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DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 161

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO RENEWABLE ENERGY
PORTFOLIO STANDARDS.

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

1 Section 1. Amend § 304, Title 26 of the Delaware Code, by inserting therein the following new subsection:

2 “(c) The Commission shall not approve any increase in rates unless, for the year prior to the date of
3 application, the applicant has met the Renewable Energy Portfolio Standards set forth in Subchapter III-
4 A of this chapter.”

5 Section 2. Amend Chapter 1, Title 26 of the Delaware Code, by inserting therein, between subchapters III and IV
6 thereof, the following new subchapter:

7 “Subchapter III-A. Renewable Energy Portfolio Standards.

8 § 351. Short title; declaration of policy.

9 (a) This subchapter shall be known and may be cited as the Renewable Energy Portfolio Standards Act.

10 (b) The General Assembly finds and declares that the benefits of electricity from renewable energy
11 resources accrue to the public at large and electric suppliers and consumers share an obligation to
12 develop a minimum level of these resources in the electricity supply portfolio of the state.

13 (c) It is therefore the purpose and intent of the General Assembly in enacting the Renewable Energy
14 Portfolio Standards Act to establish a market for electricity from these resources in Delaware, and to
15 lower the cost to consumers of electricity from these resources.

16 § 352. Definitions.

17 As used in this subchapter:

- (1) 'renewable energy credit' means a credit equal to 100 kilowatt hours of retail electricity in the state that is derived from eligible energy resources or transitional energy resources.
- (2) 'renewable energy portfolio standard' means the percentage of electricity sales at retail in the state that is to be derived from eligible energy resources or transitional energy resources.
- (3) 'eligible energy resources' means one or more of the following types of energy sources:
- a. solar;
 - b. wind;
 - c. qualifying bio-mass;
 - d. methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;
 - e. geothermal;
 - f. hydroelectric power from a hydroelectric facility with a net capacity of 30 megawatts or less;
 - or
 - g. ocean, including energy from waves, tides, currents, and thermal differences.
- (4) 'Fund' means the Green Energy Fund established pursuant to § 1014(a) of this title.
- (5) 'Qualifying bio-mass' means a solid, non-hazardous, cellulosic waste material that is segregated from other waste materials, is cultivated or harvested in a sustainable manner, and is derived from one of the following sources:
- a. Any of the following forest-related resources to the extent they are not derived from the destruction or degradation of old growth timber:
 - 1. mill residue;
 - 2. pre-commercial thinning;
 - 3. slash;
 - 4. brush;
 - 5. yard waste;
 - b. Waste pallets, crates, or dunnage; or
 - c. Agricultural sources, including, but not limited to poultry waste, tree crops, vineyard materials, grain, legumes, sugar, and other crop by-products or residues.

(6) 'Transitional energy resource' means one or more of the following types of energy sources:

- a. methane gas derived from decomposing coal;
- b. hydroelectric power derived from a hydroelectric facility with a net capacity of greater than 30 megawatts; and
- c. municipal, manufactured, or commercial waste-to-energy.

§ 353. Renewable Energy Portfolio Standards; industrial customer exemption.

The Commission shall implement Renewable Energy Portfolio Standards pursuant to this subchapter that apply to all retail electricity sales in the state except sales to any industrial customer with a peak demand in excess of 1,500 kilowatts.

§ 354. Renewable Energy Portfolio Standards; municipal electric suppliers.

(a) For a municipal electric supplier seeking a rate adjustment on or after July 1, 2003, not less than 5% of its total output shall be from eligible energy resources. The Renewable Energy Portfolio Standard shall be increased annually as follows:

- (1) On and after July 1, 2005, not less than 6% of its total output shall be from eligible energy resources;
- (2) On and after July 1, 2006, not less than 6.25% of its total output shall be from eligible energy resources;
- (3) On and after July 1, 2007, not less than 6.5% of its total output shall be from eligible energy resources;
- (4) On and after July 1, 2008, not less than 6.75% of its total output shall be from eligible energy resources;
- (5) On and after July 1, 2009, not less than 7.5% of its total output shall be from eligible energy resources;
- (6) On and after July 1, 2010, not less than 8% of its total output shall be from eligible energy resources;
- (7) On and after July 1, 2011, not less than 8.5% of its total output shall be from eligible energy resources;

(8) On and after July 1, 2012, not less than 9% of its total output shall be from eligible energy resources;

(9) On and after July 1, 2013, not less than 9.5% of its total output shall be from eligible energy resources; and

(10) On and after July 1, 2014, not less than 10% of its total output shall be from eligible energy resources.

(b) An applicant's compliance with subsection (a) of this section shall be based on historical data, collected in a manner consistent with industry standard and Commission regulations. Before calculating the number of credits required to meet the percentages established in this section, a municipal electric supplier shall exclude from its total retail electricity sales all retail electricity sales to any industrial customer with a peak demand in excess of 1,500 kilowatts.

(c) Subject to subsections (a) and (b) of this section, an electric supplier shall meet the renewable energy portfolio standards by accumulating the equivalent amount of renewable energy credits that equal the percentage required under this section.

§ 355. Renewable Energy Portfolio Standards; non-municipal electric utilities.

(a) For a non-municipal electric supplier seeking a rate adjustments on or after July 1, 2003, not less than 0.5% of its total output shall be from eligible energy resources. The Renewable Energy Portfolio Standard shall be increased annually as follows:

(1) On and after July 1, 2005, not less than 1% of its total output shall be from eligible energy resources;

(2) On and after July 1, 2006, not less than 1.5% of its total output shall be from eligible energy resources;

(3) On and after July 1, 2007, not less than 2% of its total output shall be from eligible energy resources;

(4) On and after July 1, 2008, not less than 2.5% of its total output shall be from eligible energy resources;

(5) On and after July 1, 2009, not less than 3% of its total output shall be from eligible energy resources;

(6) On and after July 1, 2010, not less than 3.5% of its total output shall be from eligible energy resources;

(7) On and after July 1, 2011, not less than 4% of its total output shall be from eligible energy resources;

(8) On and after July 1, 2012, not less than 4.5% of its total output shall be from eligible energy resources;

(9) On and after July 1, 2013, not less than 5% of its total output shall be from eligible energy resources; and

(10) On and after July 1, 2014, not less than 5.5% of its total output shall be from eligible energy resources.

(b) An applicant's compliance with subsection (a) of this section shall be based on historical data, collected in a manner consistent with industry standard and Commission regulations. Before calculating the number of credits required to meet the percentages established in this section, a non-municipal electric supplier shall exclude from its total retail electricity sales all retail electricity sales to any industrial customer with a peak demand in excess of 1,500 kilowatts.

(c) Subject to subsections (a) and (b) of this section, an electric supplier shall meet the renewable energy portfolio standards by accumulating the equivalent amount of renewable energy credits that equal the percentage required under this section.

§ 355. Renewable Energy Credits.

Energy sold on or after July 1, 2003 may be used to create and accumulate renewable energy credits for the purposes of calculating compliance with the Renewable Energy Portfolio Standards established pursuant to this subchapter.

§ 356. Multiple credit for specific energy sources.

(a) On or before June 30, 2014, an electric supplier shall receive double credit toward meeting the Renewable Energy Portfolio Standards established pursuant to this subchapter for energy derived from the following sources:

(1) Solar energy; or

(2) Fuel that is:

129 a. Derived from an eligible energy resource; and

130 b. Used in a fuel cell.

131 (b) On or before December 31, 2009, an electric supplier shall receive 125% credit toward meeting the
132 Renewable Energy Portfolio Standards established pursuant to this subchapter for energy derived from
133 wind.

134 (c) An electric supplier shall receive credit toward meeting Renewable Energy Portfolio Standards
135 established pursuant to this subchapter for electricity derived from the bio-mass fraction of bio-mass
136 combined with other fuels.

137 § 357. Reporting requirement; penalties for non-compliance.

138 (a) Beginning July 1, 2004 each electric supplier for whom a rate increase subject to this subchapter has
139 been granted shall submit an annual report to the commission, on a form and by a date specified by the
140 Commission, that:

141 (1) Demonstrates that the electric supplier has complied with the Renewable Energy Portfolio
142 Standards established pursuant to this subchapter and includes the submission of the required
143 amount of renewable energy credits; or

144 (2) Demonstrates the amount of electricity sales by which the electric supplier failed to meet the
145 applicable renewable energy portfolio standard.

146 (b) If an electric supplier for whom a rate increase subject to this subchapter has been granted fails to
147 comply with the Renewable Energy Portfolio Standard for the applicable year, the electric supplier shall
148 pay a compliance fee of 2 cents for each kilowatt hour of shortfall into the environmental incentive fund
149 established in § 1014(a) of this title.

150 (c) If an electric supplier for whom a rate increase subject to this subchapter has been granted fails to
151 comply with the Renewable Energy Portfolio Standard for a second consecutive year, the electric
152 supplier shall pay a compliance fee of 4 cents for each kilowatt hour of shortfall into the environmental
153 incentive fund established in § 1014(a) of this title and the supplier's rates shall immediately and
154 automatically revert to the level they had been immediately prior to the most recent rate increase and
155 the supplier shall not be eligible for another rate increase for a period of 12 months following such
156 reduction.

§ 358. Recovery of costs

- (a) An electric supplier may recover, through a non-bypassable surcharge to current applicable customers, actual dollar for dollar costs incurred, except any compliance fee assessed pursuant to § 357 of this title, in complying with a state mandated renewable energy portfolio standard.
- (b) An electric supplier may recover any compliance fee if:
 - (1) the payment of a compliance fee is the least cost measure to ratepayers as compared to the purchase of eligible energy resources to comply with a renewable energy portfolio standard; or
 - (2) there are insufficient eligible energy resources available for the electric supplier to comply with a renewable energy portfolio standard.
- (c) Any cost recovery under this section shall be disclosed on applicable customer bills.

§ 359 Renewable Energy Trading System.

- (a) The Commission shall establish and maintain a market-based renewable energy trading system to facilitate the creation and transfer of renewable energy credits among electric suppliers.
- (b) The Commission may contract with a for-profit or a nonprofit corporation to assist in the administration of the electricity trading system required pursuant to this section.
- (c) The renewable energy trading system shall include a registry of pertinent information regarding all:
 - (1) Available renewable energy credits; and
 - (2) Renewable energy credit transactions among electric suppliers in the state, including:
 - a. The creation and application of renewable energy credits;
 - b. The number of renewable energy credits sold or transferred; and
 - c. The price paid for the sale or transfer of renewable energy credits.
- (d) The renewable energy trading system registry shall provide current information to electric suppliers and the public on the status of renewable energy credits created, sold, or transferred in the state.
- (e) Information contained in the renewable energy trading system registry shall be available by computer network access through the internet.

§ 360 Renewable Energy Trading.

(a) An electric supplier may use accumulated renewable energy credits to meet the Renewable Energy Portfolio Standard established pursuant to this subchapter, and may sell or transfer any renewable energy credit not needed to meet said standards.

(b) A renewable energy credit shall exist for 6 years from the date created unless diminished or extinguished before the expiration of 6 years by:

(1) The electric supplier that created the credit; or

(2) A nonaffiliated entity of the electric supplier:

a. That purchased the credit from the electric supplier creating the credit; or

b. To whom the electric supplier otherwise transferred the credit.

§ 361. Renewable Energy Credit Transaction Fee

The commission may impose an administrative fee on a renewable energy credit transaction, but the amount of the fee may not exceed the commission's actual direct cost of processing the transaction.

§ 362. Rules and Regulations.

The Commission shall adopt rules and regulations necessary to implement the provisions of this subchapter."

Section 2. Nothing in this Act shall be construed to interfere with the execution of any contracts to purchase electricity in effect on the day this Act is enacted into law.

Section 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SYNOPSIS

This Act establishes Renewable Energy Portfolio Standards for electric suppliers in Delaware. Pursuant to this Act, as of July 1, 2003 any supplier seeking a rate increase would have to demonstrate compliance with these standards for the year prior to the date of the application and no increase will be granted to any supplier who fails to demonstrate the same. The Renewable Energy Portfolio Standards established in this Act, require suppliers to utilize renewable energy resources for the generation of electricity and this Act increases the requirement each year until 2014. Municipal and non-municipal suppliers must meet different standards, with municipal suppliers meeting higher standards.

This Act also establishes a Renewable Energy Credit Trading System. Modeled after the federal Clean Air Act pollution trading system, this system allows suppliers who have exceeded the Standards for a given year to trade their excess credit to a supplier who may fall short for that year. The penalties for failing to meet the standards include per kilowatt hour fees as well as a reversion to pre-increase rates for a year.

This Act is primarily modeled after recent legislation that has been considered with enthusiasm by Maryland's General Assembly.

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