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Osienski

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 124

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO DELAWARE'S RENEWABLE ENERGY PORTFOLIO STANDARDS AND DELAWARE-MANUFACTURED FUEL CELLS.

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

1 Section 1. Amend § 352, Title 26 of the Delaware Code by redesignating subsections (16) through (24) as
2 subsections (18) through (26) respectively, and inserting new subsections (16) and (17) as follows:

3 "(16) "Qualified Fuel Cell Provider" means an entity that

4 a. By no later than the commencement date of commercial operation of the full nameplate capacity of a fuel cell
5 project, manufactures fuel cells in Delaware that are capable of being powered by renewable fuels, and

6 b. prior to approval of required tariff provisions, is designated by the Director of the Delaware Economic
7 Development Office and the Secretary of DNREC as an economic development opportunity.

8 (17) "Qualified Fuel Cell Provider Project" means a fuel cell power generation project located in Delaware
9 owned and/or operated by a Qualified Fuel Cell Provider under a tariff approved by the Commission pursuant to § 364 (d)
10 of this title."

11 Section 2. Amend § 353, Title 26 of the Delaware Code by inserting new subsections (c) and (d) to read as
12 follows:

13 "(c) The Commission shall develop rules to transition the REC and SREC procurement responsibility set forth in
14 Section 354 (e) of this subchapter. The purpose of such rules shall be:

15 (1) to adequately protect electric suppliers that entered into contracts to provide RECs and SRECs to retail electric
16 customers prior to the transition of REC and SREC procurement responsibility under Section 354(e) of this subchapter,

17 (2) to adequately protect against overpayment of the cost of RPS obligations for customers of electric suppliers
18 who are parties to supply contracts that were entered into prior to the transition of REC and SREC procurement
19 responsibility under Section 354(e) of this subchapter, and

20 (3) to adequately protect Commission-regulated electric suppliers and customers thereof from having to incur
21 alternative compliance payments or other costs that would have been avoided but for the failure of an electric supplier to
22 continue retiring RECs or SRECs associated with its retail supply contracts existing at the time of the transition of REC and
23 SREC procurement responsibility under Section 354(e) of this subchapter. To the extent such protection involves a
24 temporary reduction to the RPS obligation or to the price of an alternative compliance payment required of a Commission-
25 regulated electric supplier made necessary by the failure described above, the Commission is authorized to make the
26 necessary temporary reductions notwithstanding the RPS obligations otherwise required by this chapter.

27 (d) The Commission shall develop procedures for tracking the generation output of Qualified Fuel Cell Provider
28 Projects such that energy produced by such projects shall fulfill the Commission-regulated electric company's State
29 mandated REC and SREC requirements set forth in Section 354 of this subchapter as follows:

30 (1) fulfillment of the equivalent of 1 REC for each megawatt-hour of energy produced by a Qualified Fuel Cell
31 Provider Project.

32 a. The Commission-regulated electric company can use energy output produced by a Qualified Fuel Cell Provider
33 Project to fulfill a portion of SREC requirements at a ratio of 6 MWH of RECs per 1 MWH of SRECs. The Commission-
34 regulated electric company may utilize a portion of energy output from a Qualified Fuel Cell Provider Project in any given
35 year to fulfill no more than 30% of the SREC requirements unless:

36 1. due to lack of SREC availability in the market, the alternative would be to incur Alternative Compliance
37 Payments, or

38 2. the SREC obligations set forth in Schedule I of Section 354 of this subchapter are increased, and then only to
39 the extent necessary to fulfill the increased SREC obligations.

40 b. The Secretary of DNREC may, after coordination with the Commission and a Commission-regulated electric
41 company, adjust the requirements of this section including permitting a Commission-regulated electric company
42 participating in a Commission-approved project to exceed the percentages set forth in this section.

43 c. The right of a Commission-regulated electric company to use energy output produced by a Qualified Fuel Cell
44 Provider Project to fulfill its REC and SREC requirements in accordance with this section shall not expire until actually
45 applied to fulfill such requirements.

46 (2) The Commission-regulated electric company has the ability to apply the REC and SREC equivalent fulfillment
47 benefits described in this Section for 20 MW in addition to the 30 MW set forth in § 364 of this title for future customer
48 sited applications of Qualified Fuel Cell Provider fuel cells. Separate tariff provisions must first be approved by the
49 Commission for such installations above the original 30 MW.”

50 Section 3. Amend § 354(a), Title 26 of the Delaware Code by striking the word "sold" as it appears in the first
51 sentence in said subsection, and inserting the word "delivered" in its place.

52 Section 4. Amend § 354(d), Title 26 of the Delaware Code by inserting the phrase "the Commission-regulated
53 electric companies and, where applicable," immediately before "retail electricity suppliers" in the second sentence in said
54 subsection, and inserting the phrase "with existing contractual electric supply obligations" immediately after "retail
55 electricity suppliers" in the second sentence in said subsection.

56 Section 5. Amend § 354, Title 26 of the Delaware Code by inserting a new subsection (e) to read as follows:

57 "(e) Beginning with compliance year 2012, Commission-regulated electric companies shall be responsible for
58 procuring RECs, SRECs and any other attributes needed to comply with subsection (a) of this section with respect to all
59 energy delivered to such companies' end use customers."

60 Section 6. Amend § 354(f), Title 26 of the Delaware Code by inserting the phrase "Commission-regulated electric
61 company" immediately before "retail electricity supplier" in the first sentence in said subsection, and inserting the phrase
62 "with existing contractual electric supply obligation" immediately after "retail electricity supplier" in the first sentence in
63 said subsection.

64 Section 7. Amend § 364, Title 26 of the Delaware Code by deleting the words "customers of" in the Section Title.

65 Section 8. Amend § 364, Title 26 of the Delaware Code by designating the existing paragraph as subsection (a)
66 and inserting new subsections (b) through (i) as follows:

67 "(b) All funds disbursed to a Qualified Fuel Cell Provider by a Commission-regulated electric company, including
68 incremental site preparation costs incurred by Qualified Fuel Cell Provider, shall be collected from the entire Delaware
69 customer base of such company through adjustable non-bypassable charges which shall be established by the Commission.
70 A Commission-regulated electric company participating in a Qualified Fuel Cell Provider Project shall collect and disburse
71 funds solely as the agent for the collection and disbursement of funds for the project and shall have no liability except to
72 comply with the tariff provisions to be established as set forth in subsection (d) of this section.

73 (c) All miscellaneous costs arising out of Qualified Fuel Cell Provider Projects incurred by a Commission-
74 regulated electric company, including, but not limited to, filing costs, administrative costs and incremental site preparation
75 costs, shall be distributed among the entire Delaware customer base of such company through adjustable non-bypassable
76 charges which shall be established by the Commission. Such costs shall be recovered unless, after Commission review, any
77 such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse
78 of discretion, or in violation of law.

79 (d) Before a Commission regulated electric company may collect any charges on behalf of a Qualified Fuel Cell
80 Provider Project that would entitle the Commission-regulated electric company to reduce its REC and SREC requirements
81 as provided for in § 353 (d) of this title, the Commission must adopt tariff provisions applicable to such project.

82 (1) Tariff provisions enabling and obligating Commission-regulated electric companies, acting in the role of an
83 agent for collection and disbursement, to collect charges on behalf of a Qualified Fuel Cell Provider Project shall be
84 proposed jointly by the electric company and the Qualified Fuel Cell Provider and shall, at a minimum, provide for the
85 following.

86 a. A project of 30 MW nominal nameplate, and future potential additions of up to an additional 20 MW nominal
87 nameplate, not to exceed a total of 50 MW nominal nameplate or 1,152 Megawatt Hours per day averaged on an annual
88 basis. The total allowable 50MW of nominal nameplate shall be reduced by any customer sited installations referred to in §
89 353 (d)(2) of this title or additional installations of Qualified Fuel Cell Provider fuel cells. Any additional MW beyond the
90 30MW project made pursuant to this Section and § 353 (d)(2) of this title must be reviewed and approved by the
91 Commission.

92 b. a term of service of at least 20 years from commercial operation of the completed Qualified Fuel Cell Provider
93 Project.

94 c. the cost to customers of the Commission-regulated electric company for each MWH of output produced by the
95 project which, on a levelized basis at the time of Commission approval, does not exceed the highest cost source for
96 combined energy, capacity and environmental attributes approved by the Commission for inclusion in the renewable
97 portfolio of the Commission-regulated electric company as of January 1, 2011.

98 d. adjustments to funds to be collected from customers and distributed to the Qualified Fuel Cell Provider that will
99 also compensate the Qualified Fuel Cell Provider for its costs of fuel to produce such output and that will reduce
100 compensation to the Qualified Fuel Cell Provider for any revenues received by the Qualified Fuel Cell Provider for such
101 output sold in the PJM or any successor market.

102 e. the requirement that the Qualified Fuel Cell Provider must sell all energy, capacity, and ancillary services,
103 produced by the project and any other output available or that becomes reasonably available to the Qualified Fuel Cell
104 Provider during the term of the project into the PJM or any PJM successor market. To the extent any additional output
105 produced by the project, including but not limited to any product or environmental attribute from the project becomes
106 available for sale in the PJM Market, PJM successor market, or a market other than PJM or a PJM successor market, the
107 Qualified Fuel Cell Provider and Commission-regulated electric company shall jointly propose additional provisions to the

108 tariff designed to reduce the cost of the Qualified Fuel Cell Provider Project to customers of the Commission-regulated
109 electric company.

110 f. the Commission-regulated electric company shall, on behalf of a Qualified Fuel Cell Provider Project, collect
111 from its customers, through a non-bypassable charge provided for in subsections (b) and (c) of this section, any positive
112 difference between the sum of (i) the price for each MWH of output produced by the project plus (ii) the cost of fuel to
113 produce such output plus (iii) any costs incurred by the Commission-regulated electric company arising out of the Qualified
114 Fuel Cell Provider Project minus the amount received by the Qualified Fuel Cell Provider for the market sale of its output,
115 and shall distribute such amount to the Qualified Fuel Cell Provider.

116 g. that the Commission-regulated electric company shall, on behalf of a Qualified Fuel Cell Provider Project,
117 distribute to its customers from the Qualified Fuel Cell Provider Project, through a distribution mechanism to be established
118 in a tariff, any positive difference between the amount received by the Qualified Fuel Cell Provider Project for the market
119 sale of its output minus the sum of (i) the price established for each MWH of output from the project plus (ii) the cost of
120 fuel to produce such output plus (iii) any costs incurred by the Commission-regulated electric company arising out of the
121 Qualified Fuel Cell Provider Project.

122 h. an average efficiency level that the fuel cells in a project must maintain.

123 i. a definition of the role of the Commission-regulated electric company solely as the agent of a Qualified Fuel
124 Cell Provider Project, for the collection of funds and disbursement of such collected funds to Qualified Fuel Cell Provider
125 and to its customers.

126 j. the mechanism through which the Commission-regulated electric company, on behalf of a Qualified Fuel Cell
127 Provider Project, shall collect from its customers, through a non-bypassable charge provided for in subsections (b) and (c)
128 of this section, any difference between the sum of (i) the price for each MWH of output produced by the project plus (ii) the
129 cost of fuel to produce such output plus (iii) any costs incurred by the Commission-regulated electric company arising out
130 of the Qualified Fuel Cell Provider Project minus the amount received by the Qualified Fuel Cell Provider for the market
131 sale of its output.

132 k. the mechanism through which the Commission-regulated electric company, on behalf of a Qualified Fuel Cell
133 Provider Project, shall distribute to its customers, through bill credits, any positive difference between the amount received
134 by the Qualified Fuel Cell Provider for the market sale of its output minus the sum of (i) the price established for each
135 MWH of output from the project plus (ii) the cost of fuel to produce such output plus (iii) any costs incurred by the
136 Commission-regulated electric company arising out of the Qualified Fuel Cell Provider Project.

137 l. a provision that protects a Qualified Fuel Cell Provider from any future changes to this subchapter that would
138 prevent a Qualified Fuel Cell Provider that provides service under approved tariff provisions from recovering all amounts
139 approved in such tariff. Such provision shall also include the obligation of the Commission-regulated electric company, in
140 the event of any such change to this subchapter, to collect from its customers amounts necessary to disburse, and to
141 disburse to the Qualified Fuel Cell Provider the full amount approved by the Commission in such pre-existing tariff for
142 each MWH of output produced by the Qualified Fuel Cell Provider Project.

143 m. In the event of an event of force majeure that prevents the Qualified Fuel Cell Provider from supplying output
144 from at least 80% of the capacity of the Qualified Fuel Cell Provider Project, or an interruption in fuel supply, in whole or
145 in part, to the project, a mechanism through which,

146 1. during the event of force majeure, the Commission-regulated electric company shall, on behalf of a Qualified
147 Fuel Cell Provider Project, collect from its customers and transfer to the Qualified Fuel Cell Provider, a maximum of 70%
148 of the price per MWH of output affected by the event of force majeure, and during an interruption in fuel supply, the
149 Commission-regulated electric company shall, on behalf of a Qualified Fuel Cell Provider Project, collect from its
150 customers and transfer to the Qualified Fuel Cell Provider 100% of the price per MWH of output affected by the
151 interruption.

152 2. during the event of force majeure or interruption in fuel supply, the Commission-regulated electric company
153 will continue to receive the full reduction in renewable portfolio standards that would have been provided by the output but
154 for the event of force majeure or interruption in fuel supply.

155 (2) All tariff filings must be approved or denied by the Commission in whole, as proposed, without alteration or
156 the imposition of any condition or conditions with respect thereto by the Commission. In determining whether to approve
157 or deny the Tariff, the Commission shall first ensure that the provisions of Section 364 (d) (1) a.-m. of this Title have been
158 satisfied. In addition, the Commission shall consider the incremental cost of the Qualified Fuel Cell Provider Project to
159 customers, applying at least the following factors:

160 a. Whether the Qualified Fuel Cell Provider Project utilizes innovative baseload technologies,

161 b. Whether the Qualified Fuel Cell Provider Project offers environmental benefits to the state relative to
162 conventional baseload generation technologies,

163 c. Whether the Qualified Fuel Cell Provider Project promotes economic development in the State, and

164 d. Whether the Tariff as filed promotes price stability over the project term.

165 (3) A Commission-regulated electric company and Qualified Fuel Cell Provider may jointly modify proposed
166 tariff provisions prior to any final ruling by the Commission.

167 (4) Notwithstanding Section 306 of Title 26 or any other provision of the Delaware Code to the contrary, any
168 changes in rates or charges necessary to collect funds for disbursements or costs addressed in subsection 364 (a)-(c) of this
169 section through adjustable non-bypassable charges shall become effective thirty (30) days after filing, absent a
170 determination of manifest error by the Public Service Commission. The Commission may allow changes in rates or
171 charges related to such adjustable non-bypassable charges to become effective less than thirty (30) days after filing under
172 such conditions as it may prescribe.

173 (5) Once approved by the Commission, such tariff provisions cannot be altered, nor may approval be repealed or
174 modified, without the agreement of both the Commission-regulated electric company and the Qualified Fuel Cell Provider
175 except that revisions to tariffs may be proposed by the Commission-regulated electric company alone where:

176 a. Such revisions have no adverse effect on the Qualified Fuel Cell Provider, and

177 b. Such revisions are for the purpose of complying with subsection (c) of this section.

178 (e) For purposes of this Subchapter, all fuel cell units of a Qualified Fuel Cell Provider in a fuel cell project under
179 tariff with a Commission-regulated electric company shall be considered to have been manufactured in Delaware as long
180 as:

181 (1) By no later than the second anniversary of commercial operation of the full nameplate capacity of a fuel cell
182 project, or December 31, 2016, whichever is earlier, either (i) at least 80% of the installed nameplate capacity shall have
183 been sourced from fuel cell units manufactured in a permanent manufacturing facility located in the State or (ii) no more
184 than ten megawatts of nameplate capacity from a fuel cell project shall be manufactured outside of the State, and

185 (2) Fuel cell manufacturer has executed an agreement with the Delaware Economic Development Office that a
186 termination payment shall be made by the fuel cell manufacturer in the event that it ceases manufacturing operations in the
187 State.

188 (f) Notwithstanding any other provision of the Delaware Code to the contrary, amounts due to the Qualified Fuel
189 Cell Provider and amounts collected by the Commission-regulated electric company on behalf a Qualified Fuel Cell
190 Provider as a result of a Qualified Fuel Cell Provider Project, and any other costs incurred by a Commission-regulated
191 electric company addressed in Sections 364 (a) through (c) of this title shall constitute revenue property when, and to the
192 extent that, a tariff authorizing the revenue charges have become effective in accordance with this section, and the revenue
193 property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this section
194 for the period and to the extent provided in the tariff, but in any event until the end of the term of service of the Qualified
195 Fuel Cell Provider Project.

196 (g) Notwithstanding any other provision of the Delaware Code to the contrary, any requirement under this section
197 or a tariff under this section requiring that the Commission take action with respect to the subject matter of a project under
198 this section shall be binding upon the Commission, as it may be constituted from time to time, and any successor agency
199 exercising functions similar to the Commission and the Commission shall have no authority to rescind, alter, or amend that
200 requirement in a subsequent order except as provided in this chapter.

201 (h) Notwithstanding any other provision of the Delaware Code to the contrary except as otherwise provided in this
202 chapter, with respect to revenue property, the tariffs with respect to disbursements and costs arising out of the Qualified
203 Fuel Cell Provider Project and recovery of costs addressed in Sections 364(a) through (c) of this title shall be irrevocable
204 and the Commission shall not have authority either by rescinding, altering, or amending the tariff provisions or otherwise,
205 to revalue or revise for ratemaking purposes the disbursements and costs arising out of the Qualified Fuel Cell Provider
206 Project, or the costs of recovering such costs, determine that the disbursements and costs of the Qualified Fuel Cell
207 Provider Project are unjust or unreasonable, or in any way reduce or impair the value of revenue property either directly or
208 indirectly by taking project revenue amounts, disbursements or costs arising out of the Qualified Fuel Cell Provider Project
209 into account when setting other rates for the Commission-regulated electric company; nor shall the disbursements, amount
210 of revenues or costs arising with respect thereto be subject to reduction, impairment, postponement, or termination. Except
211 as otherwise provided in this section, the State of Delaware does hereby pledge and agree with the owners of revenue
212 property and the Commission-regulated electric company as the agent for collecting and disbursement on behalf of a
213 Qualified Fuel Cell Provider Project and in collecting costs incurred by the electric company addressed in Sections 364(a)
214 through (c) of this title that the State shall neither limit nor alter the revenue property and all rights thereunder until the
215 obligations, are fully met and discharged, provided nothing contained in this section shall preclude the limitation or
216 alteration if and when adequate provision shall be made by law for the protection of the Qualified Fuel Cell Provider and
217 the Commission regulated electric company.

218 (i) Notwithstanding Section 201 of Title 26 or any other provision of the Delaware Code to the contrary, the courts
219 of this State shall have exclusive original jurisdiction over any dispute between a Qualified Fuel Cell Provider and a
220 Commission-regulated electric company involving the interpretation of the obligations between them as contained in
221 Commission approved tariffs required by Section 364 (d) of this subchapter."

222 Section 9. This Act shall be effective as of the date of its enactment.

SYNOPSIS

This Bill allows the energy output from fuel cells manufactured in Delaware that can run on renewable fuels to be an eligible resource to fulfill a portion of the requirements for a Commission-regulated utility under the Renewable Portfolio Standards Act. In addition, this Bill makes Delmarva Power & Light responsible for the RPS obligations of all its customers, and creates a process to assure that any supplier contracts in place are grandfathered through the transition.

Finally, this Bill creates a regulatory framework by which the Delaware Public Service Commission will review a Tariff to be filed by Delmarva deploying Delaware-manufactured fuel cells as part of a 30MW project. In determining whether to approve or deny the Tariff, the Commission shall among other factors, consider the incremental cost of the fuel cell project to customers, taking into consideration whether the project utilizes innovative baseload technologies, offers environmental benefits to the state relative to conventional baseload generation, enhances economic development in the State, and promotes price stability over the project term.

Author: Senator DeLuca