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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 265

AN ACT TO AMEND TITLES 17, 26, AND 29 OF THE DELAWARE CODE RELATING TO THE DELAWARE ENERGY SOLUTIONS ACT OF 2024.

1 WHEREAS, emissions of greenhouse gases are contributing to climate change, threatening the health and well-
2 being of the people of Delaware; and

3 WHEREAS, Delaware has the lowest mean elevation of any state in the nation and the State is particularly
4 vulnerable to climate change impacts; and

5 WHEREAS, the Delaware General Assembly, recognizing the threat posed by climate change, enacted the Climate
6 Change Solutions Act of 2023, requiring the State to establish strategies to ensure that greenhouse gas emissions shall be at
7 or below net zero emissions no later than January 1, 2050; and

8 WHEREAS, the Climate Change Solutions Act will require Delaware to continue to adjust its legislative and
9 regulatory framework to facilitate a regionwide transition to carbon-free energy resources; and

10 WHEREAS, key elements for facilitating this transition will be increased flexibility in connecting renewable
11 energy resources to the transmission grid, and preparing for offshore wind to be a significant element of Delaware's energy
12 future; and

13 WHEREAS, offshore wind power represents a significant opportunity for large scale renewable energy power for
14 Delaware, reducing harmful emissions from power generation; and

15 WHEREAS, pricing for offshore wind projects in Atlantic waters are expected to continue a long-term downward
16 trend, notwithstanding short-term uncertainty; and

17 WHEREAS, any contract for Delaware offshore wind development should ensure cost-effective projects from
18 qualified, experienced developers; and

19 WHEREAS, Delaware should aim to provide a pathway for all consumers of electricity in the State to participate
20 in the benefits of any offshore wind contract, because any offshore wind project will realize economies of scale if the size
21 of the project is larger; and

22 WHEREAS, the development of offshore wind facilities and other carbon-free energy resources are likely to bring
23 additional economic benefits, including business and employment opportunities; and

24 WHEREAS, this Act shall be known as the Delaware Energy Solutions Act of 2024, and aims to prepare for and
25 facilitate the upcoming energy transition, which transition will be an essential component of the implementation of the
26 Climate Change Solutions Act, and will help ensure the best opportunities for Delaware and all Delawareans.

27 NOW, THEREFORE:

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

29 Section 1. Amend § 8052, Title 29 of the Delaware Code by making deletions as shown by strike through and
30 insertions as shown by underline as follows and by redesignating accordingly:

31 § 8052. Definitions.

32 For the purposes of this subchapter:

33 () “Delaware Benchmark Price” shall have the meaning set forth in § 352 of Title 26.

34 () “Offshore Wind Contract” shall have the meaning set forth in § 352 of Title 26.

35 () “Qualified Offshore Wind Project” shall have the meaning set forth in § 352 of Title 26.

36 () “Qualified Purchasers” shall have the meaning set forth in § 352 of Title 26.

37 () “Renewable Energy Credit” (“REC”) shall have the meaning set forth in § 352 of Title 26.

38 () “OSW Solicitation Requirements” shall mean the requirements for an offshore wind solicitation set
39 forth in § 8056(d)(3) of this title.

40 Section 2. Amend § 8053, Title 29 of the Delaware Code by making deletions as shown by strike through and
41 insertions as shown by underline as follows:

42 § 8053. State Energy Office; State Energy Coordinator; establishment; powers and duties.

43 (c) The State Energy Office shall:

44 (12) Develop and conduct the solicitation or solicitations for the procurement of electric energy from
45 offshore wind, as set forth in § 8056 of this Title, and participate ~~Partieipate~~ in offshore wind transmission
46 planning with the regional transmission organization, the Delaware Public Service Commission, the Division of
47 the Public Advocate, energy utilities, other stakeholders, and other states.

48 Section 3. Amend § 8056, Title 29 of the Delaware Code by making deletions as shown by strike through and
49 insertions as shown by underline as follows:

50 § 8056. Offshore wind transmission and procurement ~~analysis~~: authority.

51 (d) Offshore wind procurement authority. –

52 (1) The State Energy Office is authorized and directed to develop and conduct a solicitation or
53 solicitations, as it may deem necessary and appropriate, through a request for proposals for a single or multiple
54 Offshore Wind Contracts relating to energy, capacity, ancillary services and RECs, or only RECs, generated by a
55 Qualified Offshore Wind Project or Projects equal to an aggregate nameplate capacity of at least 800 megawatts
56 and not more than 1,200 megawatts in accordance with the provisions of this section.

57 (2) The State Energy Office may, in its discretion, develop such solicitation or solicitations for a project
58 that serves only Delaware (a “Delaware Solicitation”) or in coordination with solicitations, requests for proposals,
59 or other procurement processes conducted by other states and may consider proposals in connection with such
60 other states’ procurement processes (a “Coordinated Solicitation,” and collectively with a Delaware Solicitation, a
61 “Solicitation”). Any particular Solicitation considered may be above or below 800 megawatts, so long as over
62 time, multiple Solicitations provide in aggregate between 800 megawatts but not more than 1,200 megawatts. A
63 Delaware Solicitation may include requirements for community benefits agreements, project labor agreements,
64 supply chain requirements, workforce development, and conservation and mitigation elements. Should the State
65 Energy Office determine to use a Coordinated Solicitation, the solicitation does not need to contain the OSW
66 Solicitation Requirements, provided that any proposal resulting from a Coordinated Solicitation must be consistent
67 with the OSW Solicitation Requirements to be considered by the State Energy Office and is subject to paragraphs
68 (d)(4) through (d)(7) of this section.

69 (3) Any Delaware Solicitation shall require proposals to meet the following offshore wind solicitation
70 requirements (the “OSW Solicitation Requirements”), which shall be weighted by the State Energy Office in any
71 Solicitation, if weighting is considered appropriate by the State Energy Office:

72 a. Have a term of at least 20 years.

73 b. Have a first-year price expressed in dollars per megawatt-hour that does not exceed 110% of
74 the Delaware Benchmark Price, as adjusted for inflation to the anticipated starting date of commercial
75 operation, provided that any price escalator for subsequent years shall be limited to a maximum of 2% per
76 year. Furthermore, if the contract is only for the purchase of RECs with no requirement to either (i)
77 purchase energy, capacity, or ancillary services, or (ii) transfer revenues from the sales of such electricity
78 products to Delaware electricity ratepayers, then such contract shall have a first-year price that does not
79 exceed 110% of the weighted average cost per megawatt-hour of compliance, through REC procurement,
80 net energy costs of renewable energy contracts, and alternative compliance payments, with the
81 Renewable Energy Portfolio Standards Act for Commission-regulated public utilities during the 3

82 immediately preceding years, as adjusted for inflation to the anticipated starting date of commercial
83 operation, provided that any price escalator for subsequent years shall be limited to a maximum of 2% per
84 year.

85 c. Sell or transfer energy, capacity, and RECs, or only RECs, from a Qualified Offshore Wind
86 Project.

87 d. Specify the avoided greenhouse gas emissions associated with the proposal and a calculation
88 of the economic benefit to the State and Delawareans of such avoided greenhouse gas emissions
89 calculated in total and on a per megawatt-hour basis.

90 e. Specify the avoided health impacts to the State and Delawareans associated with the proposal,
91 including through avoided emissions of air pollutants, and a calculation of the economic benefit to the
92 State and Delawareans of such avoided health impacts calculated in total and on a per megawatt-hour
93 basis.

94 f. Specify the economic costs and benefits for the State and Delawareans associated with the
95 proposal, including the number of in-state jobs created by the project; any increase in wages, taxes,
96 receipts, in-state expenditures, and investments in Delaware offshore wind supply chain; and utilization
97 of in-state port and supply chain facilities, and a calculation of such economic costs and benefits to the
98 State and Delawareans calculated in total and on a per megawatt-hour basis.

99 g. Specify the impacts to the electric transmission system and capacity and energy markets in
100 Delaware and within the PJM Region and include a calculation of the economic benefits and costs to the
101 State and Delawareans of such transmission, capacity, and energy impacts calculated in total and on a per
102 megawatt-hour basis.

103 h. Specify the expected bill impact for each class of service based upon the Delaware
104 Benchmark Price.

105 (4) Prior to the issuance of any Delaware or Coordinated Solicitation, the State Energy Office shall
106 present the proposed solicitation to the Renewable Energy Taskforce for review and recommendations in
107 accordance with § 360(d)(4) of Title 26. The State Energy Office may, in its sole discretion, adopt or reject
108 recommendations from the Renewable Energy Taskforce. Should the Renewable Energy Taskforce fail to provide
109 recommendations within 60 days of being presented with the Solicitation, the State Energy Office may, in its sole
110 discretion, move forward with a Solicitation without such recommendations.

111 (5) Following receipt of the recommendations of the Renewable Energy Taskforce, or the expiration of
112 the 60-day period set forth in paragraph (d)(4) of this section, the State Energy Office shall present the Solicitation
113 to the Public Service Commission for review and approval in accordance with § 365 of Title 26. The State Energy
114 Office shall not issue any Solicitation not approved by the Public Service Commission. If the Public Service
115 Commission issues a Preliminary Order, as defined in § 365 of Title 26, the State Energy Office shall issue the
116 Solicitation.

117 (6) After receipt of proposals, from either a Delaware Solicitation or a Coordinated Solicitation, the State
118 Energy Office shall determine whether each proposal meets the OSW Solicitation Requirements, and any proposal
119 arising from a Delaware Solicitation that does not meet such requirements, or in the case of a Coordinated
120 Solicitation, is not consistent with such requirements, shall be excluded from further consideration. For any
121 proposals that meet the OSW Solicitation Requirements, and which includes a price term at or below the
122 requirements set forth in paragraph (d)(3)b, above, the State Energy Office may determine, in its sole discretion,
123 whether to proceed to negotiate contract terms with the proposer based on consideration of the following factors:

- 124 a. The proposal's likelihood of achieving commercial operation.
- 125 b. The proposal's consistency with the Delaware Climate Action Plan and the Delaware Energy
126 Plan.
- 127 c. Whether the proposal will result in a net reduction in greenhouse gas emissions from the
128 electricity consumed within Delaware, or states bordering Delaware, or within the PJM region.
- 129 d. The proposal's impact on the ability of the State to meet the 2030 target and 2050 target for
130 greenhouse gas emissions reductions set forth in § 10003 of Title 7 and to meet the minimum percentage
131 of electric energy sales with eligible energy resources as required by §354(a) of Title 26.
- 132 e. Whether the proposal is competitive with new renewable or carbon-free energy projects of
133 similar scale and production profile interconnecting to the PJM grid in Delaware, or states bordering
134 Delaware.
- 135 f. The potential economic costs and benefits for the State and Delawareans associated with the
136 proposal and the strength of economic benefit guarantees in the proposal.
- 137 g. The avoided costs of greenhouse gas emissions and other air pollutants.
- 138 h. The potential health benefits for the State and for Delawareans.
- 139 i. The availability and scale of suitable offshore wind locations.

140 j. The state of the offshore wind industry, the project applicant, and the associated supply
141 chains.

142 k. The impacts, if any, of the proposal on the electric transmission system and capacity and
143 energy markets, including the ability to facilitate future expansion of offshore wind energy delivery
144 capability.

145 (7) If the State Energy Office moves forward with negotiation of contract terms on any proposal, such
146 contract terms may include community benefits agreements, project labor agreements, supply chain requirements,
147 workforce development requirements, and conservation and mitigation elements. The State Energy Office may
148 approve the terms and conditions of an Offshore Wind Contract provided it determines that entering into an
149 Offshore Wind Contract with such terms and conditions is in the public interest, which the State Energy Office
150 shall determine after consideration of the OSW Solicitation Requirements and the criteria set forth in paragraph
151 (d)(6) of this section. If the State Energy Office issues such approval, the Offshore Wind Contract shall be
152 submitted to the Commission for approval pursuant to § 365 of Title 26.

153 Section 4. Amend § 201, Title 26 of the Delaware Code by making deletions as shown by strike through and
154 insertions as shown by underline as follows:

155 § 201. General jurisdiction and powers.

156 (f) In the exercise of supervision and regulation over public utilities, the Commission may, upon application or on
157 its own motion, after notice and hearing, alter a regulated utility's billing statements in the interest of increasing
158 transparency and understanding. Alternatives include changes to fairly reflect costs associated with legislatively mandated
159 public policy initiatives, such as compliance costs in greenhouse gas reduction programs and any increase in costs
160 associated with state sponsored renewable energy projects.

161 Section 5. Amend § 202, Title 26 of the Delaware Code by making deletions as shown by strike through and
162 insertions as shown by underline as follows:

163 § 202. Limitations on jurisdiction of Commission.

164 (a) Except insofar as may be necessary to implement §§ 203A and 203B of this title regarding the establishment
165 and administration of retail electric service territories, and except as may be necessary to implement § 203C and § 203D of
166 this title regarding the issuance of certificates of public convenience and necessity for water and wastewater utilities, and
167 the review authorized under § 122 of Title 16, and except insofar as any entity agrees to participate in a proceeding before
168 the Commission relating to an Offshore Wind Contract under § 365 of Title 26, the Commission shall not have any
169 supervision or regulation over any public utility, or over the rates, property, property rights, equipment, facilities or

170 franchises of any public utility that is municipally-owned or over any municipal electric company formed pursuant to
171 Chapter 13 of Title 22.

172 Section 6. Amend § 352, Title 26 of the Delaware Code by making deletions as shown by strike through and
173 insertions as shown by underline as follows and by redesignating accordingly:

174 § 352. Definitions.

175 As used in this subchapter:

176 () “Delaware Benchmark Price” means the sum of (a) the weighted average cost per megawatt-hour of
177 compliance, through REC procurement, net energy costs of renewable energy contracts, and alternative
178 compliance payments, with the Renewable Energy Portfolio Standards Act for Commission-regulated public
179 utilities during the 3 immediately preceding years, and (b) the 3 year average, of the 3 immediately preceding
180 years, of the average of the winning bid prices in dollars per megawatt-hour that a Commission-regulated public
181 utility has secured electric energy through its most recent competitive request for proposals for each of the
182 following customer classes: (i) Residential and Small Commercial Industrial, (ii) Medium General Service –
183 Secondary, (iii) Large General Service – Secondary, and (iv) General Service – Primary.

184 () “Offshore Wind Contract” shall mean an agreement under which the state or 1 or more Commission-
185 regulated public utilities, municipal electric companies, rural electric cooperatives, or other Qualified Purchasers,
186 individually or collectively, either directly or through an intermediary, purchase or transfer any attributes of
187 electric energy generated from 1 or more qualified offshore wind projects. The agreement may include purchases
188 or transfers of energy-related products such as energy, capacity, RECs, or ancillary services, or any combination of
189 these.

190 () “OSW Solicitation Requirements” shall have the meaning set forth in § 8052 of Title 29.

191 () “Qualified Offshore Wind Project” shall mean a wind turbine electric generation facility located in the
192 Atlantic Ocean and connected to the electric transmission system in the PJM region, and shall include the
193 appurtenant transmission-related facilities and equipment that interconnects such project to the PJM region electric
194 transmission system.

195 () “Qualified Purchasers” shall mean any entities interested in joining as a party to a Qualified Offshore
196 Wind Contract who can demonstrate sufficient capital, history, or other necessary assurances as determined by the
197 State Energy Office, after consultation with the Commission, of its ability to maintain its participation as an off-
198 taker through the life of the contract.

199 Section 7. Amend § 360, Title 26 of the Delaware Code by making deletions as shown by strike through and
200 insertions as shown by underline as follows:

201 § 360. Renewable energy trading.

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

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

206 f. Establishing mechanisms to maximize in-state renewable energy generation and local
207 manufacturing; ~~and~~

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

211 h. Evaluating Offshore Wind Contract solicitations, as set forth in paragraph (d)(4) of this
212 section.

213 (4) The Renewable Energy Taskforce shall evaluate Offshore Wind Contract solicitations received from
214 the State Energy Office pursuant to § 8056(d)(4) of Title 29 for consistency with the OSW Solicitation
215 Requirements. The Renewable Energy Taskforce shall, within 60 days, provide to the State Energy Office (i) a
216 recommendation to proceed with the solicitation as presented or (ii) recommendations on improvements to the
217 solicitation. The State Energy Office shall have sole discretion on whether to incorporate such recommendations
218 into the Offshore Wind Contract solicitation. If the State Energy Office has not received recommendations from
219 the Renewable Energy Taskforce within 60 days, the State Energy Office may proceed with issuing the
220 solicitation.

221 Section 8. Amend § 363, Title 26 of the Delaware Code by making deletions as shown by strike through and
222 insertions as shown by underline as follows:

223 § 363. Special provisions for municipal electric companies and rural electric cooperatives.

224 (b) In the event that a municipal electric company or rural electric cooperative elects to exempt itself from the
225 requirements of this subchapter, it shall submit a plan at the beginning of 2022 to its local regulatory authority, the
226 Delaware General Assembly, and the Department of Natural Resources and Environmental Control detailing its approach to
227 achieve a level of renewable energy penetration in its service territory, and shall submit an annual compliance report to its
228 local regulatory authority, the Delaware General Assembly, and the Department of Natural Resources and Environmental

229 Control detailing its progress toward yearly targets. If the State Energy Office has approved an Offshore Wind Contract,
230 the annual compliance report shall detail the reporting entity's status of adoption of the Offshore Wind Contract.

231 (c) The Board of Directors for a rural electric cooperative or local regulatory authority of a municipal electric
232 company shall base renewable energy portfolio standard decisions on the need, value and feasibility of the renewable
233 energy resources pertaining to the economic and environmental well being of their members. The Board of Directors for a
234 rural electric cooperative or local regulatory authority of a municipal electric company shall continue to evaluate all
235 renewable energy resources including but not limited to: wind, including offshore wind, biomass, hydroelectric and solar
236 and submit an annual report to the General Assembly and their membership as to their determination.

237 Section 9. Amend Title 26 of the Delaware Code by inserting a new § 365 and by making insertions as shown by
238 underline as follows:

239 § 365 Offshore Wind Contracts.

240 (a) Upon the development of a Solicitation for an Offshore Wind Contract, the State Energy Office shall submit a
241 petition (the "Petition") to the Commission in accordance with paragraph (d)(5) of § 8056 of Title 29. Any Commission-
242 regulated electric public utility shall be identified as parties to such Petition, and shall have the opportunity to participate in
243 the proceeding before the Commission considering such Petition. All municipal electric companies and all rural electric
244 cooperatives shall be served by mail with such Petition.

245 (b) Within 90 days of submission of such Petition, any municipal electric companies or rural electric cooperatives
246 electing to participate in the Solicitation shall submit such election in writing to the Commission, and shall indicate the
247 amount of energy, in megawatts, that such entity would accept under an Offshore Wind Contract negotiated pursuant to the
248 Solicitation. Any entity that potentially qualifies as a Qualified Purchaser may also submit, in writing, a request to be
249 considered a Qualified Purchaser, and shall indicate the amount of energy, in megawatts, that such entity would accept
250 under an Offshore Wind Contract negotiated pursuant to the Solicitation. Submission of such election or request binds such
251 entity to the jurisdiction of the Commission for the limited purpose of approval and enforcement of any eventual Offshore
252 Wind Contract.

253 (c) The State Energy Office and the Commission shall confer regarding which proposed Qualified Purchasers
254 should be included in any Solicitation. The State Energy Office shall have sole discretion regarding which proposed
255 Qualified Purchasers shall be included in the Solicitation.

256 (d) The Commission shall, after opportunity for public comment, determine whether proceeding with the
257 Solicitation is in the public interest. This determination shall be based upon the following factors:

258 (1) Whether the State Energy Office has complied with the technical requirements and analyses
259 contemplated in the OSW Solicitation Requirements.

260 (2) Whether the Solicitation is consistent with the greenhouse gas emission reduction targets as outlined
261 by Chapter 100, § 10003 of Title 7, in light of the price and availability of all other new renewable or carbon-free
262 alternative energy sources at a similar scale and production profile interconnecting to the PJM grid in Delaware, or
263 states bordering Delaware.

264 (3) Whether proceeding with the Solicitation is consistent with goals of the current Climate Action Plan.

265 (4) Whether proceeding with the Solicitation is consistent with meeting the minimum percentage of
266 electric energy sales with eligible energy resources as required by § 354(a) of this title.

267 (5) That proceeding with the Solicitation will not adversely affect system reliability on the Delmarva
268 Peninsula.

269 (6) That proceeding with the Solicitation will likely result in submitted bids in a range that would
270 ultimately lead to rates that are just and reasonable. Any rate change arising from a project which conforms with
271 the Delaware Benchmark Price shall be presumed to be just and reasonable. Participation in the Solicitation by
272 municipal electric companies, rural electric cooperatives, or Qualified Purchasers, or the lack of such participation,
273 shall not be a factor in whether the rates are just and reasonable.

274 Upon evaluation of the factors above, the Commission shall, if appropriate, issue an Order confirming such
275 findings (the “Preliminary Order”) within 180 days of submission of the Petition. No extension of this period shall be
276 granted by PSC absent good cause.

277 (e) After issuance of the Preliminary Order, the State Energy Office shall issue the Solicitation. The docket shall
278 remain open during the pendency of negotiations of any Offshore Wind Contract, and the State Energy Office shall confer
279 with the staff of the Commission, and any parties to the Petition, in the development of terms of such Offshore Wind
280 Contract. The State Energy Office shall have sole discretion over final contract terms.

281 (f) Any Offshore Wind Contract negotiated by the State Energy Office pursuant to paragraph (d)(7) of § 8056 of
282 Title 29 shall be submitted to the Commission for final review and approval. The Commission’s review shall be to
283 determine whether proceeding with the final Offshore Wind Contract remains in the public interest, as defined by the
284 factors set forth in § 365(d) above, and in light of the findings previously made by the Commission. Additionally, the
285 Commission shall confirm, in light of its previous analysis, and in light of the actual winning bid, that proceeding with the
286 Offshore Wind Contract would result in rates that are just and reasonable. Consistent with the initial analysis prior to a
287 Preliminary Order, any rate change arising from a project which conforms with the Delaware Benchmark Price shall be

288 presumed to be just and reasonable. Participation in the Solicitation by municipal electric companies, rural electric
289 cooperatives, or Qualified Purchasers, or the lack of such participation, shall not be a factor in whether the rates are just and
290 reasonable.

291 Upon confirming the findings required in this section, with no further testimony or intervenors allowed, the
292 Commission shall issue an order (the “Final Order”) approving the Offshore Wind Contract, and the costs of such contract
293 shall be passed on to the customers of all utilities which are parties to the Solicitation. The Commission shall issue a Final
294 Order within 90 days of submission of the Offshore Wind Contract. No extension of this period shall be granted by PSC
295 absent extraordinary circumstances.

296 (g) Upon a showing of necessity by the State Energy Office, and upon a finding of good cause by the Commission,
297 any Solicitation can be considered on an adjusted schedule, either accelerated or extended, including when required to
298 facilitate a Coordinated Solicitation with another state.

299 Section 10. Amend § 203E, Title 26 of the Delaware Code by making deletions as shown by strike through and
300 insertions as shown by underline as follows and by redesignating accordingly:

301 (b) A person or entity seeking to begin the business of an electric transmission utility in this State shall first make
302 application to the Commission for a certificate of public convenience and necessity approving the person or entity as an
303 electric transmission utility authorized to provide transmission facilities. The application for a certificate of public
304 convenience and necessity shall be in writing, shall be in such form as determined by the Commission, and shall contain
305 such information as the Commission may prescribe. In determining whether to grant the certificate, the Commission shall
306 consider:

307 (2) The impact of granting the certificate of public convenience and necessity application on the State’s
308 economy and the benefits to the State’s ratepayers; ~~and~~

309 (3) The impact of granting the certificate of public convenience and necessity application on the health,
310 safety, and welfare of the general public; ~~and public.~~

311 (4) Whether granting the certificate of public convenience and necessity application is consistent with the
312 achievement of the State’s greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

313 Section 11. Amend Title 26 of the Delaware Code by adding a new § 203F and by making deletions as shown by
314 strike through and insertions as shown by underline as follows:

315 § 203F. Certificate of Public Convenience and Necessity for Renewable Energy Interconnection Facilities.

316 (a) Except as provided in § 203A(a)(3) of this title, no person or entity shall begin the business of a transmission
317 facility, as defined in §1001(26) of this title, without having first obtained from the Commission a certificate that the
318 present and future public convenience and necessity requires, or will be served by, the operation of such a business.

319 (b) The term “renewable energy interconnection facilities” means any transmission facilities which include
320 transmission lines, conduits, or any other equipment necessary to connect any solar, wind, or other renewable energy
321 project with 30 MW of capacity or higher to the PJM transmission grid. The term includes all “offshore wind
322 interconnection facilities” as defined below.

323 (c) The term “offshore wind interconnection facilities” means all transmission lines, conduits and any other
324 equipment that serve to connect an offshore wind power generation project or projects to the PJM transmission grid through
325 any part of the State of Delaware or its territorial waters, whether those facilities are part of the PJM network or serving
326 individual generation owners. All equipment located within the State of Delaware, including within 3 miles of the
327 Delaware coast, through to the substation that connects the offshore wind power project to the PJM transmission grid, shall
328 be included as a part of the “offshore wind interconnection facilities” for a particular offshore wind power generation
329 project or networked offshore wind transmission facility.

330 (d) No individual, co-partnership, association, corporation, joint stock company, agency or department of the
331 State, cooperative, or the lessees, trustees or receivers thereof, shall commence the operation of renewable energy
332 interconnection facilities without having first obtained from the Commission a certificate that the present or future public
333 convenience and necessity requires or will require the operation of such facilities.

334 (e) Specifically for offshore wind interconnection facilities, prior to any person or entity submitting an application
335 for a certificate of public convenience and necessity for such facilities, such person or entity shall first obtain written
336 approval from the State Energy Office confirming that such proposed offshore wind interconnection facilities are (i)
337 consistent with the State Energy Plan, (ii) consistent with the achievement of the State’s greenhouse gas emissions
338 reductions targets, as specified in § 10003 of Title 7, and (iii) do not adversely impact the future construction of additional
339 offshore wind interconnection facilities, including those proposed by other developers.

340 (f) A person or entity seeking to commence operation of renewable energy interconnection facilities in this State
341 shall make application to the Commission for a certificate of public convenience and necessity approving the person or
342 entity as authorized to construct and operate such facilities. The application for a certificate of public convenience and
343 necessity shall be (i) in writing, (ii) in such form as determined by the Commission, and (iii) contain such information as
344 the Commission may prescribe.

345 (g) In determining whether to grant the certificate, the Commission shall consider:

346 (1) The need for and impact of any renewable energy interconnection facilities proposed by the applicant
347 on the safe, adequate, and reliable operation or delivery of electric supply services.

348 (2) Where such facilities are operating in a Delaware Department of Transportation right of way, the
349 extent to which the renewable energy interconnection facilities impact the safe and effective operation of other
350 utility facilities, or any other facilities, already in such right of way.

351 (3) The impact of granting the certificate of public convenience and necessity application on the State's
352 economy, the impacts to the State's ratepayers, and whether the application is consistent with the achievement of
353 the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

354 (4) The extent to which the renewable energy interconnection facilities preclude or limit the ability of
355 future renewable energy projects to use the same or nearby access locations or rights of way.

356 (5) The extent to which the project proponent is proposing to develop the renewable energy
357 interconnection facilities in a manner that allows for or otherwise facilitates the future construction of additional
358 renewable energy interconnection facilities, including those proposed by other developers, so as to minimize the
359 environmental impacts of multiple entry points along the Delaware shore or through Delaware rights of way.

360 (6) The impact of granting the certificate of public convenience and necessity application on the health,
361 safety, and welfare of the general public.

362 (7) The demonstrated experience, operating expertise, and long-term viability of the applicant or its
363 affiliates, partners, or parent company.

364 (8) The engineering and technical design of any transmission facilities proposed by the applicant.

365 (h) For all renewable energy interconnection facilities, the Commission shall allow the intervention of the State
366 Energy Office to address the impact of the proposed facilities on (i) the State Energy Plan; (ii) the achievement of the
367 State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

368 (i) For all renewable energy interconnection facilities that are in whole or in part located in the jurisdiction of a
369 local government, the Commission shall allow the intervention of such local government to address any public safety,
370 environmental, or public interest considerations that such local government raises.

371 (j) Where such facilities are operating in a Delaware Department of Transportation right of way, the Commission
372 shall allow the intervention of the Delaware Department of Transportation to address the impact of the proposed facilities
373 on traffic safety and management. The Commission shall work with the Delaware Department of Transportation to ensure
374 that the route of the interconnection facilities have the lowest possible impact on traffic safety and management
375 considerations. Where the Delaware Department of Transportation establishes that alternate routes would have lower

376 impact on traffic management, such routes shall be selected unless the costs associated with such route are, in the
377 determination of the Commission, unreasonable.

378 (k) The Commission shall act on an application for a certificate of public convenience and necessity within 90
379 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be
380 served, the Commission may extend the date of its action on an application for an additional period not to exceed 90 days.
381 With the consent of the applicant, the Commission can extend the date of its action on an application beyond this second
382 90-day extension.

383 (l) Notwithstanding any other provision of this section, a certificate of public convenience and necessity for
384 renewable energy interconnection facilities will not be granted if the Commission finds that the applicant is unwilling or
385 unable to provide safe, adequate, and reliable transmission services, or is currently subject to a Commission finding that the
386 applicant is unwilling or unable to provide safe, adequate, and reliable transmission services.

387 (m) No person or entity shall abandon or discontinue any renewable energy interconnection facility without first
388 having received Commission approval for such abandonment or discontinuance. The Commission may require financial
389 assurance, including a bonding requirement, as a part of any certificate of public convenience and necessity to ensure
390 appropriate decommissioning of such facilities.

391 (n) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and
392 necessity held by any applicant. Good cause shall consist of:

393 (1) A finding by the Commission of material noncompliance by the holder of the certificate with any
394 conditions imposed in the certificate by the Commission, or with any order or rule of the Commission related to
395 the same.

396 (2) A finding by the Commission that the holder of the certificate has failed in a material manner to
397 provide safe, adequate, and reliable transmission services.

398 (o) The Commission shall have the authority to promulgate regulations to fully define the requirements necessary
399 for the implementation of this section. Any proceedings under this section involving a certificate of public convenience and
400 necessity shall be resolved within 6 months of initial application, and shall be conducted in accordance with the procedures
401 set forth in subchapter III of Chapter 101 of Title 29.

402 Section 12. Amend § 1001, Title 26 of the Delaware Code by making deletions as shown by strike through and
403 insertions as shown by underline as follows:

404 § 1001. Definitions.

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

406 (26) “Transmission facilities” means electric facilities located in Delaware, developed by public utilities or
407 companies that are not public utilities, including those in offshore waters, and integrated with onshore electric facilities, and
408 owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to
409 customers, including any customers taking electric service under interruptible rate schedules as of December 31, 1998, up
410 through and including the point of physical connection with electric facilities owned by the customer. The term includes
411 offshore wind interconnection facilities and renewable energy interconnection facilities as defined in § 203F of this title.

412 Section 13. Amend Title 17 of the Delaware Code by adding a new Chapter 20 and by making deletions as shown
413 by strike through and insertions as shown by underline as follows:

414 CHAPTER 20. PERMITTING OF RENEWABLE ENERGY INTERCONNECTION FACILITIES

415 §2001. Findings of public policy.

416 The General Assembly finds and declares as follows:

417 (1) Development of renewable energy sources and their connection to the electric power grid are declared to be
418 matters of statewide concern and interest.

419 (2) The Delaware Department of Transportation is responsible for the care, management, and control of State-
420 owned roadway rights-of-way.

421 (3) To foster the development of renewable energy and a clean energy future in this State, responsible and
422 reasonable accommodation of renewable energy interconnection facilities in the State-owned roadway rights-of-way shall
423 be encouraged as an integral part of the State’s infrastructure.

424 §2002. Definitions.

425 For the purposes of this chapter:

426 (1) “Applicable Codes” means laws, rules, regulations, engineering standards, engineering guidance, and
427 established best practices as recognized by the Department of Transportation or the Federal Highway
428 Administration.

429 (2) “Department” means the Delaware Department of Transportation.

430 (3) “Eligible Energy Resource” or “Eligible Energy Resources” shall have the defined meaning in § 352
431 of Title 26.

432 (4) “Fair Market Rental Rate” means a recurring rate for the use of the State’s roadway rights-of-way
433 based on a fair market appraisal of the use of that land.

434 (5) “Renewable energy developer” means a person or company, whether acting on its own behalf or
435 acting as the agent of a renewable energy owner or renewable energy operator on a temporary basis, developing or

436 constructing one or more eligible energy resources. A renewable energy developer may also be a renewable
437 energy operator or a renewable energy owner.

438 (6) “Renewable energy operator” means a person or company, whether acting on its own behalf or acting
439 as the agent of a renewable energy owner on a semi-permanent basis, operating 1 or more renewable energy
440 resources.

441 (7) “Renewable energy owner” means a person or company who owns the renewable energy
442 interconnection facilities to be located in the State-owned right-of-way.

443 (8) “Renewable energy entity” means any entity that is either a renewable energy developer, a renewable
444 energy operator, a renewable energy owner, or any combination of these.

445 (9) “Renewable energy interconnection facilities” shall have the meaning defined in § 203F of Title 26.

446 (10) “Offshore wind interconnection facilities” shall have the meaning defined in § 203F of Title 26.

447 (11) “Right-of-Way” or “ROW” means all those lands owned by the State of Delaware in fee simple or
448 lesser rights or under the management or control of the Department and operated as a public roadway, whether
449 located within or outside incorporated municipalities. A ROW may include lands owned and operated by the State
450 such as bicycle and pedestrian pathways, and recreational trails or railroads that are separate from State-owned
451 roadway rights of way.

452 § 2003. Regulations.

453 The Secretary of the Department shall have the authority to promulgate regulations to fully define the
454 requirements necessary to implement the provisions of this chapter.

455 § 2004. Permits.

456 (a) A renewable energy entity must first obtain a certificate of public convenience and necessity from the Public
457 Service Commission under the provisions § 203F of Title 26, and thereafter may apply for a permit from the Department
458 prior to constructing, modifying, or maintaining renewable energy interconnection facilities in the State’s ROW.

459 (b) The Department shall receive applications for, process, and issue such permits subject to the following
460 requirements:

461 (1) The applicant shall, wherever possible, place renewable energy interconnection facilities
462 underground, but the Department can authorize above-ground facilities where safety and other consideration allow
463 such placement.

464 (2) Within 30 days of receiving an application, the Department will determine and notify the applicant
465 whether the application is complete. If an application is incomplete, the Department must identify the missing
466 information.

467 (3) The Department will process permits within 90 days either approving the permit request, or denying
468 the permit request for cause based on the Department finding that the permit request fails to comply with any of
469 the following:

470 a. Protection of the public health, safety and welfare along Delaware's roadways.

471 b. Minimization of conflicts with the use of the State's ROW for the primary purpose of
472 transportation.

473 c. Objective, reasonable design standards.

474 d. Applicable Codes including applicable provisions of the Delaware Utilities Manual
475 Regulations, unless or until the Secretary of the Department promulgates regulations specific to
476 accommodation of renewable energy interconnection facilities in the State ROW.

477 §2005. Use and occupancy agreement.

478 (a) In conjunction with the issuance of a permit by the Department under § 2004 of this title, the Department is
479 authorized to enter into use and occupancy agreements with renewable energy entities for the locating of renewable energy
480 interconnection facilities in the ROW under terms that:

481 (1) Protect the public health, safety and welfare along Delaware's roadways.

482 (2) Minimize conflicts with the use of the State's ROW for the primary purpose of transportation.

483 (3) May prohibit the renewable energy entity from owning and placing poles as part of renewable energy
484 interconnection facilities in the State's ROW.

485 (4) Establish a preference that renewable energy interconnection facilities be located underground, but
486 would authorize above-ground facilities in a ROW near a roadway where safety and other considerations allow
487 such facilities.

488 (5) Ensure that the renewable energy entity entering into a use and occupancy agreement has the
489 financial, technical, organizational, and managerial resources needed to site and operate in the ROW for the full-
490 term of the use and occupancy agreement.

491 (6) Are competitively neutral and nondiscriminatory.

492 (7) Charge a Fair Market Rental Rate for the use of the State's ROW by renewable energy entities.

493 (b) Such use and occupancy agreements shall be for a term of 30 years with an option to renew for additional 5-
494 year terms subject to compliance with performance requirements set by the Department, and the authority of the
495 Department to revoke such agreements for cause.

496 (c) Such use and occupancy agreements shall be non-assignable and non-transferable without the reasonable
497 consent of the Department based on the assignee or transferee having the financial, technical, organizational, and
498 managerial resources needed to operate in the ROW for the term of the use and occupancy agreement and protecting the
499 public health, safety and welfare.

500 (d) Each renewable energy entity entering into a valid use and occupancy agreement shall comply with the
501 Underground Utility Damage Prevention and Safety Act, Chapter 8 of Title 26, to the extent applicable.

502 § 2006. Removal of Renewable Energy Interconnection Facilities.

503 Any renewable energy entity wanting to decommission an existing renewable energy interconnection facility or
504 cease operations thereof shall first obtain approval from the Public Service Commission. It shall thereafter notify the
505 Department not less than 60 days prior to commencing such decommissioning or ceasing operations as to the disposition of
506 their renewable energy interconnection facilities. Acceptable disposition includes removal of the interconnection facilities
507 from the ROW, or transfer of the interconnection facilities to another renewable energy entity subject to the approval of the
508 Department in accordance with the provisions of § 2004(c) of this chapter.

509 § 2007. Relocation of renewable energy infrastructure.

510 Whenever it becomes necessary to relocate any renewable energy interconnection facilities due to expansion of the
511 transportation system, or if the renewable energy interconnection facilities are found to interfere unreasonably with ingress
512 and egress to adjacent properties or their development, or for reasons deemed in the public interest by the Department, the
513 renewable energy entity shall relocate its infrastructure at its sole expense to a location mutually agreed upon by the
514 renewable energy entity and the Department.

SYNOPSIS

The Delaware Energy Solutions Act of 2024 authorizes processes necessary to help meet the net zero goals of the Climate Change Solutions Act of 2023. The bill facilitates a transition to carbon-free energy sources by (i) preparing for offshore wind to be a significant element of Delaware’s energy future, if cost is competitive with other potential sources, and (ii) increasing options for interconnecting renewable energy resources to the transmission grid.

The bill authorizes the State Energy Office (SEO), with the approval of the Public Service Commission (PSC), to issue solicitations to procure offshore wind. A solicitation can be for a project that serves only Delaware, or in coordination with other states, and authorizes procurement of at least 800 megawatts but not more than 1,200 megawatts of power to Delaware, in a single or multiple solicitations.

Solicitations proceed through the following steps:

The SEO drafts a solicitation for wind energy if it believes market conditions would result in a bid of no more than 110 percent of the “Delaware Benchmark Price,” defined as the average price that Delmarva Power has paid for power and renewable energy compliance over the prior three years.

The Renewable Energy Task Force, an existing public body, must be consulted on the structure and factors of the proposed solicitation.

The PSC evaluates the proposed solicitation and determines in a public process, with public comment, if issuing the solicitation would be in the public interest. If so, PSC issues a Preliminary Order allowing the solicitation to proceed.

Municipal utilities and rural electric cooperatives are provided an option to participate in the potential project. Third-party “Qualified Purchasers,” such as those that currently purchase electricity for Delaware industries and utilities, could also participate.

After preliminary PSC approval, SEO issues the solicitation. Pricing is the key factor, and the returned bids will also include information about avoided greenhouse gas emissions as well as environmental, economic, health and electric grid benefits to Delaware.

The SEO cannot proceed to negotiate a contract unless a bid comes back with a price at or below 110 percent of the Delaware Benchmark Price. If contract negotiations occur, SEO confers with PSC staff in finalizing the terms of the contract.

PSC reviews the proposed purchase contract to verify that the bid meets all statutory and solicitation requirements, including the examination of the bid price to ensure it is no more than 110 percent of the Delaware Benchmark Price, and is competitive with other new renewable or carbon-free energy projects in the region.

If PSC approval is granted, Delmarva Power and any public utility that elected to participate would amend their rates to pass on the costs or savings of the project to their customers.

In addition to allowing offshore wind procurement, the bill enhances the PSC’s current Certificate of Public Convenience and Necessity (CPCN) process by giving the Commission authority to issue a CPCN in connection with renewable energy interconnection facilities, such as the transmission lines from an offshore wind project to a nearby substation, or the lines connecting a utility scale solar project (over 30 MW) to a nearby substation. The bill outlines the factors PSC should consider when granting a CPCN for renewable energy interconnection facilities. Additionally, the bill provides separate authority to the Delaware Department of Transportation to permit such facilities in a State-owned Right of Way under Title 17, once a CPCN is issued by the PSC.

Author: Senator Hansen