

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 962 Session of
2003

INTRODUCED BY FERLO, KUKOVICH, COSTA, TARTAGLIONE AND MUSTO,
NOVEMBER 24, 2003

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
NOVEMBER 24, 2003

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, requiring the Pennsylvania Public
3 Utility Commission to establish a market-based clean energy
4 portfolio standard to apply to all retail electricity
5 products sold in this Commonwealth; requiring energy
6 suppliers to report to the commission on the compliance of
7 certain products with the clean energy portfolio standard and
8 the payment of a certain compliance fee under certain
9 circumstances; establishing a Clean Energy Fund for certain
10 purposes; authorizing the payment of certain grants from the
11 fund; providing for the creation and use of certain clean
12 energy credits; requiring the commission to establish a
13 certain clean energy trading system and to develop and
14 maintain a certain clearinghouse for certain purposes;
15 providing for the creation, uses, transfer and duration of
16 clean energy credits; requiring the commission to adopt
17 certain regulations; and further providing for definitions
18 and for energy regulation.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Section 2802 of Title 66 of the Pennsylvania
22 Consolidated Statutes is amended by adding paragraphs to read:

23 § 2802. Declaration of policy.

24 The General Assembly finds and declares as follows:

25 * * *

1 (22) A diverse energy supply will lower energy costs and
2 make this Commonwealth less dependent on power generation
3 sources that require nonrenewable fuels which are subject to
4 depletion, which increase in cost over time and which cause
5 this Commonwealth to be reliant on imports.

6 (23) The Commonwealth becomes more secure as we reduce
7 our reliance on centralized energy technologies.

8 (24) A market-based clean energy portfolio standard has
9 the potential to reduce natural gas costs by reducing demand
10 for peaking power from gas-fired generators.

11 (25) The cost of renewable energy technologies decreases
12 over time, as the cost of nonrenewable fuels like natural gas
13 is increasing and is subject to price fluctuation.

14 (26) Decreased reliance on combustion of fossil fuels
15 will improve the health of residents of this Commonwealth as
16 well as the local and global environment.

17 Section 2. Section 2803 of Title 66 is amended by adding
18 definitions to read:

19 § 2803. Definitions.

20 The following words and phrases when used in this chapter
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

23 * * *

24 "Clean energy credit" or "CEC." A credit equal to 100
25 kilowatt hours of retail electricity in this Commonwealth that
26 is derived from clean energy resources or through the use of a
27 generation offset technology.

28 "Clean energy portfolio standard." The percentage of the
29 electricity in each retail electricity product in this
30 Commonwealth that must be derived from a clean energy resource

1 under section 2806.1 (relating to clean energy portfolio
2 standard).

3 "Clean energy resource." Electricity produced through one of
4 the following sources:

5 (1) wind;

6 (2) solar;

7 (3) geothermal;

8 (4) ocean, including energy from waves, tides, currents
9 and thermal differences;

10 (5) combustion of methane from the anaerobic digestion
11 or organic materials from yard waste (grass clippings and
12 leaves) or food wastes;

13 (6) combustion of methane from the anaerobic digestion
14 of animal wastes, provided that the digester has a nameplate
15 capacity of no more than 150 kilowatts and that the animal
16 waste processed does not originate from a confined animal
17 feeding operation or an animal feeding operation established
18 after January 1, 2003;

19 (7) combustion of landfill gas which has been filtered
20 to remove halogenated contaminants and mercury and where
21 these contaminants are filtered into a solid medium not
22 destined for thermal treatment or incineration; or

23 (8) eligible fuel cells.

24 The term does not include nuclear energy, energy from combustion
25 of any solid fuel or energy produced from coal, natural gas,
26 coal-bed methane, oil, propane or any other fossil fuel or
27 fossil fuel waste product.

28 * * *

29 "Eligible fuel cells." Electricity produced from fuel cells
30 using hydrogen as a fuel. The hydrogen must be obtained from

1 water or from a microbial process which does not release
2 greenhouse gases. Any electricity or other energy source used to
3 obtain the hydrogen must be derived from a clean energy
4 resource. The term excludes hydrogen produced from nuclear
5 technologies or obtained from fossil fuels or any other carbon-
6 based fuel.

7 * * *

8 "Fund." The Clean Energy Fund established in section
9 2806.1(i) (relating to clean energy portfolio standard).

10 "Generation offset technology." Any clean energy resource
11 that reduces the demand for electricity at a site where a
12 customer consumes electricity. Examples include solar water
13 heating and geothermal heat pumps.

14 "Net energy metering customer." A retail electric customer
15 that owns and operates a solar or wind electrical generating
16 facility that is located on the customer's premises and is
17 intended primarily to offset all or part of the customer's own
18 electricity requirements.

19 "Net energy metering." The difference between the
20 electricity that is supplied to a net energy metering customer
21 and the electricity that is generated by that customer over an
22 annualized period as determined by a meter which is allowed to
23 run backwards.

24 * * *

25 "Retail electricity product." Electricity sold to a retail
26 electric customer. The term includes electricity generated by a
27 net energy metering customer, whether the electricity is used
28 onsite or is sold on the grid.

29 * * *

30 Section 3. Title 66 is amended by adding a section to read:

1 § 2806.1. Clean energy portfolio standard.

2 (a) General rule.--The commission shall establish a clean
3 energy portfolio standard that applies to all retail electricity
4 products sold in this Commonwealth by an energy supplier. The
5 clean energy portfolio standard applies to each individual
6 product offered by each retail electricity seller. For the
7 purposes of this section, the term "energy supplier" shall
8 include electric generation supplier and electric distribution
9 company.

10 (b) Schedule.--The clean energy portfolio standard shall be:

- 11 (1) 0.5% in 2006;
12 (2) 1% in 2007;
13 (3) 2% in 2008;
14 (4) 3% in 2009;
15 (5) 4% in 2010;
16 (6) 5% in 2011;
17 (7) 6% in 2012;
18 (8) 7% in 2013;
19 (9) 8% in 2014; and
20 (10) 9% in 2015.

21 The clean energy portfolio standard shall continue to increase
22 by 1% every year after 2015 until a date determined by the
23 Department of Environmental Protection. At no time shall the
24 minimum standard decrease below the percentage in effect at the
25 time a suspension is implemented. Following a suspension of the
26 annual increase, the Department of Environmental Protection, at
27 its discretion, may reinstate annual 1% increases. Any
28 suspension or reinstatement must be issued by January 1 of the
29 year prior to the year of suspension or reinstatement.

30 (c) Clean energy credits.--An energy supplier shall meet the

1 clean energy portfolio standard for a retail electricity product
2 in a given year by accumulating clean energy credits such that
3 the percentage that clean energy credits represent in relation
4 to the total sales of the retail electricity product for the
5 year equals or exceeds the minimum percentage required under
6 subsection (b) as follows:

7 (1) The commission shall establish a market-based clean
8 energy credits trading program as described in subsection
9 (e). Any energy supplier that does not satisfy the
10 requirements of this section by directly producing clean
11 energy credits shall purchase sufficient clean energy credits
12 to satisfy the requirements by holding clean energy credits
13 in lieu of capacity from clean energy resources.

14 (2) Not later than January 1, 2005, the commission shall
15 adopt rules necessary to administer and enforce this section.
16 At a minimum, the rules shall establish the minimum annual
17 clean energy requirement for each energy supplier operating
18 in this Commonwealth in a manner reasonably calculated by the
19 commission to produce compliance with the requirement
20 prescribed by subsection (b), on a retail electricity product
21 basis, energy supplier basis and a Statewide basis.

22 (3) An energy supplier may begin accumulating clean
23 energy credits under this section on or after January 1,
24 2005.

25 (4) On or before December 31, 2013, an energy supplier
26 shall receive triple credit toward meeting the clean energy
27 portfolio standard for energy derived from solar photovoltaic
28 or eligible fuel cells.

29 (5) Electricity may be used to produce clean energy
30 credits if it is generated from a clean energy resource at a

1 facility that did not produce electricity from a clean energy
2 resource before January 1, 2003. An increase in generating
3 capacity after January 1, 2003, from an existing facility
4 utilizing a clean energy resource shall be eligible for the
5 production of clean energy credits. Existing facilities
6 producing electricity from landfill gas may qualify to
7 produce clean energy credits if they install the necessary
8 filtering equipment to meet the definition of a clean energy
9 resource.

10 (6) No more than 25% of the clean energy credits used to
11 meet a product's clean energy portfolio standard may come
12 from the use of landfill gas.

13 (7) Electricity produced from clean energy resources may
14 not be used to produce clean energy credits if their
15 environmental attributes:

16 (i) have been used to satisfy another state's
17 renewable energy portfolio requirement;

18 (ii) have been used to satisfy a Federal renewable
19 energy portfolio requirement;

20 (iii) have been marketed at a premium as an
21 environmentally preferable energy product; or

22 (iv) have been or are in the process of being
23 recovered in the rate-base of a regulated utility in
24 another state.

25 (8) Retail customers which self-generate more than one
26 megawatt of their own electricity shall be considered an
27 energy supplier for the purposes of this section and
28 therefore shall comply with the clean energy portfolio
29 standard by purchasing the appropriate amount of clean energy
30 credits, if they are not already in compliance.

1 (9) Clean energy credits shall continue in existence and
2 may not be diminished or extinguished except by the owner of
3 the facility from which the clean energy credit is derived.

4 (10) After a clean energy credit is created, the first
5 sale or transfer of the clean energy credit may be made only
6 by the owner of the facility from which the clean energy
7 credit is derived.

8 (11) A clean energy credit may not be created from a
9 source located in a state that restricts the sale or transfer
10 of clean energy credits into this Commonwealth.

11 (d) On-site generation.--An energy supplier may receive
12 clean energy credits by subsidizing all or part of the
13 acquisition or installation of one or more generation offset
14 technologies or other clean energy resource used by a net energy
15 metering customer in any residence of the customer that is
16 located in this Commonwealth, provided that this results in a
17 reduction in the retail electric customer's consumption of
18 electricity at that residence. For the purposes of this
19 subsection, an on-site clean energy resource used by a net
20 energy metering customer may include wind turbines smaller than
21 one megawatt or solar photovoltaic systems.

22 (1) In any such instance, the energy supplier may count
23 toward its compliance in each pertinent calendar year
24 specified in subsection (b) any reduction in the number of
25 kilowatt hours of electricity that it sells the retail
26 electric customer in that calendar year, compared to the
27 number of kilowatt hours it sold the customer in the calendar
28 year prior to installation.

29 (2) No more than 10% of the clean energy credits used to
30 meet a product's clean energy portfolio standard may come

1 from the use of generation offset technologies.

2 (e) Clean energy credits trading program.--The commission
3 shall establish a market-based clean energy credits trading
4 program, which facilitates the creation and transfer of clean
5 energy credits among energy suppliers.

6 (1) As part of the market-based clean electricity
7 trading system, the commission shall develop and maintain a
8 clearinghouse for clean energy credits transactions among
9 energy suppliers.

10 (2) The system may rely, in part, on the Generation
11 Attributes Tracking System or any similar tradable
12 certificates system developed by the Pennsylvania-Jersey-
13 Maryland (PJM) system for reporting, compliance and
14 verification of environmental attributes of electric
15 generation. Only certificates with environmental attributes
16 meeting the definition of a clean energy resource may be used
17 in the clean energy credits trading program.

18 (3) The system shall protect against double-counting of
19 attribute sales such as those described in subsection (c)(7).

20 (4) Energy sources outside of PJM may be used only if an
21 equivalent system exists to track and verify the sale of
22 environmental attributes of clean energy resources. Such
23 systems must protect against double-counting and must have
24 reciprocity with the PJM system.

25 (5) The clearinghouse shall register clean energy
26 credits transactions among energy suppliers, including
27 information about the source of the clean energy credits sold
28 or transferred, and the price paid for clean energy credits.

29 (6) The clearinghouse shall provide current information
30 on the status of clean energy credits generated or applied in

1 this Commonwealth to owners and the public by computer
2 network access through the Internet and by any other
3 appropriate means.

4 (7) The commission shall use the clearinghouse to
5 maintain records of transactions involving the creation and
6 application of clean energy credits in this Commonwealth.

7 (f) Rate recovery.--The commission shall monitor the cost of
8 providing peaking power from oil and natural gas, comparing the
9 cost of this power to the first year prior to the introduction
10 of the clean energy portfolio standard. If the costs of
11 compliance for an energy supplier in any given year exceed any
12 savings from reduced peak power prices, the energy supplier may
13 recover these additional costs in the rate base, if deemed just
14 and reasonable by the commission. Penalty fees may not be
15 recovered through the rate base or any other cost-recovery
16 mechanism.

17 (g) Reporting requirements.--Each energy supplier shall
18 submit to the commission an annual report after the end of each
19 calendar year and within the time prescribed by the commission.
20 The report must be submitted in a format approved by the
21 commission.

22 (1) The commission may adopt regulations that require
23 providers to submit to the commission additional reports
24 during each calendar year.

25 (2) The annual report must demonstrate that each of the
26 retail electricity products of the energy supplier complied
27 with the clean energy portfolio standard during the preceding
28 year by submitting the required amount of clean energy
29 credits or:

30 (i) identifying each retail electricity product that

1 did not comply with the clean energy portfolio standard
2 during the preceding year;

3 (ii) demonstrating the amount by which each
4 noncomplying product failed to meet the standard; and

5 (iii) demonstrating the compliance of the other
6 retail electricity products of the energy supplier.

7 (3) Each annual report and each additional report must
8 include clear and concise information that sets forth:

9 (i) the number of clean energy credits generated or
10 acquired during the reporting period;

11 (ii) an overview of where the credits were obtained,
12 including facility name, fuel type, location and the
13 amount of credits used from each source; and

14 (iii) any other information that the commission by
15 regulation may deem relevant.

16 (h) Compliance fee.--If a retail electricity product
17 contains fewer kilowatt hours from clean energy resources than
18 are required to comply with the clean energy portfolio standard
19 for that year, the energy supplier shall pay into the Clean
20 Energy Fund a compliance fee of 5¢ for each kilowatt hour of
21 shortfall.

22 (i) Clean Energy Fund.--The Clean Energy Fund is established
23 as a separate fund in the State Treasury. The commission shall
24 use the fund for the following purposes:

25 (1) To make grants to municipal and county governments
26 and public school districts in this Commonwealth for the
27 installation of solar photovoltaic systems.

28 (2) To administer this section.

29 Section 4. This act shall take effect in 60 days.