

LAWS OF DELAWARE  
VOLUME 83  
CHAPTER 178  
151st GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 2

AN ACT TO AMEND TITLES 6, 26, AND 29 OF THE DELAWARE CODE RELATING TO COMMUNITY OWNED ENERGY GENERATING FACILITIES AND RENEWABLE ENERGY.

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. Amend § 352, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 352. Definitions.

(3) “Community-owned energy generating facility” has the meaning given in §1001 of this title.

(4) “Unsubscribed energy” means any community-owned energy generating facility percentage of output that is not allocated to any customer.

Section 2. Amend § 360, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 360. Renewable energy trading.

(d) The Renewable Energy Taskforce shall be formed for the purpose of making recommendations about the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in Delaware.

(2) The Taskforce shall be charged with making recommendations about and reporting on the following and matters related thereto:

b. Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of renewable, distributed renewable, and solar energy ~~technologies~~ technologies, including community-owned energy generating facilities, in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives;

g. Ensuring that residential, commercial, and utility scale photovoltaic and solar thermal systems of various ~~sizes~~ sizes, including community-owned energy generating facilities, are financially viable and cost-effective investments in Delaware.

Section 3. Amend § 1001, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1001. Definitions.

As used in the chapter, unless the context otherwise requires:

(5) “Community-owned energy generating facility” means a renewable energy generating facility, located in the service area of a utility under the regulation of the Public Service Commission, that has multiple owners or customers who share the output of the generator, which may be located either as a stand-alone

facility or behind the meter of a participating owner or customer. The facility shall be interconnected to the distribution system and operated in parallel with an electric distribution company's transmission and distribution facilities.

Section 4. Amend § 1014, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 1014. Public purpose programs and consumer education.

(e) The rules and regulations promulgated for net energy metering by the Commission, municipal electric companies, and electric cooperatives during any period of exemption under § 223 of this title shall:

~~(2) Provide for customers participating in a community-owned energy-generating facility to be credited in kilowatt-hours (kWh), valued at an amount per kWh equal to supply service charges according to each account's rate schedule for any excess production of the community-owned energy-generating facility. For customers that host a community-owned energy-generating facility or where all participating customers are located on the same distribution feeder as a community-owned energy-generating facility, credit in kWh shall be valued according to each account's rate schedule and the rules and regulations promulgated for net energy metering under paragraph (e)(1) or (3) of this section. Excess kWh credits shall be credited to subsequent billing periods to offset customers' consumption in those billing periods. At the end of the annualized billing period, a community may request a payment from the electric supplier for any excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the supply service rate of the account hosting the community-owned energy-generating facility. Such payment shall be made to the account hosting the community-owned energy-generating facility, and may be credited to the account through monthly billing if less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the electric supplier. The customers participating in a community-owned energy-generating facility retain ownership of all RECs associated with electric energy produced unless the customer has relinquished such ownership by contractual agreement with a third party.~~

~~(3) As an alternative to paragraph (e)(2) of this section above, electric suppliers, DEC, DP&L, and municipal electric companies may elect to make payment to the account hosting the community-owned energy-generating facility for the value of the generated electricity as established by the Public Service Commission for those utilities regulated by the Commission, and by the Board of Directors or other governing body of any utility not regulated by the Commission.~~

~~(9) Absent the promulgation of rules and regulations pursuant to paragraph (e)(3) of this section, individual customers may aggregate their individual meters in conjunction with a community-owned energy-generating facility, provided that:~~

- ~~a. A community includes customers sharing a unique set of interests; and~~
- ~~b. Electric suppliers, DEC, DP&L, and municipal electric companies shall only allow meter aggregation for customer accounts of which they provide electric supply service; and~~

~~c. A community-owned energy generating facility is designed to produce no more than 110% of the community's aggregate electrical consumption of its individual customers, calculated on the average of the 2 previous 12-month periods of actual electrical usage at the time of installation of energy generating equipment. For new building construction, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time of installation of energy generating equipment; and~~

~~d. A community-owned energy generating facility shall not exceed a capacity of the sum total of the individual unit allowances as defined under paragraph (d)(1) of this section among the participants of a community-owned energy generating facility; and~~

~~e. Community-owned energy generating facilities may include technologies defined under § 352(6)a. h. of this title;~~

~~f. Before a community-owned net energy metering system may be formed and served by an electric supplier, DP&L, DEC, or municipal electric company, the community proposing a community-owned energy generating facility shall file with the Delaware Energy Office and the electric supplier, DP&L, DEC, or the appropriate municipal electric company the following information:~~

~~1. A list of individual meters the community desires to aggregate identified by name, address, and account number; and~~

~~2. A description of the energy generating facility, including the facility's host location, capacity, and fuel type or generating technology; and~~

~~3. The quantity of kWh credits attributed to each customer, which the electric supplier, DP&L, DEC, or the appropriate municipal electric company shall true-up at the end of the annualized billing period;~~

~~g. A community may change its list of aggregated meters no more than quarterly by providing 90 days' written notice to the electric supplier, DP&L, DEC, or the appropriate municipal electric company; and~~

~~h. If the community removes individual customers from the aggregate, the community shall either replace the removed customers, reduce the generating capacity of the community-owned energy generating facility to remain compliant with the provisions provided under paragraphs (e)(9)c. and d. of this section, or negotiate with the electric supplier, DP&L, DEC, or the appropriate municipal electric company to establish a mutually acceptable agreement for any excess kWh credit;~~

~~i. An electric supplier, DP&L, DEC, or municipal electric companies may require that customers participating in a community-owned energy generating facility have their meters read on the same billing cycle; and~~

~~j. Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation as either public utilities or an electric supplier.~~

(f) Individual customers may aggregate their individual meters in conjunction with a community owned energy generating facility provided that:

(1) The Commission promulgates rules and regulations that provide for customers participating in a community-owned energy generating facility to be credited for the customers' subscribed percentage of generation valued at the sum of the volumetric (kWh) components of the distribution service charges and supply service charges for residential customers and the sum of the volumetric energy (kWh) components of the distribution service charges and supply service charges for nonresidential customers according to each participating customer account's rate schedule. At the end of the annualized billing period, a customer may request a refund from the electric distribution company.

(2) A customer may not receive credit for more than 110% of the customer's expected aggregate electrical consumption, calculated on the average of the 2 previous 12-month periods of actual electrical usage at the time of subscription with the community-owned energy generating facility. For new building construction, electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics. On an annual basis, an electric distribution company shall be permitted to audit individual customer's subscribed amounts to ensure the associated usage does not exceed 110% of the customer's annual usage. The community-owned energy generating facility shall provide updated individual customer's subscribed percentage as required. In the event the community-owned energy generating facility does not provide the required update within 30 days after notification by the electric distribution company, the electric distribution company shall be permitted to set the customer's percentage to zero. Customers of a community-owned energy generating facility shall only pay for credits received. A community-owned energy generating facility may update customer allocation percentages on a monthly basis.

(3) Any unsubscribed energy that constitutes 10% or less of the community-owned energy generating facility shall be compensated using the average annual locational marginal price of energy in the DPL Zone based on the prior calendar year. Any unsubscribed energy that is greater than 10% of the community-owned energy generating facility not allocated shall not be compensated by the electric distribution company.

(4) An electric distribution company shall use energy generated from a community-owned energy generating facility to offset purchases from wholesale electricity suppliers for standard offer service.

(5) Excess credits shall be credited to subsequent billing periods to offset the customers' charges in those billing periods.

(6) The community-owned energy generating facility shall ensure that the net-metering credits from the community-owned energy generating facility are accurate. The amount of electricity generated each month available for allocation as subscribed or unsubscribed energy shall be determined by a revenue quality production meter installed and paid for by the owner of the community-owned energy generating facility. Further, the community-owned energy generating facility shall be responsible for any additional costs incurred by the electric distribution company, including billing-related costs associated with community-owned energy generating facility customers.

(7) The community-owned energy generating facility will retain ownership of all RECs and SRECs associated with the electric energy it produces unless it has relinquished such ownership by contractual agreement with a third party or its customers.

(8) The community-owned energy generating facility shall not have subscriptions larger than 200 kilowatts constituting more than 60% of its capacity. The community-owned energy generating facility host's self-consumption is not included in this calculation.

(9) The electric distribution company shall only allow meter aggregation for customer accounts for which they provide electric distribution service.

(10) A community-owned energy generating facility shall not exceed a capacity of 4 megawatts and all costs associated with the interconnection are the responsibility of the community-owned energy generating facility.

(11) Community-owned energy generating facilities may include technologies defined under § 352(6)a.-h. of this title.

(12) A community-owned energy generating facility seeking to provide service to customers must apply for and obtain a Certificate to Operate from the Commission, and pay an application fee of \$750. Community-owned energy generating facilities are not required to obtain a Certificate of Public Convenience and Necessity from the Commission. To obtain a Certificate to Operate, a community-owned energy generating facility must provide the following:

a. A completed interconnection study or signed interconnection agreement with the electric distribution company.

b. Proof of site control.

c. Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal regulations.

(13) If a community-owned energy generating facility fails to comply with orders, rules, or regulations promulgated or issued by the Commission governing such a facility, or any other laws, rules, or regulations that apply to such a facility, the Commission may impose penalties, including monetary assessments, and may suspend or revoke the Certificate to Operate, and impose other sanctions permitted by law.

(14) Every 3 years, the community-owned energy generating facility must certify to the Public Service Commission in writing that it meets the low-income eligibility criteria provided in this chapter.

(15) Community-owned energy generating facilities are subject to the fees and charges in §114 of this title. In addition, community-owned energy generating facilities are required to pay the annual gross revenue assessment in § 115 of this title, and the "gross operating revenue" shall equal the sum of the net-metering credits produced by the community-owned energy generating facility and the revenue derived from unsubscribed energy.

(16) Before a community-owned energy generating facility receives permission to operate pursuant to the interconnection process from the electric distribution company, a community-owned energy generating facility shall provide the electric distribution company with the following information:

a. A list of individual meters the community-owned energy generating facility desires to aggregate identified by name, address, and account number.

b. A description of the energy generating facility, including the facility's host location, capacity, and fuel type or generating technology.

c. The subscribed percentage of generation attributed to each customer, which the electric distribution company shall true-up at the end of the annualized billing period.

d. Certification that the subscription level of each customer does not exceed 110% of that customer's expected aggregate electrical consumption calculated on the average of the two previous 12-month periods of actual electrical usage at the time of subscription with the community-owned energy generating facility.

e. Before a community-owned energy generating facility receives permission to interconnect with an electric distribution company, the community-owned energy generating facility must certify to the electric distribution company and the Commission that participants in the community-owned energy generating facility include at least 15% low income customers whose gross annual income, by family size, is at or below 200% of the Federal Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau, whichever is greater.

(17) A community-owned energy generating facility may change its list of aggregated meters no more than monthly by providing 30 days written notice to the electric distribution company.

(18) An electric distribution company may require that customers participating in a community-owned energy generating facility have their meters read on the same billing cycle.

(19) Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation as either public utilities or an electric supplier, except as set forth in this section.

(20) Community-owned energy generating facilities shall be subject to regulation under the purview of the Commission, and the Commission will engage in rule-making in consultation with the Consumer Protection Unit of the Delaware Department of Justice. In addition to the promulgation of rules and regulations pursuant to this section relating to net energy metering, the Commission may promulgate rules and regulations with respect to community-owned energy generating facilities and §1014 to protect customers, including provisions related to standardized customer information billing, service terms and conditions, dispute procedures, and portability and transferability of contracts. Community-owned energy generating facilities shall not solicit customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.

(21) All community-owned energy generating facilities shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State.

(22) Community-owned energy generating facilities must adhere to State and the Federal Energy Regulatory Commission rules.

(23) The Commission shall open a rule-making docket to promulgate the rules and regulations for community-owned energy generating facilities called for in this section by August 1, 2021, and the rules and regulations must be promulgated no later than March 11, 2022, unless the deadline is extended by law.

(24) A violation of any provision of this chapter related to community-owned energy generating facilities, and any rules or regulations promulgated pursuant to this section shall be deemed an unlawful practice under § 2513 of Title 6 and a violation of subchapter II of Chapter 25 of Title 6.

Section 5. Amend § 2513(b)(3), Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(b)(3) To matters subject to the jurisdiction of the Public Service Commission, or of the Insurance Commissioner of this ~~State~~. State, except for matters covered by § 1014 of Title 26, but only as they relate to community-owned energy generating facilities.

Section 6. Amend § 2520(b), Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(b) The scope of authority of the Director to initiate administrative proceedings or take civil enforcement action does not extend to matters within the jurisdiction of the Public Service Commission or of the Insurance Commissioner of the ~~State~~. State, except for matters covered by § 1014 of Title 26, but only as they relate to community-owned energy generating facilities.

Approved September 17, 2021