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DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 74  
AS AMENDED BY  
SENATE AMENDMENT NOS. 1,2 & 3  
AND  
HOUSE AMENDMENT NO. 1

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:

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

“Subchapter III-A. Renewable Energy Portfolio Standards.

§ 351. Short title; declaration of policy.

- (a) This subchapter shall be known and may be cited as the Renewable Energy Portfolio Standards Act.
- (b) The General Assembly finds and declares that the benefits of electricity from renewable energy resources accrue to the public at large, and that electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the state. These benefits include improved regional and local air quality, improved public health, increased electric supply diversity, increased protection against price volatility and supply disruption, improved transmission and distribution performance, and new economic development opportunities.
- (c) It is therefore the purpose and intent of the General Assembly in enacting the Renewable Energy Portfolio Standards Act to establish a market for electricity from these resources in Delaware, and to lower the cost to consumers of electricity from these resources.

§ 352. Definitions.

As used in this subchapter:

- (1) “Alternative Compliance Payment” means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier or Municipal Electric Company may submit in lieu of supplying the minimum percentage of Eligible Energy Resources required under Schedule I in § 354 of this title.
- (2) “DNREC” means Delaware Department of Natural Resources and Environmental Conservation.
- (3) “Commission” means the Delaware Public Service Commission.
- (4) “Compliance Year” means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier or Municipal Electric Company must demonstrate that it has met the requirements of this subchapter.
- (5) “Customer-Sited Generation” means a generation unit that is interconnected on the End-Use Customer’s side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.
- (6) “Eligible Energy Resources” include the following energy sources located within or imported into the PJM region:
  - a. Solar energy technologies that employ solar radiation to produce electricity;
  - b. Electricity derived from wind energy;
  - c. Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;
  - d. Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth’s crust;
  - e. Electricity generated by a fuel cell powered by Renewable Fuels;
  - f. Electricity generated by the combustion of gas from the anaerobic digestion of organic material;
  - g. Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC;
  - h. Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator, as that term is defined in Title 7;

- i. Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:
  1. Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;
  2. Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and
  3. Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.
- (7) "End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier or Municipal Electric Company.
- (8) "Fund" means the Delaware Green Energy Fund.
- (9) "GATS" means the Generation Attribute Tracking System developed by PJM.
- (10) "Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.
- (11) "Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.
- (12) "Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the Delaware Code and the electric utilities that are municipally owned within the State of Delaware.
- (13) "New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.
- (14) "PJM" or "PJM Interconnection" means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

- (15) “PJM region” means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.
- (16) “Renewable Energy Credit” (“REC”) means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this subchapter.
- (17) “Renewable fuel” means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.
- (18) “RPS” and “Renewable Energy Portfolio Standard” means the percentage of electricity sales at retail in the state that is to be derived from Eligible Energy Resources.
- (19) “Retail Electricity Product” means an electrical energy offering that is distinguished by its Generation Attributes and that is offered for sale by a Retail Electricity Supplier or Municipal Electric Company to End-Use Customers.
- (20) “Retail Electricity Supplier” means a person or entity that sells electrical energy to End-Use Customers in Delaware, including but not limited to non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this subchapter.
- (21) “Rural Electric Cooperative” means a non-stock, non-profit, membership corporation organized pursuant to the Federal “Rural Electrification Act of 1936” and operated under the cooperative form of ownership
- (22) “Total retail sales” means retail sales of electricity within the State of Delaware exclusive of sales to any industrial customer with a peak demand in excess of 1,500 kilowatts.

§ 353. Renewable Energy Portfolio Standards Administration.

- (a) The Delaware Public Service Commission shall determine, verify, and assure compliance with Renewable Energy Portfolio Standards established pursuant to this subchapter that apply to all retail electricity sales in the State, except retail electricity sales of Municipal Electric Companies. Any rural electric cooperative that is opted-out of Commission regulation by its membership pursuant to 26 Del. C. § 223 of the Delaware Code shall, for all purposes of administering and applying the provisions of this Subchapter, be treated as a

Municipal Electric Company during any period of time that the Rural Electric Cooperative is exempt from Commission regulation.

- (b) 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, Eligible Energy Resources and Industrial Exemption.

- (a) The total retail sales of each Retail Electricity Product sold to Delaware end-use customers by a Retail Electricity Supplier or Municipal Electric Company during any given compliance year shall include a minimum percentage of electrical energy sales with Eligible Energy Resources as follows:

SCHEDULE I	
Compliance Year (beginning June 1 <sup>st</sup> )	Cumulative Minimum Percentage
2007	1%
2008	1.5%
2009	2%
2010	2.75%
2011	3.5%
2012	4.25%
2013	5%
2014	5.75%
2015	6.5%
2016	7.25%
2017	8%
2018	9%
2019	10%

- (b) Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in Schedule I, subsection (a) of this section. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.
- (c) Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule I and report to the legislature on the status of the pace of the scheduled percentage

increases toward the goal of 10%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

- (d) Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 10%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the alternative compliance payment for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for renewable energy credits eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.
- (e) With respect to Municipal Electric Companies, any provision that would alter the percentage target requirements or extend those requirements past Compliance Year 2019 must be enacted by the General Assembly.
- (f) For each Retail Electricity Supplier or Municipal Electric Company, no more than 1% of each year's total retail sales may be met from Eligible Energy Resources that are not New Renewable Generation Resources. In Compliance Year 2020, and for each Compliance Year thereafter, all Eligible Energy Resources used to meet cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.
- (g) A Retail Electricity Supplier or Municipal Electric Company shall not use energy used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule I of subsection (a) of this section.
- (h) An applicant's compliance with Schedule I of subsection (a) of this section shall be based on historical data, collected in a manner consistent with industry standard and, with respect to Retail Electricity Suppliers, Commission regulations. A Retail Electricity Supplier or Municipal Electric Company 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.

- (a) Energy sold or displaced by customer-sited generation on or after June 1, 2006 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.
- (b) Energy production from customer-sited Eligible Energy Resource may also be used to demonstrate compliance, provided that the facilities are physically located in Delaware.
- (c) Aggregate generation from small eligible energy sources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule I, provided that the generators or their agents document the level of generation, as recorded by appropriate metering and power sales, on an annual basis.

§ 356. Multiple credits for specific energy sources.

- (a) A Retail Electricity Supplier or Municipal Electric Company shall receive 300% credit toward meeting the Renewable Energy Portfolio Standards established pursuant to this subchapter for energy derived from the following sources installed on or before December 31, 2014:
  - (1) Solar electric; or
  - (2) Renewable fuel that is used in a fuel cell.
- (b) A Retail Electricity Supplier or Municipal Electric Company shall receive 150% credit toward meeting the Renewable Energy Portfolio Standards established pursuant to this subchapter for wind energy installations sited in Delaware on or before December 31, 2012.

§ 357. Proportional credit for eligible landfill gas and biogas.

A Retail Electricity Supplier or Municipal Electric Company shall receive credit toward meeting Renewable Energy Portfolio Standards established pursuant to this subchapter for electricity derived from the fraction of eligible landfill gas or biogas combined with other fuels.

§ 358. Issuance of Renewable Energy Credits; Reporting requirement; Alternative Compliance Payment.

- (a) The Commission shall establish by regulation the mechanisms under which a REC shall be created and recorded with respect to the entity generating electricity using Eligible Energy Resources for use in complying with the Renewable Energy Portfolio Standards of this subchapter. Once the GATS system is operational and the PJM Interconnection, or a related organization currently known as PJM Environmental

Services, Inc. (PJM-ESI), begins issuing RECs, the Commission may issue an order approving the use of RECs issued by the PJM Interconnection or PJM-ESI for compliance with the Renewable Energy Portfolio Standards of this subchapter.

(b) Beginning June 1, 2007 each Retail Electricity Supplier shall submit an annual report to the Commission, on a form and by a date specified by the Commission, that:

(1) Demonstrates that the Retail Electricity Supplier has complied with the Renewable Energy Portfolio Standards established pursuant to this subchapter and includes the submission of the required amount of renewable energy credits; or

(2) Demonstrates the amount of electricity sales for the Compliance Year by which the Retail Electricity Supplier failed to meet the renewable energy portfolio standard.

(c) Beginning June 1, 2007, each Municipal Electric Company shall submit an annual report to the Delaware Energy Office and the Controller General that:

(1) Demonstrates that the Municipal Electric Company has complied with the RPS established pursuant to this subchapter and includes the submission of the required amount of renewable energy credits; or

(2) Demonstrates the amount of electricity sales for the Compliance Year by which the Municipal Electric Company failed to meet the RPS.

(d) In lieu of standard means of compliance with this statute, any Retail Electricity Supplier may pay into the Fund an alternative compliance payment of \$25 for each megawatt-hour deficiency between the credits available and used by a Retail Electricity Supplier in a given compliance year and the credits necessary for such Retail Electricity Supplier to meet year's Renewable Energy Portfolio Standard. A Municipal Electric Company may pay the alternative compliance payment into a fund established by its municipal members. In subsequent years, the alternative compliance payments for any Retail Electricity Supplier or Municipal Electricity Company shall increase as follows:

(1) If a Retail Electricity Supplier has paid an alternative compliance payment of \$25 for each megawatt-hour in any previous year, then the alternative compliance payment shall be \$35 for each megawatt-hour.



- (2) If a Retail Electricity Supplier has paid an alternative compliance payment of \$35 for each megawatt-hour in any previous year, then the alternative compliance payment shall be \$45 for each megawatt-hour.
- (3) If a Retail Electricity Supplier has paid an alternative compliance payment of \$45 for each megawatt-hour in any previous year, then the alternative compliance payment shall be \$50 for each megawatt-hour.
- (4) If a Retail Electricity Supplier has paid an alternative compliance payment of \$50 for each megawatt-hour in any previous year, then the alternative compliance payment shall be \$50 for each megawatt-hour.
- (5) Alternative compliance payments shall not be more than \$50 for each megawatt-hour.

(e) Recovery of Costs

- (1) A Retail Electricity Supplier or Municipal Electric Company may recover, through a non-bypassable surcharge, actual dollar for dollar costs incurred in complying with a state mandated renewable energy portfolio standard, except that any compliance fee assessed pursuant to § 358(d) of this title shall be recoverable only to the extent authorized by paragraph (2) of this subsection.
- (2) A Retail Electricity Supplier or Municipal Electric Company may recover any alternative compliance payment if:
  - a. The payment of an alternative compliance payment 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
  - b. There are insufficient eligible energy resources available for the electric supplier to comply with a renewable energy portfolio standard.
- (3) Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

§ 359. Renewable Energy Tracking System.

- (a) The Commission shall establish, maintain or participate in a market-based renewable energy tracking system to facilitate the creation, and transfer of renewable energy credits among Retail Electricity Suppliers. A Municipal Electric Company may elect to participate in the tracking system established by the Commission and may elect to participate in the GATS system once it is operational.

- (b) The Commission may contract with a for-profit or a nonprofit entity to administer, or assist in the administration of, the renewable energy tracking system required pursuant to this section.
- (c) The renewable energy tracking system shall include a registry of 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; and
    - b. The number of renewable energy credits sold or transferred.
- (d) The renewable energy tracking system registry shall provide current aggregated information to Retail Electricity Suppliers and the public on the status of renewable energy credits created, sold, or transferred in the State. Information contained in the renewable energy tracking system registry shall be available by computer network access through the Internet; provided, however, that the Commission may establish reasonable limitation on the disclosure of commercially-sensitive information.

§ 360. Renewable Energy Trading.

- (a) A Retail Electricity Supplier or Municipal Electric Company 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) An unused renewable energy credit shall exist for 3 years from the date created.

§ 361. Renewable Energy Credit Transaction Fee.

The Commission may impose an administrative fee on a Retail Electricity Supplier with respect to a renewable energy credit transaction, but the amount of the fee may not exceed the Commission's actual direct cost of processing the transaction. If a Municipal Electric Company opt to use the Commission's renewable energy credit tracking system, it shall be assessed the same transaction fees that the Commission assesses other Retail Electricity Suppliers.

§ 362. Rules and Regulations.

The Commission shall adopt rules and regulations necessary to implement the provisions of this subchapter as it applies to Retail Electricity Suppliers. The Commission shall make its regulations as consistent as possible with those of other states in the region with similar requirements in order to minimize the compliance burdens imposed by this statute and in order to avoid duplication of effort.

§ 363. Special Provisions for Municipal Electric Companies and Rural Electric Cooperatives.

Municipal Electric Companies and Rural Electric Cooperatives may elect to be exempt from the requirements of this subchapter provided that, on or before June 1, 2006, they:

- (1) submit a written notice to the General Assembly;
- (2) alert their End-Use Customers with notices inserted in two consecutive electricity bills;
- (3) offer their retail customers a voluntary program for purchasing renewable energy under competitive rates; and
- (4) either contribute to the Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent, self-administered fund separate from the Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in this State.”

Section 2. The Delaware Public Service Commission shall adopt rules and regulations necessary to implement the provisions of this Act no later than July 31, 2006.

Section 3. 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 4. 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.

Section 5. Nothing in this Act shall be construed to amend or affect the provisions of Title 26, Chapter 10 of the Delaware Code relating to electric utility restructuring.

Section 6. When promulgating rules and regulations to implement this Act, the Department of Natural Resources and Environmental Control and the Delaware Public Services Commission (1) shall promote the use of best industry practices and policies by regulated entities and (2) shall seek public comment and participation and give the same great weight when making decisions relating to specific proposed regulations.