

CHAPTER 188  
FORMERLY  
SENATE BILL NO. 106  
AS AMENDED BY  
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING  
TO ENERGY EFFICIENCY RESOURCE STANDARDS AND ENERGY  
EFFICIENCY PLANNING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE (Three-fifths of all members elected to each house thereof concurring  
therein):

Section 1. This Act shall be known as the "Energy Conservation and Efficiency Act of  
2009."

Section 2. Amend Title 26 of the Delaware Code, by adding a new Chapter 15 to  
read as follows:

" Chapter 15– Energy Efficiency Resource Standards

§ 1500. Short Title; Declaration of Policy.

(a) This chapter shall be known and may be cited as the "Energy Efficiency Resource  
Standards Act of 2009."

(b) The General Assembly finds and declares that:

(1) Cost effective energy efficiency shall be considered as an energy supply source  
before any increase or expansion of traditional energy supplies; and

(2) Energy efficiency is among the least expensive ways to meet the growing energy  
demands of the State; and

(3) Providing affordable, reliable, and clean energy for all consumers in Delaware is  
in the public interest and will yield social, economic, and welfare benefits for generations to  
come; and

(4) The benefits of a strong focus on cost effective energy efficiency accrue to the  
public at large, and all electric and natural gas suppliers and consumers in Delaware share an  
obligation to develop a minimum level of these resources in the energy supply portfolio of the  
State.

(5) The benefits of cost effective energy efficiency include lowered consumer  
spending on energy, improved regional and local air quality, improved public health,  
increased electric supply diversity, increased protection against price volatility and supply  
disruption, improved transmission and distribution performance, and new economic  
development opportunities; and

(6) The Delaware Sustainable Energy Utility (SEU) combines public funding  
sources and consumer savings with private sector funds and management skills to provide all  
Delaware energy users with assistance for all their energy efficiency and renewable energy  
needs; and

(7) The SEU is a critical mechanism for achieving energy conservation and energy  
efficiency in the State.

(8) Decoupled rate design mechanisms will be implemented by no later than  
December 2010 for regulated natural gas and electric utilities such that delivery rate structures  
provide for an appropriate, cost-based level of revenue recovery which will remove

disincentives to investment in demand response programs and conservation and improved efficiency of energy use.

§ 1501. Definitions.

For purposes of this chapter:

(a) “Affected Electric Energy Provider” means an electric distribution company, rural electric cooperative, or municipal electric company serving Energy Customers in Delaware.

(b) “Affected Energy Provider” means an Affected Electric Energy Provider or Affected Natural Gas Distribution Company.

(c) “Affected Natural Gas Distribution Company” means a natural gas distribution company serving Energy Customers in Delaware.

(d) “Combined heat and power” means a system that uses the same energy source both for the generation of electrical or mechanical power and the production of steam or another form of useful thermal energy.

(e) “Combined heat and power system savings” means the electric output, and the electricity saved due to the mechanical output, of a combined heat and power system, adjusted to reflect any increase in fuel consumption by that system as compared to the fuel that would have been required to produce an equivalent useful thermal energy output in a separate thermal-only system, as determined in accordance with regulations promulgated by the Secretary.

(f) “Demand-side management” has the same definition set forth in § 1001 of this Title.

(g) “DEO” means the State Energy Office established in § 8051 of Title 29.

(h) “DNREC” has the same definition set forth in § 352 of this Title.

(i) “DP&L” has the same definition set forth in § 1001 of this Title.

(j) “DEC” has the same definition set forth in § 1001 of this Title.

(k) “Electric distribution company” has the same definition set forth in § 1001 of this Title.

(l) “Electricity consumption” and “electricity consumed” means, for any Affected Electric Energy Provider, the sum of retail electricity deliveries to all Energy Customers within the electric distribution system.

(m) “Energy Customer” means a natural person or public or private entity that receives electric distribution service from an Affected Energy Provider.

(n) “Electricity demand response” means a reduction in the use of electricity by electricity Energy Customers in response to power grid needs, economic signals from a competitive wholesale market or special retail rates.

(o) “EERS” means Energy Efficiency Resource Standards.

(p) “EERU” or “Energy Efficiency Resource Unit” means one kilowatt-hour of electricity demand reduction relating to demand side management programs, one kilowatt of electricity demand response, or one decatherm of reduced natural gas consumption, or an equivalent energy efficiency measure.

(q) “Energy efficiency” means either a decrease in consumption of electric energy or natural gas or a decrease in consumption of electric energy or natural gas on a per unit of production basis or equivalent energy efficiency measures that do not cause a reduction

in the quality or level of service provided to the Energy Customer achieved through measures or programs that target consumer behavior, or replace or improve the performance of equipment, processes, or devices. Energy efficiency can also mean the reduction in transmission and distribution losses associated with the design and operation of the electrical system.

(r) “Energy efficiency charge” has the meaning given in § 1505 of this chapter.

(s) “Energy Savings” means (i) reduction in electricity consumption, (ii) reduction in natural gas consumption, (iii) electricity coincident peak demand response capability, or (iv) equivalent energy efficiency measures, in Delaware from a base year of 2007, calculated on a calendar year basis.

(t) “Equivalent energy efficiency measure” means reductions in the use of fossil fuel other than natural gas or use of other sources of energy not derived from fossil fuel equivalent to a reduction in natural gas consumption or electricity consumption, as defined by the Secretary by regulations pursuant to § 1504 of this chapter.

(u) “Municipal electric company” has the same definition set forth in § 352 of this Title.

(v) “Natural gas consumption” and “natural gas consumed” means, for any Affected Natural Gas Provider, the sum of retail natural gas deliveries in Delaware.

(w) “Natural gas distribution company” means a public utility owning and/or operating natural gas distribution facilities in the state.

(x) “Coincident Peak demand” means for each Affected Electric Energy Provider the highest level of electricity demand for such Affected Electric Energy Provider.

(y) “Recycled energy savings” means a reduction in electricity or natural gas consumption that results from a modification of an industrial or commercial system that commenced operation before the date of enactment of this section, in order to make productive use of electrical, mechanical, or thermal energy that would otherwise be wasted, as determined in accordance with regulations promulgated by the Secretary.

(z) “Rural Electric Cooperative” has the same definition set forth in § 352 of this Title.

(aa) “Secretary” means the Secretary of DNREC.

(bb) “State Energy Coordinator” is the administrator and head of the State Energy Office as established in § 8053 of Title 29.

(cc) “Sustainable Energy Utility” or “SEU” have the same meaning as set forth in § 8059 of Title 29.

#### § 1502. Energy Efficiency Resource Standards.

(a) It is the goal of this chapter that each Affected Energy Provider shall achieve a minimum percentage of Energy Savings as follows:

1. For each Affected Electric Energy Provider, Energy Savings that is equivalent to 2% of the Provider’s 2007 electricity consumption, and coincident peak demand reduction that is equivalent to 2% of the Provider’s 2007 peak demand by 2011, with both of the foregoing increasing from 2% to 15% by 2015;

2. For each Affected Natural Gas Distribution Company, Energy Savings that is equivalent to 1% of the Company's 2007 natural gas consumption by 2011, increasing to 10% by 2015.

(b) Not later than April 1 of the calendar year immediately following each reporting period:

1. Each Affected Electric Energy Provider shall submit to the State Energy Coordinator a report, in accordance with regulations promulgated by the Secretary, demonstrating that the Affected Electric Energy Provider, in cooperation with the Sustainable Energy Utility and the Weatherization Assistance Program, has achieved cumulative Energy Savings (adjusted to account for any attrition of Energy Savings measures implemented in prior years) in the previous calendar year that are at least equal to the Energy Savings required by regulations adopted by the Secretary pursuant to § 1502(a) of this chapter.

2. Each Affected Natural Gas Provider shall submit to the State Energy Coordinator a report, in accordance with regulations promulgated by the Secretary, demonstrating that the Affected Natural Gas Provider, in cooperation with the Sustainable Energy Utility and the Weatherization Assistance Program, has achieved cumulative Energy Savings (adjusted to account for any attrition of Energy Savings measures implemented in prior years) in the previous calendar year that are at least equal to the Energy Savings contained in regulations adopted by the Secretary pursuant to § 1502(a) of this chapter.

(c) A Workgroup shall be established to complete a study and provide recommendations during the planning and implementation of this policy.

1. The Workgroup shall be composed of 11 members. It shall be chaired by the State Energy Coordinator and include one representative of each of DP&L, DEC, and Chesapeake Utilities, one representative appointed by the municipal electric companies, one representative of each of the Public Service Commission, the Public Advocate, and the SEU, and shall also include the Weatherization Assistance Program Manager and two members of the public with experience representing, respectively, low- and moderate- income families and environmental concerns.

2. The Workgroup shall complete a study and submit its findings to the Secretary no later than December 31, 2010 to determine the feasibility and impact of pursuing EERS goals for the Affected Energy Providers in Delaware. Such a study at minimum must address:

a. Supporting and confirming the Energy Savings percentages identified for 2011 and 2015 or recommending alternative Energy Savings percentages if warranted.

b. The impact of implementation and compliance on carbon dioxide and other greenhouse gas emissions;

c. The issue of "unintended consequences" of establishing goals for the Affected Energy Providers, especially, for instance, where beneficial fuel switching might otherwise be penalized or compliance with the goal negatively impacts the ability of gas utilities to compete with higher carbon fuel alternatives;

d. Consideration of any EERS type goals and programs established for natural gas distribution utilities in nearby states and the measurable results of any ongoing programs in those states;

e. The evaluation of the results of any ongoing natural gas energy efficiency and conservation programs implemented and administered through the SEU or any individual natural gas distribution utility;

f. The impact of implementation and compliance on customer rates for Affected Energy Providers;

g. The efficiency of the natural gas system relative to other energy alternatives on full-fuel-cycle measurement basis (from source to point-of-use);

h. The level of an energy efficiency charge, if any, needed to fund energy efficiency measures to meet compliance of the EERS pursuant to § 1505 of this chapter;

i. The step load increases or decreases caused by the connection of large, new energy consumers, such as data centers;

j. The impact of implementation and compliance on major farm, commercial, and industrial customers;

k. The appropriate level of equivalency for electricity demand response and energy efficiency measures in achieving compliance with the Energy Savings goals of § 1502 of this chapter;

l. The appropriate scope of equivalent energy efficiency measures; and

m. Whether the Secretary, by regulation, should permit trading of EERUs among Affected Energy Providers;

n. Enforcement mechanism(s) to be adopted by the Secretary which will ensure compliance with the EERS.

3. The Workgroup shall create quantitative annual reduction targets in EERUs, which are consistent with the State's Energy Savings objectives.

4. The Workgroup will meet at least once each year to review progress in meeting the goals and to recommend changes to the plan for meeting the quantitative reduction targets.

5. The Secretary will reconvene the Workgroup in February 2013 to evaluate progress toward the EERS goals.

§ 1503. Energy Use Reporting.

(a) The DEO shall annually publish a report on statewide electricity and natural gas consumption and electricity peak energy demand, submit this report to the Secretary, and make the report available to the general public by December 31 of each calendar year commencing in 2011.

(b) All Affected Energy Providers shall provide electric and natural gas consumption and peak usage data to the State Energy Coordinator annually by April 1 as required in § 1502(b) of this chapter.

§ 1504. Regulations; Jurisdiction; Administration.

(a) Not later than 1 year after the date of enactment of this section, the Secretary, with the cooperation of Affected Energy Providers, shall, by regulation, establish the requirements of this subsection, including, but not limited to:

1. measurement and verification procedures and standards;

2. requirements under which Affected Energy Providers shall demonstrate, document, and report compliance with the energy savings goals established under § 1502(a) of this chapter:

3. procedures and standards for defining and measuring electricity savings and natural gas savings that can be counted towards the Energy Savings targets established under § 1502(a) of this chapter, which shall, at a minimum:

a. specify the types of energy efficiency and energy conservation measures that can be counted;

b. enable that energy consumption and peak estimates in the applicable base and current years be adjusted, as appropriate, to account for changes in weather, population previously enacted and deployed demand side management and energy efficient programs by an Affected Energy Provider since the 2007 base year, or other variables;

c. account for the useful life of measures;

d. include deemed savings values for specific, commonly used measures;

e. allow for savings from a program to be estimated based on extrapolation from a representative sample of participating customers;

f. include procedures for counting combined heat and power savings and recycled energy savings;

g. establish methods for calculating codes and standards savings, including the use of verified compliance rates;

h. provide for standardized determination of baselines for energy efficiency projects; and

i. procedures and standards for third-party verification of reported electricity savings or natural gas savings.

(b) Regulations promulgated pursuant to this chapter and case decisions issued under the auspices of this chapter by the Secretary or DNREC shall be subject to direct appeal to the Superior Court pursuant to the provisions of the Administrative Procedures Act, Title 29, Chapter 101. The Environmental Appeals Board shall not have jurisdiction over any such appeal.

(c) Regulations promulgated by the Secretary shall not differ significantly among Affected Natural Gas Distribution Companies or among Affected Electric Energy Providers.

(d) All regulations promulgated under this chapter shall be adopted under the Administrative Procedures Act.

(e) Any costs incurred by the Secretary and DEO in developing and implementing the programs under this chapter shall be funded through a charge placed by the Public Service Commission on entities under its jurisdiction that have an obligation to comply with the provisions of this chapter and through compliance payments submitted by entities not regulated by the Public Service Commission. Any remaining funds shall be distributed as authorized in § 1505 of this chapter.

(f) If an energy efficiency charge greater than zero is established pursuant to § 1505 of this chapter, then § 1504 (e) will no longer apply.

§ 1505. Energy Efficiency Charge.

(a) There is hereby established the Sustainable Energy Trust Fund.

(b) Each individual Affected Energy Provider may determine how best to fund activities necessary to achieve the Energy Savings goals within its service territory and implement programs as it sees fit. Should an Affected Energy Provider determine that a charge is unnecessary, a plan shall be submitted that demonstrates how the goals will be achieved. Should an Affected Energy Provider determine that an energy efficiency charge is necessary to achieve the goals, they may make such a recommendation in the Workgroup study that is consistent with subsection 1505.

(c) Based upon the recommendation(s) of the Workgroup, the Secretary may implement a charge to be collected from each Energy Customer by its Affected Energy Provider (“energy efficiency charge”), which may not vary by customer class and is consistent with subsection 1505.

(d) Any energy efficiency charge for Energy Customers of Affected Electric Energy Providers shall be imposed on a per kilowatt-hour basis and may not exceed a level that would result in an average charge in excess of \$0.58 per month per residential electric customer.

(e) Any energy efficiency charge for Energy Customers of Affected Natural Gas Energy Providers shall be imposed on a therm basis and may not exceed a level that would result in an average charge in excess of \$0.41 per month per residential natural gas customer.

(f) Each Affected Energy Provider shall remit any energy efficiency charges collected pursuant to this chapter to the DEO to be deposited in the Sustainable Energy Trust Fund on a monthly basis. Funds shall be deposited in the Sustainable Energy Trust Fund by the DEO in separate accounts for each Affected Energy Provider and shall, to the extent feasible, and except as otherwise provided in subparagraph (h)c below, be earmarked for use on behalf of Energy Customers of the Affected Energy Provider from which they are collected in collaboration with the Affected Energy Providers. Funds deposited in the Sustainable Energy Trust Fund shall not be funds of the state, shall not be available to meet the general obligations of the government, and shall not be included in the financial reports of the state. The DEO shall submit to the General Assembly and the Governor by May 30 of each year a written accounting of monies received from the fund during the previous year and how those monies were used or disbursed during that year.

(g) Costs associated with achieving the Energy Savings Goals are not recoverable through Public Service Commission proceedings.

(h) All revenue credited to the Sustainable Energy Trust Fund shall be used solely to fund the programs mandated by this chapter.

(i) All interest earned on monies deposited in the Sustainable Energy Trust Fund shall be credited to the Sustainable Energy Trust Fund and shall be used solely for the purposes designated in this chapter.

(j) All monies deposited into the Sustainable Energy Trust Fund shall be transferred in their entirety on July 1 of each year to the DEO to fund the programs mandated by this chapter. The DEO shall distribute the funds in each separate account established pursuant to § 1505(e) of this chapter to the following uses:

a. Seventy-five percent of the assessment is provided to the SEU and shall be used to further the goals and activities of the SEU including, but not limited to, the promotion of energy conservation, energy efficiency, renewable energy, and energy financing pursuant to § 8059(j)(3) of Title 29.

b. Twenty percent of the assessment is provided to the Weatherization Assistance Program.

c. Five percent of the assessment is provided to the Secretary and DEO to cover costs incurred in developing and implementing the EERS.

§ 1506. Verified Savings.

(a) Subject to the other provisions of this subsection, Affected Energy Providers will use EERUs obtained from the Sustainable Energy Utility or the Weatherization Assistance Program and approved by the State Energy Coordinator or created by an Affected Energy Provider under a demand response program to meet the applicable Energy Savings requirements defined pursuant to § 1502(a) of this chapter.

(b) Energy Savings achieved and used for compliance pursuant to this subsection shall be:

1. measured and verified in accordance with the procedures specified by regulations developed under § 1504(c) of this chapter;
2. reported in accordance with § 1502(b) of this chapter; and
3. located in the State of Delaware.

§ 1507. Review and Enforcement.

(a) The Secretary shall review each report submitted by all Affected Energy Providers under § 1502(b) of this chapter to verify that the applicable performance standards under that subsection have been met.

(b) In determining compliance with the applicable Energy Savings requirements, the Secretary shall exclude reported electricity savings or natural gas savings that are not adequately demonstrated and documented, in accordance with the regulations promulgated under § 1504 of this chapter.”

Section 3. Amend Title 26, Chapter 10, § 1001 by adding the following defined term: “ ‘Electricity demand response’ has the same definition set forth in § 1501 of this Title.”

Section 4. Amend Title 26, Chapter 10 by adding a new § 1020 to read as follows: “§ 1020. Energy Efficiency Planning; Loading Order.

(a) IRPs filed with the Commission pursuant to § 1007 of this chapter shall include a detailed description of the energy efficiency activities of the utility. Electricity demand response programs shall be directly implemented by the utility. Demand-side management and other energy efficiency activities shall be implemented by the SEU (as defined in §8059 of Title 29), in collaboration with the utility. The contributions of utility-implemented and SEU-implemented programs shall be considered in meeting the Energy Efficiency Resource Standards required under Chapter 15 of this Title.

(b) In preparing the IRP, the utility shall first consider electricity demand response and demand-side management strategies for meeting base load and load growth needs and shall preferentially obtain electricity demand response resources through utility operated programs or demand-side management resources from the SEU or Weatherization Assistance Program, and cost-effective renewable energy resources before considering traditional fossil fuel-based electric supply services to meet their retail electricity supplier (as defined in § 352 of this Title) obligations.”

Approved July 29, 2009