SPONSOR: Sen. McDowell & Simpson, & Rep. D.E. Williams, & Rep. Mulrooney
Sens. Katz, Henry & Reps. Brady, Keeley, Gilligan, B. Short, Kovach, Oberle, Hocker

DELAWARE STATE SENATE

145th GENERAL ASSEMBLY

SENATE BILL NO. 267
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO NET ENERGY METERING.

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

Section 1. Amend Chapter 10, §1001, Title 26 of the Delaware Code, by adding new paragraphs (5) and (15) to read as follows and renumbering the remainder sections accordingly:

"(5) 'Community-owned energy generating facility' means a renewable energy generating facility 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.

(15) 'Fuel Cell' means an electric generating facility that: (a) includes integrated power plant systems containing a stack, tubular array, or other functionally similar configuration used to electrochemically convert fuel to electric energy, and (b) may include an inverter and fuel processing system or other plant equipment to support the plant's operation or its energy conversion, including heat recovery equipment."

Section 2. Amend Chapter 10, §1014(d), Title 26 of the Delaware Code, by adding new language after the word "operate" to read as follows: ", lease and operate, or contract with a third party that owns and operates".

Section 3. Amend Chapter 10, §1014, Title 26 of the Delaware Code, by striking §1014(d)(1)d in its entirety.

Section 4. Amend §1014(d) by striking paragraph (5) in its entirety and replacing it with a new paragraph (5) to read as follows:

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"(5) Is designed to produce no more than 110% of the host 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 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."

Section 5. Amend Chapter 10, §1014(e), Title 26 of the Delaware Code by adding new language after the words "electric energy produced" to read as follows: "unless the customer has relinquished such ownership by contractual agreement with a third party."

Section 6. Amend Chapter 10, §1014(e), Title 26 of the Delaware Code by adding new paragraphs (2) and (3) to read as follows and renumbering the remainder sections (2) through (5) as (4) through (7):

"(2) Provide for customers participating in a community-owned energy generating facility to be credited in kilowatt-hours (kWh), valued at an amount per kilowatt-hour 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 kilowatt-hours (kWh) shall be valued according to each account's rate schedule and the rules and regulations promulgated for net energy metering under §1014(e)(1) or (3) of this title. Excess kWh credits shall be credited to subsequent billing periods to offset customers' consumption in those billing periods. At the end of the annualized bulling 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 subparagraph (2) 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."

Section 7. Amend §1014(e) of Title 26 of the Delaware Code by adding new subparagraphs (8) and (9) as follows:

"(8) In instances where one customer has multiple meters under the same account or different accounts, regardless of the physical location and rate class, the customer may aggregate meters for the purpose of net energy metering regardless of which individual meter receives energy from the energy generating facility, provided that:

(a) 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

(b) The customer's energy generating facility is designed to produce no more than 110% of the customer's aggregate electrical consumption of the individual meters or accounts that the customer wishes to aggregate under this subparagraph (8), calculated on the average of the two 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

(c) The customer's energy generating facility shall not exceed a capacity as defined under §1014(d)(1) of this title; and

(d) At least ninety days before a customer commences construction of an energy generating facility or a customer desires to aggregate multiple meters, the customer shall file with the electric supplier, DP&L, DEC, or the appropriate municipal electric company the following information:

(i) a list of individual meters the customer desires to aggregate, identified by name, address, and account number, and ranked according to the order in which the customer desires to apply credit; and

(ii) a description of the energy generating facility, including the facility's location, capacity, and fuel type or generating technology.

(iii) a complete interconnection application to facilitate a transmission and distribution analysis, including an evaluation of potential reliability, safety and stability impacts and determination of whether infrastructure upgrades are necessary and appropriate allocation of applicable interconnection costs.

(e) The customer may change its list of aggregated meters no more than once annually by providing ninety days' written notice; and

(f) Credit shall be applied first to the meter through which the energy generating facility supplies electricity, then through the remaining meters for the customer's accounts according to the rank order as specified in accordance with subparagraph 8(d); and

(g) Credit in kilowatt-hours (kWh) shall be valued according to each account's rate schedule and the rules and regulations promulgated for net energy metering under §1014(e)(1) of this title; and

(h) An electric supplier, DP&L, DEC, or the appropriate municipal electric company may require that a customer's aggregated meters be read on the same billing cycle; and

(i) The rules and regulations promulgated for net energy metering under this section shall also apply to net energy metering aggregation.

(9) Absent the promulgation of rules and regulations pursuant to subparagraph (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 two 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 §1014(d)(1) 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 Title 26 of the Delaware Code; and

(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:

(i) a list of individual meters the community desires to aggregate identified by name, address, and account number; and

(ii) a description of the energy generating facility, including the facility's host location, capacity, and fuel type or generating technology; and

(iii) 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 ninety 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 subparagraph (9)(c-d), 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; and

(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."

Section 8. Amend §1014 of Title 26 of the Delaware Code by adding new paragraph (i) as follows:

"(i) Nothing in this section is intended in any way to limit eligibility for net energy metering services based upon direct ownership, joint ownership, or third-party ownership or financing agreement related to an electric generation facility, where net energy metering would otherwise be available."

Section 9. Amend §1014 of Title 26 of the Delaware Code by adding a new paragraph (j) to read as follows:

"(j) Disputes shall be resolved by the Commission or appropriate governing body.".

Section 10. Amend §1014(d)(2) of Title 26 of the Delaware Code by striking the language "powered by renewable fuels.".

Section 11. Amend §1014 of Title 26 of the Delaware Code by adding a new paragraph (k) to read as follows: "(k) Rules, regulations and programs for §1014(e)(8) and (9) shall be promulgated by the Commission or the appropriate local regulatory authority not later than July 1, 2011.".

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