

# CONNECTICUT LAW REVIEW

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VOLUME 42

JULY 2010

NUMBER 5

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## Commentary Introduction

American use of fossil fuels has flared up as a political issue from time to time for decades. This spring's sinking of the Deepwater Horizon oil platform, and the ensuing leak into the Gulf of Mexico, has brought the issue into the news once more. Some argue that we should continue using fossil fuels because they are inexpensive and some, like coal, are domestically available. Others argue that we should transition to renewable energy sources for both environmental and national security reasons.

In this Commentary Issue, *Connecticut Law Review* focuses on one means of encouraging the development of renewable energy: the renewable portfolio standard ("RPS"). RPSs require electric utilities to obtain a certain fraction of their electricity from renewable sources. Approximately two-thirds of the United States have state-based RPSs, but there is no national RPS, despite more than twenty-five proposals introduced in Congress.

The Commentary Issue begins with *Power Forward: The Argument for a National RPS*, by Professor Lincoln L. Davies of the S.J. Quinney College of Law at the University of Utah. Professor Davies argues that a national RPS would more efficiently encourage renewable energy than the current system of state-based RPSs. Surveying the thirty-six existing local RPSs, Professor Davies concludes that the "crazy-quilt" character of the regulations frustrates their purpose. He also argues that a national RPS would encourage a "diversified energy supply that is reliable, cost-efficient, and environmentally friendly" by integrating environmental law and energy law, the objectives of which have traditionally been at odds.

In *Moving Power Forward: Creating a Forward-Looking Energy Policy Based on a National RPS*, Professor Joshua P. Fershee of the University of North Dakota School of Law describes strategies for effectively implementing a national RPS. Professor Fershee argues that it is critical for policy makers to clearly identify their goals and develop strategies for achieving those goals. He argues that "the RPS is one

tactical way to achieve the strategic goal of creating a market in renewable energy” and that creating a national RPS should not be pursued as a goal in and of itself. Professor Fershee then identifies pitfalls that have hindered state efforts at encouraging renewable energy, and presents suggestions for national policy.

In *The Limits of a National Renewable Portfolio Standard*, Professor Jim Rossi of the Florida State University College of Law analyzes economic issues presented by the prospect of a national RPS. Professor Rossi offers qualified support for a national RPS, warning that it “may crowd out the next least expensive form of generating electricity—natural gas—at the cost of both efficiency and climate change mitigation.” He also identifies regulatory tools that could alleviate some of the problems caused by a national RPS.

In *The Political Barriers to a National RPS*, Professor David B. Spence of the McCombs School of Business, University of Texas at Austin highlights the political obstacles to a national RPS. Noting that President Richard Nixon, a Republican, signed a great deal of environmental legislation, Professor Spence argues that environmental issues are much more politically polarizing today. He also argues that without the “climate change equivalent of the Cuyahoga River fire or a Santa Barbara oil spill,” voters and policy makers will not truly be motivated to address renewable energy.

Finally, in *Johnny-Come-Lately: Practical Considerations of a National RPS*, Professor Lynn Fountain of the University of Connecticut School of Law provides a critical perspective on the current structure of RPSs and the prospect of a national RPS. Responding to Professor Davies’ concerns about crazy-quilt regulation, Professor Fountain argues that “a state RPS has the flexibility to take advantage of the state’s natural resources and local industry.” Furthermore, she argues that stakeholders have adapted to the current regulatory regime, and that a change in regulatory structure may hinder the development of renewable energy that national RPS advocates seek to encourage.

On behalf of *Connecticut Law Review*, I would like to thank Professor Davies and all of our commentators for their timely and thought-provoking pieces. We are honored to publish their Articles in this Commentary Issue.

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