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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 250

AN ACT TO AMEND TITLES 9, 22, 26 AND 29 OF THE DELAWARE CODE RELATING TO THE RENEWABLE ENERGY PORTFOLIO STANDARDS ACT AND THE COMMUNITY SUSTAINABLE ENERGY AUTHORITIES ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 352, Title 26 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 352. Definitions.

4 (27) “Community solar project” means the solar electric generation component of a community sustainable
5 energy project; provided that if the solar electric generation component is combined with other sustainable
6 energy resources in a community sustainable energy project, the solar electric generation component must
7 be separately metered to establish entitlement to community solar renewable energy credits.

8 (28) “Community solar renewable energy credits” (“CSRECs”) means renewable energy credits generated
9 by a community solar project located in Delaware and developed pursuant to the Community Sustainable
10 Energy Authorities Act, Chapter 21 of Title 22.

11 (29) “Community sustainable energy project” has the meaning given in the Community Sustainable Energy
12 Authorities Act, Chapter 21 of Title 22.

13 (30) “Critical emergency facilities” means facilities whose continued operation during an emergency is required or
14 proposed in a municipality’s emergency response plan as approved by the Delaware Department of Safety and
15 Homeland Security.

16 (31) “Sustainable energy resources” has the meaning given in the Community Sustainable Energy
17 Authorities Act, Chapter 21 of Title 22.

18 Section 2. Amend § 354, Title 26 of the Delaware Code by making deletions as shown by strike through and
 19 insertions as shown by underline as follows and by redesignating accordingly:

20 § 354. Renewable energy portfolio standards, eligible energy resources, and industrial exemption.

21 (a) The total retail sales of each Retail Electricity Product delivered to Delaware end-use customers by a retail
 22 electricity supplier or municipal electric company during any given compliance year shall include a minimum percentage of
 23 electrical energy sales with eligible energy resources and solar photovoltaics as follows:

SCHEDULE I

Compliance Year (beginning June 1st)	Minimum Cumulative Percentage from Eligible Energy Resources	Minimum Cumulative Percentage from Solar Photovoltaics*	<u>Minimum Cumulative Percentage from Community Solar**</u>
2010	5.00%	0.018%	
2011	7.00%	0.20%	
2012	8.50%	0.40%	
2013	10.00%	0.60%	
2014	11.50%	0.80%	
2015	13.00%	1.00%	
2016	14.50%	1.25%	
2017	16.00%	1.50%	
2018	17.50%	1.75%	
2019	19.00%	2.00%	
2020	20.00%	2.25%	<u>0.00%</u>
2021	21.00%	2.50%	<u>0.20%</u>
2022	22.00%	2.75%	<u>0.25%</u>
2023	23.00%	3.00%	<u>0.30%</u>
2024	24.00%	3.25%	<u>0.35%</u>
2025	25.00%	3.50%	<u>0.40%</u>
<u>2026</u>	<u>25.50%</u>	<u>3.75%</u>	<u>0.45%</u>
<u>2027</u>	<u>26.00%</u>	<u>4.00%</u>	<u>0.50%</u>
<u>2028</u>	<u>26.50%</u>	<u>4.25%</u>	<u>0.55%</u>
<u>2029</u>	<u>27.00%</u>	<u>4.50%</u>	<u>0.60%</u>
<u>2030</u>	<u>28.00%</u>	<u>5.00%</u>	<u>0.65%</u>
<u>2031</u>	<u>30.00%</u>	<u>5.80%</u>	<u>1.00%</u>
<u>2032</u>	<u>32.00%</u>	<u>6.60%</u>	<u>1.50%</u>
<u>2033</u>	<u>34.00%</u>	<u>7.40%</u>	<u>1.95%</u>
<u>2034</u>	<u>37.00%</u>	<u>8.40%</u>	<u>2.60%</u>
<u>2035</u>	<u>40.00%</u>	<u>10.00%</u>	<u>3.50%</u>

* Minimum Percentage from Eligible Energy Resources Includes the Minimum Percentage from Solar Photovoltaics.

**The Minimum Percentage from Solar Photovoltaics Includes the Minimum Percentage from Community Solar

24 (b) Cumulative minimum percentage requirements of eligible energy resources and solar photovoltaics shall be
 25 established by Commission rules for compliance year ~~2026~~ 2036 and each subsequent year. ~~In no case shall the~~ The minimum
 26 percentages established by Commission rules may not be lower than those required for compliance year ~~2025~~ 2035 in

27 Schedule I, subsection (a) of this section. Each of the rules setting such minimum percentage shall must be adopted at least 2
28 years ~~prior to~~ before the minimum percentage being required.

29 ~~(e) Beginning in compliance year 2010, and in each compliance year thereafter, the Commission may review the
30 status of Schedule I and report to the legislature on the status of the pace of the scheduled percentage increases toward the
31 goal of 25% from eligible energy resources. If the Commission concludes at this time that the schedule either needs to be
32 accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.~~

33 ~~(d) Beginning in compliance year 2014, and in each compliance year thereafter, the Commission may, in the event
34 of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage
35 increases towards meeting the goal of 25%. The Commission may only slow the increases if the Commission finds that at
36 least 30% of RPS compliance has been met through the alternative compliance payment for 3 consecutive years, despite
37 adequate planning by the commission-regulated electric companies and, where applicable, the retail electricity suppliers with
38 existing contractual electric supply obligations. The Commission may only accelerate the scheduled percentage increases
39 after finding that the average price for renewable energy credits eligible for RPS compliance has, for 2 consecutive years,
40 been below a predetermined market-based price threshold to be established by the Commission. The Commission shall
41 establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would
42 alter the percentage targets shall be promulgated at least 2 years before the percentage change takes effect. In no event shall
43 the Commission reduce the percentage target below any level reached to that point.~~

44 ~~(ec) Beginning with compliance year 2012~~ 2020, commission-regulated electric companies shall be responsible for
45 procuring RECs, SRECs, CSRECs, and any other attributes needed to comply with subsection (a) of this section with respect
46 to all energy delivered to such companies' end use customers.

47 ~~(i) The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative solar
48 photovoltaics requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying
49 with this requirement during a compliance year exceeds 1% of the total retail cost of electricity for retail electricity suppliers
50 during the same compliance year. In the event of a freeze, the minimum cumulative percentage from solar photovoltaics shall
51 remain at the percentage for the year in which the freeze is instituted. The freeze shall be lifted upon a finding by the
52 Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under
53 the 1% threshold. The total cost of compliance shall include the costs associated with any ratepayer funded state solar rebate
54 program, SREC purchases, and solar alternative compliance.~~

55 ~~(j) The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative eligible
56 energy resources requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying~~

57 with this requirement during a compliance year exceeds 3% of the total retail cost of electricity for retail electricity suppliers
58 during the same compliance year. In the event of a freeze, the minimum cumulative percentage from eligible energy resources
59 shall remain at the percentage for the year in which the freeze is instituted. The freeze shall be lifted upon a finding by the
60 Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under
61 the 3% threshold. The total cost of compliance shall include the costs associated with any ratepayer funded state renewable
62 energy rebate program, REC purchases, and alternative compliance payments.

63 (kg) The CSREC requirements of this subchapter may be satisfied with regular SRECs in the event that
64 insufficient CSRECs are available and would drive the price above 200% of the average cost of an SREC that the
65 commission-regulated utility purchased in the previous two years.

66 Section 3. Amend § 355, Title 26 of the Delaware Code by making deletions as shown by strike through and
67 insertions as shown by underline as follows:

68 § 355. Renewable energy credits.

69 (a) Energy sold or displaced by customer-sited generation on or after June 1, 2006, may be used to create and
70 accumulate renewable energy credits for the purposes of calculating compliance with the renewable energy portfolio
71 standards established pursuant to this subchapter.

72 (b) Energy production from customer-sited eligible energy resource may also be used to demonstrate compliance,
73 provided that the facilities are physically located in Delaware.

74 (c) Aggregate generation from small eligible energy sources, 100 kilowatts of capacity or less, may be used to meet
75 the requirements of Schedule I of § 354(a) of this title, provided that the generators or their agents document the level of
76 generation, as recorded by appropriate metering and power sales, on an annual basis.

77 (d) Community sustainable energy projects are permitted to generate CSRECs whether or not customer-sited.

78 Section 4. Amend § 356, Title 26 of the Delaware Code by making deletions as shown by strike through
79 and insertions as shown by underline as follows:

80 § 356. Multiple credits for specific energy sources.

81 (f) Microgrids that serve critical emergency facilities shall receive 1.5 CSRECs per CSREC created by a
82 community sustainable energy project for the first five years of operation. However, any microgrid covered by this
83 provision cannot also receive any of the other CSREC credit benefits permitted by this section.

84 (g) A retail electricity supplier or municipal electric company must receive 150% credit toward meeting the
85 renewable energy portfolio standards established under this subchapter for eligible energy resources located on a
86 certified brownfield, as defined under § 9123 of Title 7. However, any retail electricity supplier or municipal electric

87 company covered by this provision cannot also receive any of the other CSREC credit benefits permitted by this
88 section.

89 (h) A retail electricity supplier or municipal electric company must receive 150% credit toward meeting the
90 renewable energy portfolio standards established under this subchapter for eligible energy resources provided that at
91 least 5% of the energy users participating in any community sustainable energy project are low and moderate income
92 users, meaning users whose income is 120% or less of the median income for families in Delaware.

93 Section 5. Amend § 358, Title 26 of the Delaware Code by making deletions as shown by strike through and
94 insertions as shown by underline as follows:

95 § 358. Issuance of renewable energy credits; reporting requirement; alternative compliance payment.

96 (d) In lieu of standard means of compliance with this ~~statute, subchapter, any retail electricity supplier~~ any
97 commission-regulated utility may pay into the Fund an alternative compliance payment of \$25 for each megawatt-hour
98 deficiency between the credits available and used by a ~~retail electricity supplier~~ commission-regulated utility in a given
99 compliance year for eligible non-solar renewable energy resources and the credits necessary for such ~~retail electricity supplier~~
100 commission-regulated utility to meet the year's renewable energy portfolio standard. A municipal electric company may pay
101 the alternative compliance payment into a fund established by its municipal members. If alternative compliance payments
102 representing 15% or more of the total number of RECs for eligible non-solar renewable energy resources are paid into the
103 Fund for each of 2 consecutive compliance years, the minimum cumulative percentage from eligible energy resources
104 specified in Schedule I of § 354(a) of this title remains at the percentage specified for the immediately preceding year and
105 does not increase from that percentage until a year passes during which no alternative compliance payment is made. After
106 the year in which less than 15% of the REC obligation is satisfied by alternative compliance payments, the annual increases
107 in Schedule I of § 354(a) of this title resume, starting from the percentage specified for the year immediately before the
108 current compliance year. A freeze of the minimum cumulative percentage from eligible non-solar technology does not permit
109 a freeze of the minimum cumulative percentage from eligible solar energy resources. ~~In subsequent years, the alternative~~
110 ~~compliance payments for any retail electricity supplier or municipal electricity company shall increase as follows:~~

111 (1) ~~If a retail electricity supplier has paid an alternative compliance payment of \$25 for each megawatt hour in any~~
112 ~~previous year, then the alternative compliance payment shall be \$50 for each megawatt hour.~~

113 (2) ~~If a retail electricity supplier has paid an alternative compliance payment of \$50 for each megawatt hour in any~~
114 ~~previous year, then the alternative compliance payment shall be \$80 for each megawatt hour.~~

115 (3) ~~Alternative compliance payments shall not be more than \$80 for each megawatt hour.~~

116 (4) The State Energy Coordinator shall have the authority to review the alternative compliance payment on an as
117 needed or annual basis to determine reasonableness compared to market REC prices. Following an analysis conducted by the
118 Delaware Energy Office, the State Energy Coordinator shall also have the authority to adjust the alternative compliance
119 payment by 10% in order to achieve reasonableness.

120 (e) In lieu of standard means of compliance with this statute, ~~subchapter, any retail electricity supplier~~ a commission-
121 regulated utility may pay into the Fund a Solar Alternative Compliance payment of \$400 ~~\$150~~ for each megawatt-hour
122 deficiency between the credits available and used by a ~~retail electricity supplier~~ commission-regulated utility in a given
123 compliance year and the credits necessary for such ~~retail electricity supplier~~ commission-regulated utility to meet the year's
124 Renewable Energy Portfolio Standard. A municipal electric company may pay the solar alternative compliance payment into
125 a fund established by its municipal members. If solar alternative compliance payments representing 15% or more of the total
126 number of SRECs are paid into the Fund for each of 2 consecutive compliance years, the minimum cumulative percentage
127 from solar technology specified in Schedule I of § 354(a) of this title remains at the percentage specified for the immediately
128 preceding year and does not increase from that percentage until a year passes during which less than 15% of the SREC
129 obligation is satisfied by solar alternative compliance payments. After the year in which 15% or less of the total SREC
130 obligation is satisfied by solar alternative compliance payments, the annual increases set forth in Schedule I of § 354(a) of
131 this title resume, starting from the percentage specified for the year immediately before the current compliance year. A freeze
132 of the minimum cumulative percentage from solar technology does not freeze the minimum cumulative percentage from
133 eligible energy resources. In subsequent years, the solar alternative compliance payments for any retail electricity supplier or
134 municipal electricity company shall increase as follows:

135 (1) ~~If a retail electricity supplier has paid a solar alternative compliance payment of \$400 \$100 for each megawatt-~~
136 ~~hour in any previous year, then the solar alternative compliance payment shall must be \$450 \$125 for each megawatt hour.~~

137 (2) ~~If a retail electricity supplier has paid a solar alternative compliance payment of \$450 \$125 for each megawatt-~~
138 ~~hour in any previous year, then the solar alternative compliance payment shall must be \$500 \$150 for each megawatt hour.~~

139 (3) The State Energy Coordinator shall have the authority to review the solar alternative compliance payment on an
140 as needed or annual basis to determine reasonableness compared to market-based SREC prices. Following an analysis
141 conducted by the Delaware Energy Office, the State Energy Coordinator shall also have the authority to adjust the solar
142 alternative compliance payment by 20% in order to achieve reasonableness, but not higher than 20% of the competitive
143 market cost of an SREC, determined by the quarterly weighted average cost of meeting the requirement through purchase of
144 an SREC as analyzed by the Delaware Energy Office.

145 Section 6. Amend § 362, Title 26 of the Delaware Code by making deletions as shown by strike through and
146 insertions as shown by underline as follows:

147 § 362. Rules and regulations.

148 (a) The Commission shall adopt rules and regulations necessary to implement the provisions of this subchapter as it
149 applies to retail electricity suppliers. The Commission shall make its regulations as consistent as possible with those of other
150 states in the region with similar requirements in order to minimize the compliance burdens imposed by this ~~statute~~ subchapter
151 and in order to avoid duplication of effort.

152 (b) ~~For regulated utilities, the Commission shall further adopt rules and regulations to specify the procedures for~~
153 ~~freezing the minimum cumulative solar photovoltaic requirement as authorized under § 354(i) and (j) of this title, and for~~
154 ~~adjusting the alternative compliance payment and solar alternative compliance payment as authorized under § 358(d)(4) and~~
155 ~~(e)(3) of this title.~~

156 Section 7. Amend § 363, Title 26 of the Delaware Code by making deletions as shown by strike through
157 and insertions as shown by underline as follows and by re-designating accordingly:

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

159 (a) Any municipal electric company and any rural electric cooperative may elect to exempt itself from the
160 requirements of this subchapter, if it develops and implements a comparable program to the renewable energy
161 portfolio standards for its ratepayers beginning in ~~2013~~ 2022.

162 (b) In the event that a municipal electric company or rural electric cooperative elects to exempt itself from
163 the requirements of this subchapter, it shall submit a plan at the beginning of ~~2013~~ 2022 to its local regulatory
164 authority, the Delaware General Assembly, and the ~~Delaware Energy Office~~ Department of Natural Resources and
165 Environmental Control detailing its approach to achieve a level of renewable energy penetration in its service
166 territory, and shall submit an annual compliance report to its local regulatory authority, the Delaware General
167 Assembly, and the ~~Delaware Energy Office~~ Department of Natural Resources and Environmental Control detailing
168 its progress toward yearly targets.

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

175 (d) In the event that a municipal electric company or rural electric cooperative elects to exempt itself, it shall
176 either contribute to the Green Energy Fund at levels commensurate with other retail electricity suppliers or create an
177 independent, self-administered fund separate from the Green Energy Fund to be used in support of energy efficiency
178 technologies, renewable energy technologies, or demand side management programs, into which it shall make
179 payments of at least \$0.178 for each megawatt-hour it sells, transmits, or distributes in this State.

180 ~~(e) The total cost of compliance with this section shall include the costs associated with any ratepayer~~
181 ~~funded renewable energy rebate programs, REC and SREC purchases, or other costs incurred in meeting renewable~~
182 ~~energy programs.~~

183 ~~(f) The total cost of complying with eligible energy resources shall not exceed 3% of the total cost of the~~
184 ~~purchased power of the utility for any calendar year.~~

185 ~~(g) The total cost of complying with the solar photovoltaic program shall not exceed 1% of the total cost of~~
186 ~~the purchased power of the affected utility for any calendar year.~~

187 ~~(h) At no time during any calendar year shall the total cost of compliance with this section result in an~~
188 ~~increase of an average consumer's monthly bill in excess of 4%.~~

189 ~~(i) The Board of Directors of a rural electric cooperative and the local regulatory authority of a municipal~~
190 ~~electric company may approve an increase in the limit on the cost of compliance, as specified in subsections (f) and~~
191 ~~(g) of this section above.~~

192 (j) In pursuit of their renewable energy goals, a municipal electric company or rural electric cooperative
193 shall receive all appropriate multiple credits for specific energy sources, as established under §§ 356 and 357 of this
194 title and sited in Delaware for the life of contracts for renewable energy credits.

195 Section 8. Amend § 1001, Title 26 of the Delaware Code by making deletions as shown by strike through
196 and insertions as shown by underline as follows and by redesignating accordingly:

197 (5) "Community Sustainable Energy Authority" means an authority established under the
198 Community Sustainable Energy Authorities Act, Chapter 21 of Title 22 of the Delaware Code.

199 ~~(5)(6)~~ "Community-owned energy generating facility" means a renewable energy generating
200 facility that has multiple owners or customers who share the output of the generator, which may be located
201 either as a stand-alone facility or behind the meter of a participating owner or customer. The facility shall be
202 interconnected to the distribution system and operated in parallel with an electric distribution company's
203 transmission and distribution facilities. This term includes eligible energy resources included in community

204 sustainable energy projects created under the Community Sustainable Energy Authorities Act, Chapter 21,
205 Title 22 of the Delaware Code, regardless of ownership structure.

206 (7) “Community sustainable energy project” has the meaning given in the Community Sustainable
207 Energy Authorities Act, Chapter 21, Title 22 of the Delaware Code.

208 Section 9. Amend § 102, Title 26 of the Delaware Code by making deletions as shown by strike
209 through and insertions as shown by underline as follows:

210 (2) “Public utility” includes every individual, partnership, association, corporation, joint stock
211 company, agency or department of the State or any association of individuals engaged in the prosecution in
212 common of a productive enterprise (commonly called a “cooperative”), their lessees, trustees or receivers
213 appointed by any court whatsoever, that now operates or hereafter may operate for public use within this
214 State, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the
215 production, sale or distribution of propane gas or heating oil), any natural gas, electric (excluding electric
216 suppliers as defined in § 1001 of this title), and Community Sustainable Energy Authorities created pursuant
217 to this title), electric transmission by other than a public utility over which the Commission has no
218 supervisory or regulatory jurisdiction pursuant to § 202(a) or (g) of this title, water, wastewater (which shall
219 include sanitary sewer charge), telecommunications (excluding telephone services provided by cellular
220 technology or by domestic public land mobile radio service) service, system, plant, or equipment.

221 Section 10. Amend Title 22 of the Delaware Code by adding a new Chapter 21 and by making deletions as
222 shown by strike through and insertions as shown by underline as follows:

223 Chapter 21. Community Sustainable Energy Authorities Act

224 § 2101. Short Title; Findings and Declaration of Policy.

225 (a) This chapter shall be known and may be cited as the “Community Sustainable Energy Authorities
226 Act.”

227 It is determined and declared as a matter of legislative finding that:

228 (1) Continued emission of greenhouse gases threatens to result in dangerous human interference
229 with the climate system and climate change poses a significant threat to the life and security of the citizens
230 of Delaware;

231 (2) Among the effects of climate change are rising sea levels, and increasingly severe storms and
232 weather events which expose Delaware communities to disruption of community life and severe economic
233 loss;

234 (3) Transition to a sustainable energy economy by reducing building energy use, increasing use of
235 electric vehicles, and moving to renewable sources of energy generation are essential to reducing
236 greenhouse gas emissions;

237 (4) Establishing local, secure, resilient energy generation facilities, such as qualified microgrids
238 servicing critical facilities used by the public, can mitigate the effects of climate disruption;

239 (5) Lower-income citizens of Delaware are the least economically able to participate in the
240 transition to a sustainable energy economy and often most at risk for the effects of climate disruption.
241 The establishment of authorities that promote the transition to a local sustainable energy economy and assist
242 lower-income citizens to participate in that transition, will promote the public health, safety, convenience,
243 and welfare;

244 (6) Therefore, it is declared to be the policy of this State to promote the public health, safety,
245 convenience and welfare of the inhabitants thereof by the creation in municipalities of “community energy
246 authorities,” which shall exist and operate to expand the deployment of energy conservation measures,
247 renewable energy, and energy storage in the State and spread the benefits of those sustainable resources to all
248 citizens of the State.

249 § 2102. Definitions.

250 As used in this chapter, unless the context requires a different meaning:

251 (1) “Aggregator” has the meaning given in 26 Del. C. §1001(1).

252 (2) “Authority” means a body politic and corporate created pursuant to this chapter.

253 (3) “Board” means the governing body of the authority.

254 (4) “Community sustainable energy project” means a sustainable energy project undertaken by an
255 authority pursuant to § 2106 of this title.

256 (5) “Community-owned energy generating facility” has the meaning given in 26 Del. C. §1001(5).

257 (6) “Community Sustainable Energy Authority” means any authority created pursuant to this Act. Any
258 authority created pursuant to this Act is not a “public utility” under 26 Del. C, § 102(2), and is not
259 subject to regulation by the Delaware Public Service Commission.

260 (7) “Demand response resource” means facilities owned or operated by a municipal energy user or by, or
261 on behalf of, an authority that are qualified to provide demand-side management services.

262 (8) “Demand-side management” has the meaning given in 26 Del. C. §1001(7).

263 (9) “Electric supplier” has the meaning given in 26 Del. C. §1001(14).

264 (10) “Energy conservation measure” has the meaning given in 29 Del. C. § 6972 (3).

265 (11) “Energy storage system” means a battery or other electric storage system or a thermal energy
266 storage system.

267 (12) “Federal agency” means and includes the United States of America and any department,
268 corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the
269 United States of America.

270 (13) “Governing Body” means the city council or other governing body of a Municipality.

271 (14) “Municipality” means any incorporated city or incorporated town of this State.

272 (15) “Municipal sponsor” means the municipality or municipalities that incorporate an authority under
273 this chapter.

274 (16) “Municipal energy user” means (i) a person who maintains a private residence or operates a
275 business within the jurisdictional limits of a municipal sponsor or (ii) a business, non-profit, or
276 governmental entity that owns or operates a facility or building within the jurisdictional limits of the
277 municipal sponsor.

278 (17) “Persons” means and includes natural persons.

279 (18) “Qualified microgrid” means a group of interconnected loads and distributed energy resources
280 within clearly defined electrical boundaries that acts as a single controllable entity with respect to the
281 grid with generating capacity that includes at least 70 % sustainable energy resources.

282 (19) “Sustainable energy resource” means and includes energy conservation, energy efficiency, and
283 renewable energy consistent with “eligible energy resource” as defined in 26 Del. C. § 352.

284 (20) “Sustainable energy program” means a program to assist municipal energy users to undertake
285 sustainable energy projects, including providing technical support or assistance with financing, singly or
286 on a collective basis.

287 (21) “Sustainable energy project” means the development, construction, acquisition, financing, and
288 operation as a single commercial unit of 1 or more sustainable energy resources, energy storage systems,
289 electric vehicle charging stations, demand response resources, energy conservation measures, or
290 qualified microgrids.

291 (22) “Sustainable Energy Utility” means the Sustainable Energy Utility, Inc. or any successor
292 organization formed and existing under 29 Del. C. § 8059.

293 (23) “Small business” means a firm having a full-time equivalent complement of 100 or fewer
294 Delaware- based employees at the time of application.

295 § 2103. Organizing an authority.

296 (a) Whenever the governing body or bodies of a municipality, singly, or 2 or more municipalities
297 jointly, desire to organize an authority, under this chapter, they must adopt a resolution or ordinance
298 signifying their intention to do so. Any municipality may join an authority being organized by a county,
299 provided that the municipality is located, in whole or in part, within the county. In such cases, the county
300 and each included municipality must adopt a resolution or ordinance signifying their intention to join in
301 organizing the authority.

302 § 2104. Purpose and powers.

303 (a) The authority incorporated under this chapter shall constitute a body politic and corporate, and
304 shall be known as the community energy authority of the municipal sponsor, but shall in no way be deemed to
305 be an instrumentality of the municipal sponsor or engaged in the performance of a municipal function. The
306 authority shall have the power to conduct research activities to maintain current data on energy consumption and
307 needs for energy resilience in the municipality or municipalities, for the fulfillment of public and private needs
308 in relation to energy efficiency and energy consumption, including needs in low and moderate income census
309 tracts. The authority shall also have the power, either independently or in conjunction with other public or
310 private persons and entities, to engage in planning, designing, locating, acquiring, holding, constructing,
311 improving, maintaining and operating, owning or leasing, in the capacity of lessor or lessee, and making loans
312 and investments in connection with sustainable energy projects and sustainable energy programs.

313 (b) Every authority may exercise all powers necessary or convenient for the carrying out of the
314 aforesaid purposes, including to obtain on a confidential basis, from the public utilities serving municipal
315 energy users in the municipal sponsor, data on usage of electricity and, as applicable, other forms of energy
316 by municipal energy users to assist it in the development of sustainable energy projects. The authority may
317 share that data on an aggregated basis that does not permit identification of individual customers with potential
318 participants in sustainable energy projects.

319 § 2105. Co-operation with the Sustainable Energy Utility.

320 (a) An authority may work in cooperation with the Sustainable Energy Utility, Inc., established pursuant
321 to § 8059 of Title 29, to implement energy efficiency and renewable energy projects in the State.

322 § 2106. Community Sustainable Energy Projects.

323 (a) For purposes of awarding CSRECs as defined in § 352 of Title 26, Community Sustainable
324 Energy Projects are subject to: i) a cap of 5 megawatts, and ii) an annual aggregate statewide program cap of
325 20 megawatts. At the year 2030, the project cap i) will change to 10 megawatts and the annual aggregate
326 statewide program cap in ii) will change to 50 megawatts.

327 (b) An authority may undertake community sustainable energy projects on behalf of residential,
328 small business, non-profit, and governmental energy users within the municipality that elect to participate in
329 a project, as established by affirmative written consent of the energy users. In evaluating the participation of
330 small businesses, those small businesses employing 10 or fewer persons will be afforded preference in the
331 subscription for a community sustainable energy project.

332 (c) An authority may require an investment in a community sustainable energy project or a partial
333 prepayment for services of a community sustainable energy project by a municipal energy user.

334 (d) If an authority elects, municipal energy users who participate in a community sustainable energy
335 project shall be billed for their energy consumption on the same basis as participants in a community-owned
336 energy generating facility established under the Renewable Energy Portfolio Standards Act, 26 Del. C. §351
337 et.seq., provided that all participating municipal energy users must be served by the same public utility, and
338 such projects must be interconnected at the distribution level.

339 (e) An authority may elect to own a community sustainable energy project directly or through a
340 special purpose entity created for the purpose or may contract with third parties on behalf of municipal energy
341 users to own, operate, or undertake other services for a community sustainable energy project for the
342 municipal energy users' benefit.

343 § 2107. Governing body.

344 1. The powers of each authority shall be exercised by a board of directors composed of not less than
345 5 members, all of whom shall be municipal energy users within the municipal sponsor. The board shall be
346 broadly representative of the population of the municipal sponsor. Board members shall receive no
347 compensation for services, but shall be entitled to the necessary expenses, including travel expenses, incurred
348 in the discharge of duties.

349 § 2108. Moneys; reporting; examination of accounts.

350 (a) All moneys of any authority, from whatever source derived, shall be paid to the treasurer of the
351 authority. The moneys shall be deposited in the first instance by the treasurer in 1 or more banks or trust
352 companies in 1 or more special accounts. The moneys in the accounts shall be paid out on the warrant or other

353 order of the chairperson of the authority or of such other person or persons as the authority may authorize to
354 execute such warrants or orders. Every authority shall have at least an annual examination of its books,
355 accounts, and records by a certified public accountant in accordance with Governmental Accounting
356 Standards Board requirements. A copy of such audit shall be delivered to the municipal sponsor and the
357 Sustainable Energy Utility. A concise financial statement shall be published annually at least once in a
358 newspaper of general circulation in the municipal sponsor. If such publication is not made by the authority,
359 the municipal sponsor shall publish such statement at the expense of the authority. If the authority fails to
360 make such an audit, the auditor or accountant designated by the municipal sponsor may, from time to time,
361 examine, at the expense of the authority, the accounts and books of the authority, including its receipts,
362 disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances,
363 operation, and affairs.

364 (b) The Attorney General may examine the books, accounts, and records of any authority.

365 (c) Each authority shall prepare an annual report of its activities in a form approved by the
366 Sustainable Energy Utility including: (i) the acquisition and disposition of property, (ii) the development,
367 financing, construction, and operation of sustainable energy projects, including energy savings and carbon
368 reductions; (iii) the operation of sustainable energy programs directly or in collaboration with the Sustainable
369 Energy Utility; and (iv) other material activities undertaken by the authority in furtherance of the purposes of
370 this chapter. The authority shall provide copies of such report to the municipal sponsor and the Sustainable
371 Energy Utility and make it available by electronic or other suitable means to the general public.

372 2. No member of the Board of any authority shall be entitled to vote on any matter before the Board
373 if such member has a direct or indirect financial interest in the outcome of such matter under review. In the
374 event such a financial interest exists, said member shall disclose to the Board the nature of the interest and
375 said member shall refrain from any discussion, deliberation, action, or vote by the Board on this matter. In
376 situations in which a member or members do not vote by reason of such financial interest, the matter pending
377 before the Board will be decided on the basis of a majority vote of the remaining members present who do
378 not have a financial interest in the matter. A member or members having a financial interest as set forth herein
379 shall be counted for purposes of establishing a quorum, provided such member or members are present at the
380 meeting. The disqualification of a member from voting on a matter before the Board by reason of a financial
381 interest therein shall not affect the validity of any action taken by the Board relative to the matter before it.
382

383 § 2109. Exemption from taxation; payments in lieu of taxes.

384 The effectuation of the authorized purposes of the authorities created under this chapter shall and will be
385 in all respects for the benefit of the residents of municipalities for the increase of their resilience and prosperity,
386 and for the improvement of their health, safety, and living conditions, and, in effectuating such purposes, such
387 authorities shall not be required to pay any taxes or assessments upon any property acquired or used by them for
388 such purposes. In lieu of such taxes or special assessments, an authority may agree to make payments to the
389 municipal sponsor or the county or any political subdivision. The bonds issued on behalf of any authority, their
390 transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be free from
391 taxation within this State.

392 Section 11. Amend Chapter 3, Title 9 of the Delaware Code by making deletions as shown by strike through and
393 insertions as shown by underline as follows:

394 § 350. Community Sustainable Energy Authorities Act.

395 The county governments may create community sustainable energy authorities pursuant to the provisions
396 of the Community Sustainable Energy Authorities Act, Chapter 21 of Title 22. Any Community Sustainable Energy
397 Authority created by a county government shall be governed by, and must comply with, applicable provisions of the
398 Community Sustainable Energy Authorities Act, including all powers and obligations of municipal authorities under
399 the Act.

400 Section 12. Amend § 8059, Title 29 of the Delaware Code by making deletions as shown by strike through and
401 insertions as shown by underline as follows:

402 (i) The SEU may create Community Sustainable Energy Authorities pursuant to the provisions of the Community
403 Sustainable Energy Authorities Act, Title 22, Chapter 21. Any Community Sustainable Energy Authority created by
404 the SEU shall be governed by, and must comply with, applicable provisions of the Community Sustainable Energy
405 Authorities Act. The SEU may assist cities, towns, and counties with the formation of community sustainable energy
406 authorities and the financing of projects.

407 Section 13. Amend § 1014, Title 26 of the Delaware Code by making deletions as shown by strike through and
408 insertions as shown by underline as follows:

409 § 1014 Public purpose programs and consumer education.

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

412 (2) Provide for customers participating in a community-owned energy generating facility to be credited in kilowatt-
413 hours (kWh), valued at an amount per kWh equal to supply service charges according to each account's rate
414 schedule for any excess production of the community-owned energy generating facility, meaning the amount above
415 the Net Metering Limit . For customers that host a community-owned energy generating facility or where all
416 participating customers are located on the same distribution feeder as a community-owned energy generating
417 facility, credit in kWh shall be valued according to each account's rate schedule and the rules and regulations
418 promulgated for net energy metering under paragraph (e)(1) or (3) of this section. Excess kWh credits shall be
419 credited to subsequent billing periods to offset customers' consumption in those billing periods. At the end of the
420 annualized ~~billing~~ billing period, a customer participating in a community-owned generating facility ~~community~~
421 may request a payment from the electric supplier for any excess kWh credits. The payment shall be calculated by
422 multiplying the excess kWh credits by ~~the supply service rate of the account hosting the community-owned energy~~
423 generating facility ~~the average annual load-weighted PJM wholesale locational marginal price of energy in the~~
424 Delmarva Power Zone. Such payment shall be made to the ~~account hosting~~ account-hosting customer participating
425 in the community-owned energy generating facility, and may be credited to the account through monthly billing if
426 less than \$25. Any excess kWh credits shall not reduce any fixed monthly customer charges, including demand
427 charges, imposed by the electric supplier. The customers participating in a community-owned energy generating
428 facility retain ownership of all RECs associated with electric energy produced unless the customer has relinquished
429 such ownership by contractual agreement with a third party.

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

- 433 a. A community includes customers sharing a unique set of ~~interests; and~~ interests.
- 434 b. Electric suppliers, DEC, DP&L, and municipal electric companies shall only allow meter aggregation for
435 customer accounts of which they provide electric supply ~~service; and~~ service.
- 436 c. A community-owned energy generating facility is designed to produce no more than 110% of the
437 community's aggregate electrical consumption of its individual customers, calculated on the average of the 2
438 previous 12-month periods of actual electrical usage at the time of installation of energy generating equipment.
439 For new building construction, electrical consumption will be estimated at 110% of the consumption of units of
440 similar size and characteristics at the time of installation of energy generating ~~equipment; and~~ equipment.

441 d. A community-owned energy generating facility shall not exceed a capacity of the sum total of the individual
442 unit allowances as defined under paragraph (d)(1) of this section among the participants of a community-owned
443 energy generating ~~facility; and~~ facility, except that community sustainable energy projects are exempt from this
444 limitation.

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

447 f. Before a community-owned net energy metering system may be formed and served by an electric supplier,
448 DP&L, DEC, or municipal electric company, the community proposing a community-owned energy generating
449 facility shall file with the ~~Delaware Energy Office~~ Department of Natural Resources and Environmental Control
450 and the electric supplier, DP&L, DEC, or the appropriate municipal electric ~~company~~ company, a description of
451 the energy generating facility, including the facility's host location, capacity, and fuel type or generating
452 technology, and the following information:

453 1. A list of individual meters the community desires to aggregate identified by name, address, and ~~account~~
454 ~~number; account, representing 50% of the subscribing capacity of the community; and~~

455 2. Proof that the project has started the permitting process by either providing a receipt of a filing fee paid to
456 a local jurisdiction for a permit, or if a preliminary action is required prior to paying a filing fee, evidence
457 confirming completion of the preliminary action; and

458 2. 3. A description of the energy generating facility, including the facility's host location, capacity, and fuel
459 type or generating technology; and

460 4. Proof of site control.; and

461 3. 5. The quantity of kWh credits attributed to each customer, which the electric supplier, DP&L, DEC, or
462 the appropriate municipal electric company shall true-up at the end of the annualized billing period; and

463 6. An interconnection study with the electric supplier or a signed interconnection agreement.

464 g. A community may change its list of aggregated meters no more than ~~quarterly~~ monthly by providing ~~90~~ 30
465 days' written notice to the electric supplier, DP&L, DEC, or the appropriate municipal electric ~~company; and~~
466 company.

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

471 acceptable agreement for any excess kWh ~~credit~~; credit, or the community shall be paid at the Utility's

472 Locational Marginal Price for any energy that is unallocated.

473 i. An electric supplier, DP&L, DEC, or municipal electric companies may require that customers participating in

474 a community-owned energy generating facility have their meters read on the same billing ~~cycle~~; and cycle.

475 j. Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation

476 as either public utilities or an electric supplier solely because of their participation in community-owned

477 generating facilities.

478 (f) The Commission shall periodically review the impact of net-metering rules in this section and recommend changes

479 or adjustments necessary for the economic health of utilities.

480 (g) A retail electric customer having on its premises 1 or more grid-integrated electric vehicles shall be credited in

481 kilowatt-hours (kWh) for energy discharged to the grid from the vehicle's battery at the same kWh rate that customer

482 pays to charge the battery from the grid, as defined in paragraph (e)(1) of this section. Excess kWh credits shall be

483 handled in the same manner as net metering as described in paragraph (e)(1) of this section. To qualify under this

484 subsection, the grid-integrated electric vehicle must meet the requirements in paragraphs (d)(1)a., (d)(1)b. and (d)(4) of

485 this section. Connection and metering of grid integrated vehicles shall be subject to the rules and regulations found in

486 paragraphs (e)(4), (5), and (6) of this section.

487 (h) The Commission may adopt tariffs for regulated electric utilities that are not inconsistent with subsection (g) of this

488 section. Such tariffs may include rate and credit structures that vary from those set forth in subsection (g) of this section,

489 as long as alternative rate and credit structures are not inconsistent with the development of grid-integrated electric

490 vehicles.

491 (i) Nothing in this section is intended in any way to limit eligibility for net energy metering services based upon direct

492 ownership, joint ownership, or third-party ownership or financing agreement related to an electric generation facility,

493 where net energy metering would otherwise be available.

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

495 (k) Rules, regulations and programs for paragraphs (e)(8) and (9) of this section shall be promulgated by the

496 Commission or the appropriate local regulatory authority not later than July 1, 2011.

SYNOPSIS

This bill is intended to advance sustainable energy goals and initiatives in Delaware and to restore Delaware as a leader in renewable, sustainable energy. First, this Act builds on the Renewable Energy Portfolio Standards Act, which was first enacted into law in 2005, by setting new standards for the minimum percentage of electric energy sales from eligible energy resources and solar photovoltaics. Second, this bill contains the "Community Sustainable Energy Authorities Act," which authorizes incorporated municipalities, towns, and counties and the Delaware Sustainable Energy Utility to create authorities to develop, promote, and operate community sustainable energy projects.

Author: Senator McDowell