators

- Despite many changes in the details of regulation, little practical effect on merchant generation business
  - PUHCA 2005 - took authority from SEC gave it to FERC
  - FPA Section 203 – FERC often reviewed transactions that were primarily generation asset transfers due to jurisdiction over transmission facilities
  - FERC's market behavioral rules prohibited many of the types of behavior that are prohibited under the anti-manipulation statute
  - National Interest Electric Transmission Corridors (NIETC)

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## Energy Legislation in 2007 (as of August 2007)

- H.R.6, the Clean Energy Act
  - Intended to help alleviate supply and demand concerns, advance energy efficiency programs, increase the use of renewable energy and further the debate on greenhouse gases
  - June 21, 2007, the Senate approved H.R. 6, the Clean Energy Act. Bill includes:
    - a more vigorous carbon capture and storage RD&D program
    - boost the use of renewable fuels for transportation
    - set aggressive energy efficiency standards for appliances and buildings



## Energy Legislation in 2007 (cont.)

- On August 4, 2007, House approved H.R.3221, New Direction for Energy Independence, National Security, and Consumer Protection Act
  - Increase energy efficiency standards for appliances, lighting and buildings
  - Promote modernization of the electricity grid by encouraging the deployment of "smart grid" technologies
  - provide loan guarantees and grant programs for advanced vehicle batteries and promoting the use of Plug in Hybrid Electric Vehicles
  - Improve the implementation of the EPAct 2005 loan guarantee program for low-emissions technologies
  - Encourage greater production of renewable fuels for vehicles
  - A national Renewable Portfolio Standard (RPS)
  - Energy tax package

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## Impact of Energy Bill 2007 on Merchant Generators

- Focus largely on energy efficiency and will not have major impact on generators
- Inclusion of CAFÉ standards suggests mobile sources should be a priority
- Inclusion of an RPS may have market and cost impact.



## Outlook on GHG (as of August 2007)

- Following bills in play that include mandatory greenhouse gas emissions reductions:
  - Bingaman-Specter- "Low Carbon Economy Act of 2007" (multi-sector)
  - Lieberman-McCain-"Climate Stewardship and Innovation Act of 2007" (multi-sector)
  - Feinstein- "Electric Utility Cap and Trade Act of 2007" (electric sector)
- Discussions of mandating reductions at the Load Serving Entity (LSE) (Lieberman/Warner)
- Cap-and-trade legislation likely in House

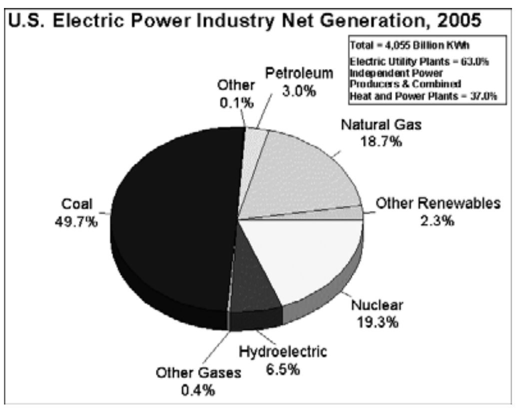
## Outlook on GHG (cont.)

- Many states have GHG programs
  - Regional Greenhouse Gas Initiative (RGGI)
    - Nine states in New England and the Mid-Atlantic.
    - Mandatory cap-and-trade program for the electric sector
  - Western Regional Climate Change Action Initiative
    - Formed by Governors of Arizona, California, New Mexico, Oregon and Washington
    - Plan implements strategy to reduce greenhouse gas emissions



## Energy & Environment in conflict

- Energy Bills in Congress do not address supply/ demand imbalance
- GHG bills on the federal and state levels do not address consumer costs, supply and demand.
- Coal as a generation resource?
  - General agreement coal should be part of generation mix
  - Today coal provides 52 percent of electricity, more than double any other fuel source.






# Energy & Environment in conflict (cont.)

- Worldwide coal consumption expected to grow by more than 40 percent between 2001 - 2025, with China and India accounting for three-fourths of that increase
- Conflicting messages on coal:
  - 7/23/07- Environmental groups filed suit in federal district court in Washington, D.C., objecting to government support for new coal plants in the Montana. Claim the government did not weigh global warming implications.
  - 5/04- Eileen Claussen, President, Pew Center on Global Climate Change, said, "A scenario in which we meet the world's various energy challenges without coal seems to me highly unlikely."
  - 3/07- Chairman John Dingell, House Energy & Commerce Committee said, " Coal must be maintained as a generation resource in any program that mandates greenhouse gas reductions."

## Summary Points

- Energy bills do not address increased demand for electricity and supply concerns
- Consumer costs are not being addressed
- State programs on greenhouse gas reduction will continue to mature and be implemented
- Federal GHG program unlikely this year



# Legislative Update on Energy Issues

## Renewable Energy Legislation

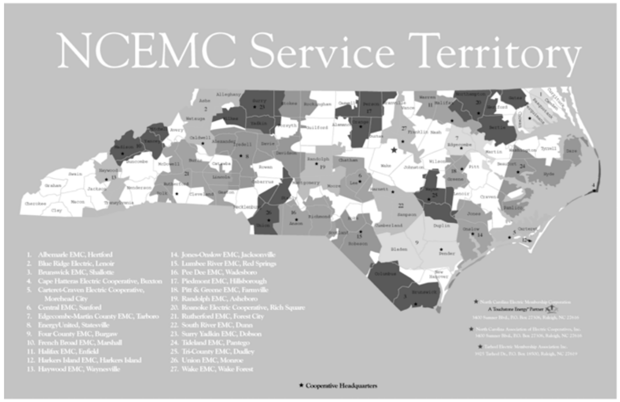
Robert B. Schwentker

Senior Vice President & General Counsel
North Carolina Electric Membership Corporation

## North Carolina Electric Membership Corporation

- Generates, buys, and sells power for local co-ops to sell and distribute to members
- Serve 26 member cooperatives
  - Geographically diverse system with service territories located in 93 of 100 North Carolina counties
- Approximately 99% of customers are residential and small businesses





## Power Supply

- NCEMC acquires power it sells from
  - Ownership interest in Catawba Nuclear Station in York County, SC
  - Two NCEMC owned-and-operated natural gas-fired peak load power plants
    - One plant began commercial operation in June 2007
    - Second plant scheduled to begin commercial operation December 2007
  - NCEMC owned-and-operated peaking generators on the Outer Banks of NC
  - Purchases from investor-owned utilities



## Renewable Energy Legislation

- 2007 Legislative Session
  - Introduction of two bills
    - Senate Bill 3
      - Included all suppliers, 10% RPS
    - House Bill 77
      - Included all suppliers, 20% RPS
  - Work on the Senate Bill
    - Energy Issues Working Group (EIWG)
      - Led by legislative research staff
      - Diverse group of stakeholders
      - Multiple meetings (approx. 14)
        - » Many sidebar discussions as well

## Energy Issues Working Group

- Participants
  - Representatives of constituent groups
    - IOUs
    - Environmental Community
    - Industrial Consumers
    - Electric Cooperatives
    - ElectriCities
      - Late participant
      - Initially tried to be exempt from any legislation
    - North Carolina Utilities Commission (NCUC) and the Public Staff



## Electric Cooperatives' Initial Efforts

- Authorization to participate in the process—April Board Meeting
  - Support a modest, diverse renewable energy portfolio standard
    - Renewables—wind, biomass, solar, etc.
    - Include energy efficiency and demand side management
  - Support development of a Public Benefits Fund (PBF)

## Reasons for Participation

- General support for initiatives—federal and state levels
- Location of renewables—"fuels" in the cooperatives' service territories
- Only successful way to shape legislation



## Evolution of Senate Bill 3

- Stakeholder process developed two major portions of the bill
  - "Front part of the bill"—Renewable Energy Portfolio Standard (REPS)
  - "Back part of the bill"—Favorable treatment of new base load generation
- Public Benefits Fund concept
  - Failed to receive consensus support
  - Environmental community ultimately opposed

## Legislative Consideration—SB 3

- Initially passed the Senate by an overwhelming majority
- Referred to House Committee on Energy Efficiency and Conservation
- Days of comments from witnesses opposed to the "back part of the bill"
  - Ultimately passed by strong majority in the committee
  - Quickly considered by House Public Utilities Committee—same result



## House Consideration of SB 3

- Floor maneuvers continued to weaken the "back part of the bill"
  - Efforts led by members of the environmental community opposed to base load generation
    - "We can conserve our way out of the need for such generation"
    - Strong opposition to coal and nuclear plants
  - Passed the House by strong majority of votes

## Key Provisions of SB 3

- Statement of Policy—development of renewable energy and promotion of energy efficiency
- Renewable Energy and Energy Efficiency Portfolio Standard (REPS)
  - Definitions include electric cooperatives and municipal systems as "electric power suppliers"

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## REPS for IOUs

- 12.5% standard by 2021
- Meeting the standard
  - New renewable energy facility
  - Reduce consumption through energy efficiency measure—25% limitation
    - 40% limitation beginning in 2021
  - Purchase of renewable energy certificates (RECs)
    - Out-of-state limitation—25% of the requirements
    - Dominion exception—25% limitation not applicable

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## REPS for Electric Cooperatives and Municipals

- Standards applicable to retail providers
  - Member cooperatives
  - Individual municipalities
- Schedule of standards
  - 2012—3% of 2011 NC retail sales
  - 2015—6% of 2014 NC retail sales
  - 2018—10% of 2017 NC retail sales



## Meeting the Standards—EMCs and Municipalities

- Generate at a new renewable energy facility
- Reduce consumption
  - Demand-side management
  - Energy efficiency
- Purchase from a renewable facility or from a hydroelectric power facility
  - Includes SEPA allocations
    - Subject to a 30% limitation

## Meeting the Standards (cont'd.)

- Purchase RECs from in-state or out-of-state renewable facilities
  - Subject to 25% limitation from out-of-state facilities
- Acquire all or part of its electric power at wholesale from a supplier whose portfolio of supply and demand options meet the requirements of the REPS



## Yr. Caps for REPS Compliance

| Customer Class | 2008-11 | 2012-14 | 2015 and on |
|---|---|---|---|
| Res. per account | $ 10.00 | $ 12.00 | $ 34.00 |
| Com. per account | $ 50.00 | $ 150.00 | $ 150.00 |
| Ind. per account | $ 500.00 | $ 1,000.00 | $ 1,000.00 |

## Special Provisions for Certain Resources

- Solar energy resources
  - .20% by 2018
    - Applicable to each electric supplier
    - NCUC oversight—determine if new solar facility fails to meet the terms of its contract with the electric power supplier
- Swine waste resources
  - .20% by 2018
  - Electric suppliers to comply "in the aggregate"



## Special Provisions (cont'd.)

- Poultry waste resources
  - 900,000 MWh by 2014
  - Electric suppliers to comply in the "aggregate"
- Control of emissions
  - Use of Best Available Control Technology
  - Environmental Management Commission may adopt rules of implementation

## General Provisions

- Encourage implementation of Demand Side Management (DSM), energy efficiency and conservation measures



## IOU General Provisions

- Recovery of additional costs under annual fuel charge
- Ongoing review of construction costs and inclusion of those costs in rates
- Recovery of costs for out-of-state electric facilities
- Recovery of project development costs for nuclear facilities

## IOU Provisions

- Recovery of construction work in progress when reasonable and prudent and subject to ongoing review by the NCUC



## Other Provisions

- Phase out of sales taxes paid by farmers and manufacturers for electricity, piped natural gas and other fuels
- If federal and state legislation conflict, more stringent provision applies