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HOUSE OF REPRESENTATIVES  
148th GENERAL ASSEMBLY

HOUSE BILL NO. 414

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

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

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

3 § 352 Definitions.

4 As used in this subchapter:

5 (3) "Compliance year" means the calendar year beginning with June 1 and ending with May 31 of the following  
6 year, for which:

7 a. a retail electricity supplier or municipal electric company must demonstrate that it has met the requirements of  
8 this subchapter:

9 b. the cost of retail electricity suppliers' compliance with this subchapter is determined for purposes of  
10 subsections 354(i) and (j) of this subchapter; and

11 c. the total retail costs of electricity for retail electricity suppliers is determined for purposes of subsections 354(i)  
12 and (j) of this subchapter.

13 (6) "Eligible energy resources" include the following energy sources located within or imported into the PJM  
14 region:

15 e. Electricity generated by a fuel cell powered by renewable fuels. This shall include all fuel cells powered by  
16 natural gas, and specifically includes all energy generated by a qualified fuel cell provider and/or a qualified fuel cell  
17 provider project as defined in this section, with all costs shown on Monthly Filings by a regulated utility as the "Monthly  
18 QFCP Project Charge" included.

19 (27) "Non-exempt customers" means the retail customers of an electric distribution company and of third-  
20 party suppliers that are included in total retail sales for determining compliance with this subchapter.

21           (28)    “Total retail cost of electricity” means the total retail electric supply costs paid by non-exempt customers  
22 of an electric distribution company, including those served by a retail electricity supplier, for a particular compliance year.

23           Section 2. Amend §354, Title 26, Delaware Code by making deletions as shown by strike through and insertions  
24 as shown by underline as follows:

25           §354 Renewable energy portfolio standards, eligible energy resources and industrial exemption.

26           (i)(1)    ~~The State Energy Coordinator in consultation with the Commission, may~~ shall freeze the minimum  
27 cumulative solar photovoltaics requirement for regulated public utilities if the ~~Delaware Energy Office~~ Commission  
28 determines that the total cost of complying with this requirement during a compliance year exceeds 1% of the total retail  
29 cost of electricity for retail electricity suppliers during the same compliance year. In the event of a freeze, the minimum  
30 cumulative percentage from solar photovoltaics shall remain at the percentage for the year in which the freeze is instituted.

31           (2)    The freeze shall be lifted upon a finding by the ~~Coordinator, in consultation with the~~ Commission, that  
32 the total cost of compliance can reasonably be expected to be under the 1% threshold. The calculation of the total cost of  
33 compliance shall include the costs associated with any ratepayer funded state solar rebate program, SREC purchases,  
34 purchases from qualified fuel cell providers and qualified fuel cell provider projects, and solar alternative compliance  
35 payments.

36           (3)    The cost of complying with the minimum cumulative solar photovoltaics requirement and the total retail  
37 costs of electricity shall not include costs associated with transmission or distribution of electricity, nor shall they include  
38 consideration of any factors other than those specifically identified in this subchapter.

39           (j)(1) The ~~State Energy Coordinator in consultation with the~~ Commission, ~~may~~ shall freeze the minimum  
40 cumulative eligible energy resources requirement for regulated public utilities if the ~~Delaware Energy Office~~ Commission  
41 determines that the total cost of complying with this requirement during a compliance year exceeds 3% of the total retail  
42 cost of electricity for retail electricity suppliers during the same compliance year. In the event of a freeze, the minimum  
43 cumulative percentage from eligible energy resources shall remain at the percentage for the year in which the freeze is  
44 instituted.

45           (2)    The freeze shall be lifted upon a finding by the ~~Coordinator, in consultation with the~~ Commission, that  
46 the total cost of compliance can reasonably be expected to be under the 3% threshold. The calculation of the total cost of  
47 compliance shall include the costs associated with any ratepayer funded state renewable energy rebate program, REC  
48 purchases, purchases from qualified fuel cell providers and qualified fuel cell provider projects, and alternative compliance  
49 payments.

50           (3) The cost of complying with the minimum cumulative eligible energy resources requirement and the total  
51 retail cost of electricity shall not include costs associated with transmission or distribution of electricity, nor shall they  
52 include consideration of any factors other than those specifically identified in this subchapter.

#### SYNOPSIS

This Bill is designed to clarify certain issues that have arisen in the administration of §354(i) and (j) of Delaware's Renewable Energy Portfolio Standards Act ("REPSA"), which were added to REPSA in 2010. The Bill resolves those issues and makes clear the intent of the Delaware General Assembly that purchases shall be frozen if the statutory thresholds are reached, and that any such freeze shall be lifted if the cost of the compliance with the REPSA can reasonably be expected to be under the statutory thresholds. The Bill also clarifies the items that the Commission is to consider in calculating the cost of complying with the REPSA and the total retail cost of electricity for purposes of determining whether a freeze is required.