

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 716 Session of  
2007

INTRODUCED BY MUSTO, FUMO, BOSCOLA, WASHINGTON, C. WILLIAMS,  
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APRIL 2, 2007

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
APRIL 2, 2007

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania  
2 Consolidated Statutes, further providing for the definition  
3 of "public utility"; adding a definition of "micro-grid";  
4 further providing for duties of electric distribution  
5 companies; and providing for micro-grids.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. The definition of "public utility" in section 102  
9 of Title 66 of the Pennsylvania Consolidated Statutes is amended  
10 to read:

11 § 102. Definitions.

12 Subject to additional definitions contained in subsequent  
13 provisions of this part which are applicable to specific  
14 provisions of this part, the following words and phrases when  
15 used in this part shall have, unless the context clearly  
16 indicates otherwise, the meanings given to them in this section:

17 \* \* \*

18 "Public utility."

1           (1) Any person or [corporations] corporation now or  
2           hereafter owning or operating in this Commonwealth equipment  
3           or facilities for:

4               (i) Producing, generating, transmitting,  
5               distributing or furnishing natural or artificial gas,  
6               electricity, or steam for the production of light, heat,  
7               or power to or for the public for compensation.

8               (ii) Diverting, developing, pumping, impounding,  
9               distributing, or furnishing water to or for the public  
10              for compensation.

11              (iii) Transporting passengers or property as a  
12              common carrier.

13              (iv) Use as a canal, turnpike, tunnel, bridge,  
14              wharf, and the like for the public for compensation.

15              (v) Transporting or conveying natural or artificial  
16              gas, crude oil, gasoline, or petroleum products,  
17              materials for refrigeration, or oxygen or nitrogen, or  
18              other fluid substance, by pipeline or conduit, for the  
19              public for compensation.

20              (vi) Conveying or transmitting messages or  
21              communications, except as set forth in paragraph (2)(iv),  
22              by telephone or telegraph or domestic public land mobile  
23              radio service including, but not limited to, point-to-  
24              point microwave radio service for the public for  
25              compensation.

26              (vii) Sewage collection, treatment, or disposal for  
27              the public for compensation.

28              (viii) Providing limousine service in a county of  
29              the second class pursuant to Subchapter B of Chapter 11  
30              (relating to limousine service in counties of the second

1 class).

2 (2) The term does not include:

3 (i) Any person or corporation, not otherwise a  
4 public utility, who or which furnishes service only to  
5 himself or itself.

6 (ii) Any bona fide cooperative association which  
7 furnishes service only to its stockholders or members on  
8 a nonprofit basis.

9 (iii) Any producer of natural gas not engaged in  
10 distributing such gas directly to the public for  
11 compensation.

12 (iv) Any person or corporation, not otherwise a  
13 public utility, who or which furnishes mobile domestic  
14 cellular radio telecommunications service.

15 (v) Any building or facility owner/operators who  
16 hold ownership over and manage the internal distribution  
17 system serving such building or facility and who supply  
18 electric power and other related electric power services  
19 to occupants of the building or facility.

20 (vi) Electric generation supplier companies, except  
21 for the limited purposes as described in sections 2809  
22 (relating to requirements for electric generation  
23 suppliers) and 2810 (relating to revenue-neutral  
24 reconciliation).

25 (vii) Any person or corporation who or which  
26 furnishes natural gas produced from alternative sources,  
27 including, but not limited to, landfill gas, coal-mine  
28 methane or coal-bed methane and synthetic natural gas  
29 produced from the gasification of coal or other  
30 feedstocks directly to no more than four customers. A

1 person or corporation who or which wishes to furnish  
2 natural gas produced from alternative sources to more  
3 than four customers and be excluded from this definition  
4 must request approval from the commission. The commission  
5 shall approve the request if the person or corporation  
6 provides a private rather than a public service.

7 (viii) Micro-grids, as that term is defined by  
8 section 2803 (relating to definitions).

9 (3) For the purposes of sections 2702 (relating to  
10 construction, relocation, suspension and abolition of  
11 crossings), 2703 (relating to ejectment in crossing cases)  
12 and 2704 (relating to compensation for damages occasioned by  
13 construction, relocation or abolition of crossings) and those  
14 portions of sections 1501 (relating to character of service  
15 and facilities), 1505 (relating to proper service and  
16 facilities established on complaint; authority to order  
17 conservation and load management programs) and 1508 (relating  
18 to reports of accidents), as those sections or portions  
19 thereof relate to safety only, a municipal authority or  
20 transportation authority organized under the laws of this  
21 Commonwealth shall be considered a public utility when it  
22 owns or operates, for the carriage of passengers or goods by  
23 rail, a line of railroad composed of lines formerly owned or  
24 operated by the Pennsylvania Railroad, the Penn-Central  
25 Transportation Company, the Reading Company or the  
26 Consolidated Rail Corporation.

27 \* \* \*

28 Section 2. Section 2803 of Title 66 is amended by adding a  
29 definition to read:

30 § 2803. Definitions.

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

4 \* \* \*

5 "Micro-grid." A small power generation and distribution  
6 network directly serving multiple consumers with the electric  
7 generating facility located near or on the same site as the  
8 consumers, that may be interconnected to the transmission and  
9 distribution system and, if so, operates independently from it.

10 \* \* \*

11 Section 3. Section 2807(e) of Title 66 is amended and the  
12 section is amended by adding a subsection to read:

13 § 2807. Duties of electric distribution companies.

14 \* \* \*

15 (e) Obligation to serve.--An electric distribution company's  
16 obligation to provide electric service following implementation  
17 of restructuring and the choice of alternative generation by a  
18 customer is revised as follows:

19 (1) While an electric distribution company collects  
20 either a competitive transition charge or an intangible  
21 transition charge or until 100% of its customers have choice,  
22 whichever is longer, the electric distribution company shall  
23 continue to have the full obligation to serve, including the  
24 connection of customers, the delivery of electric energy and  
25 the production or acquisition of electric energy for  
26 customers.

27 (2) At the end of the transition period, the commission  
28 shall promulgate regulations to define the electric  
29 distribution company's obligation to connect and deliver and  
30 acquire electricity under paragraph (3) that will exist at

1 the end of the phase-in period.

2 (3) [If a customer contracts for electric energy and it  
3 is not delivered or if a customer does not choose an  
4 alternative electric generation supplier, the]

5 (i) The electric distribution company or commission-  
6 approved alternative supplier shall acquire [electric  
7 energy at prevailing market prices to serve that customer  
8 and shall recover fully all reasonable costs.] a  
9 portfolio of resources through one or more competitive  
10 procurement processes approved by the commission to serve  
11 customers who contract for electric energy and do not  
12 receive it or to customers who do not choose an  
13 alternative electric generation supplier, and shall  
14 recover fully all reasonable costs. The competitive  
15 procurement process or processes to secure electricity  
16 shall be conducted by customer rate class as determined  
17 and approved by the commission. The generation rates  
18 procured by the competitive procurement process or  
19 processes may not allow the cross-subsidization of one  
20 customer rate class by another.

21 (ii) In addition to complying with the requirements  
22 of the act of November 30, 2004 (P.L.1672, No.213), known  
23 as the Alternative Energy Portfolio Standards Act, the  
24 resource portfolio acquired pursuant to this paragraph  
25 shall be designed to produce the lowest reasonable rates  
26 on a long-term basis and shall reflect a diversity of  
27 supply-side and demand-side resources, a diversity of  
28 fuel types and a prudent mix of long-term, short-term and  
29 spot-market purchases. A long-term contract shall be  
30 permitted only for newly constructed or proposed to be

1 constructed alternative energy sources, as that term is  
2 defined in section 2 of the Alternative Energy Portfolio  
3 Standards Act, and new generation resources determined by  
4 the commission to be required for reliability as set  
5 forth in subparagraph (v).

6 (iii) An electric distribution company or  
7 commission-approved alternative supplier may enter into a  
8 long-term contract directly with a Tier I alternative  
9 energy source, as that term is defined in section 2 of  
10 the Alternative Energy Portfolio Standards Act, for  
11 electricity, alternative energy credits, or both, without  
12 engaging in a commission-approved competitive procurement  
13 process. The costs associated with the contract must be  
14 consistent with the average cost of Tier I alternative  
15 energy credits in other jurisdictions of the PJM  
16 Interconnection, L.L.C., regional transmission  
17 organization or its successor, accounting for the effect  
18 that public subsidies have on the price of the  
19 alternative energy credit. The commission shall determine  
20 when there is significant competition among Tier I  
21 alternative energy sources that the acts authorized by  
22 this subpart are no longer necessary.

23 (iv) An electric distribution company or commission-  
24 approved alternative supplier shall enter into a contract  
25 with energy efficiency and other demand-side resources,  
26 instead of electric generation facilities, to meet any  
27 increases in energy usage and peak demand so long as the  
28 cost of energy efficiency and demand-side resources is  
29 less than the cost of electric generation. To the extent  
30 that electric generation is necessary to meet additional

1 load growth, the electric distribution company or  
2 commission-approved alternative supplier shall make a  
3 good faith effort to procure electricity from alternative  
4 energy sources specified in the Alternative Energy  
5 Portfolio Standards Act.

6 (v) An electric distribution company or commission-  
7 approved alternative supplier may enter into a contract  
8 approved by the commission to enable the construction of  
9 new electric generation resources upon a determination by  
10 the commission that new electric generation resources are  
11 required to ensure reliability. The commission shall  
12 ensure that a contract for new electric generation  
13 resources are the lowest cost option for ensuring  
14 reliability.

15 (vi) The portfolio of resources acquired pursuant to  
16 this subsection shall be acquired separately for  
17 residential customers, small business customers and large  
18 customers as those customer classes are defined by the  
19 commission for each electric distribution company or  
20 commission-approved alternative supplier.

21 (vii) For the purposes of this paragraph "long-term  
22 contract" shall be defined as a contract length of more  
23 than three years. "Short-term contract" shall be defined  
24 as a contract length of three years or less.

25 (4) If a customer that chooses an alternative supplier  
26 and subsequently desires to return to the local distribution  
27 company for generation service, the local distribution  
28 company shall treat that customer exactly as it would any new  
29 applicant for energy service.

30 (5) No later than January 1, 2011, an electric



1 distribution company or commission-approved alternative  
2 supplier shall provide a rate that shall change no more  
3 frequently than on an annual basis as the default option for  
4 residential and small business customers.

5 (6) One year from the effective date of this paragraph  
6 or at the end of the applicable generation rate cap period,  
7 whichever is later, an electric distribution company and  
8 commission-approved alternative supplier shall offer a time-  
9 of-use pilot rate to residential and small business customers  
10 voluntarily choosing to be part of the pilot program. An  
11 electric distribution and commission-approved alternative  
12 supplier shall provide to the commission a description of its  
13 time-of-use pilot rate program and shall annually report on  
14 the participation in the pilot program and the efficacy of  
15 the pilot program in affecting energy demand and consumption.

16 (7) Within six years of the effective date of this  
17 paragraph, an electric distribution company shall furnish its  
18 customers with technology capable of allowing all customers  
19 to participate in pricing programs that reflect time of use.  
20 The electric distribution company may recover the net costs  
21 associated with technology required to implement time-of-use  
22 rates. Cost recovery shall reflect the operating cost savings  
23 to the electric distribution company from the introduction of  
24 technology to implement time-of-use rates. Customer  
25 participation in time-of-use pricing shall be voluntary.

26 (8) By January 1, 2011, or at an electric distribution  
27 company or commission-approved alternative supplier's next  
28 default service offering, whichever is sooner, the electric  
29 distribution company or commission-approved alternative  
30 supplier may offer large customers any rate including, but

1 not limited to, a cost-based rate for any duration agreed  
2 upon by the electric distribution company or commission-  
3 approved alternative supplier and the large customer.  
4 Contract rates entered into pursuant to this paragraph shall  
5 be subject to review by the commission in order to ensure  
6 that no costs related to the rates are borne by other  
7 customers or customer classes.

8 (9) The commission shall require an electric  
9 distribution company to offer customers the choice of  
10 phasing-in over a period of up to three years any generation  
11 rate increases resulting from the end of existing generation  
12 rate caps which are approved by the commission.

13 (f) Retail electricity surcharge.--

14 (1) Each electric distribution company shall apply and  
15 collect a charge of \$0.0005 per kWh for each kWh of retail  
16 electricity sold in this Commonwealth and shall pay that  
17 charge to the State Treasurer through the Department of  
18 Revenue on a quarterly basis within 30 days after the close  
19 of the quarter in which collected.

20 (2) Notwithstanding the provisions in paragraph (1), in  
21 no event shall the annual payment from any single customer  
22 exceed \$10,000.

23 (3) The State Treasurer shall transfer all funds  
24 received pursuant to this subsection to the Energy  
25 Development Fund within 30 days of receipt of the funds.

26 (4) The charge shall appear as a separate charge on the  
27 distribution bill of each retail electricity customer. The  
28 charge shall be applied beginning 90 days after the effective  
29 date of this subsection and shall expire on the 30th  
30 anniversary of the date it was first applied.

1       (5) Funds collected under this subsection shall be used  
2       by the Pennsylvania Energy Development Authority,  
3       Redevelopment Capital Assistance Program and the Ben Franklin  
4       Technology Development Authority for the following purposes:

5               (i) To fulfill the obligations of a bond for  
6               alternative energy projects, including:

7                       (A) Funding for alternative and renewable energy  
8                       projects, including alternative and renewable  
9                       transportation fuels.

10                      (B) Funding for the purchase of tradable  
11                      instruments, including, but not limited to,  
12                      alternative and renewable energy credits.

13                      (C) Funding for demand-side management measures  
14                      for all customer classes, including, but not limited  
15                      to, energy efficiency building construction,  
16                      equipment and renovation.

17                      (D) Rebates or grants for solar photovoltaic,  
18                      other solar electric or solar thermal installations.

19                      (E) Production grants or rebates to solar  
20                      equipment manufacturers.

21                      (F) Funding for weatherization and other usage  
22                      reduction measures for low-income electricity and  
23                      natural gas customers.

24                      (G) To acquire, through purchase or otherwise,  
25                      hold, sell, transfer and redistribute electric power,  
26                      natural gas, liquid fuel, transportation fuel and any  
27                      other energy commodity.

28       (2) Reasonable administrative costs associated with  
29       utilizing the funds.

30       Section 4. Title 66 is amended by adding a section to read:

1 § 2813. Micro-grids.

2 Customers may have their electricity supplied by micro-grids  
3 subject to the following:

4 (1) A micro-grid shall be limited to four customers.  
5 Micro-grids seeking to supply electricity to more than four  
6 customers may be approved by the commission on a case-by-case  
7 basis. The commission shall approve such requests if the  
8 micro-grid, while serving more than four customers, provides  
9 a private rather than a public service.

10 (2) The commission shall promulgate regulations on the  
11 fees related to micro-grid interconnection, standby power and  
12 other services related to the reliable and safe functioning  
13 of micro-grids. Fees associated with this section shall be  
14 the lowest cost necessary to ensure adequate system  
15 reliability and safety.

16 (3) Micro-grids may sell power back to the electric  
17 transmission and distribution system at the spot or hourly  
18 wholesale price of electricity at the nearest appropriate  
19 node that is part of the regional transmission organization.

20 Section 5. This act shall take effect immediately.