

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1350 Session of
2012

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AND BROWNE, AUGUST 14, 2012

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
AUGUST 14, 2012

AN ACT

1 Amending the act of November 30, 2004 (P.L.1672, No.213),
2 entitled, "An act providing for the sale of electric energy
3 generated from renewable and environmentally beneficial
4 sources, for the acquisition of electric energy generated
5 from renewable and environmentally beneficial sources by
6 electric distribution and supply companies and for the powers
7 and duties of the Pennsylvania Public Utility Commission,"
8 further providing for definitions and for alternative energy
9 portfolio standards; and providing for sale and installation
10 of customer-generator alternative energy systems.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. The definitions of "alternative energy credit,"

14 "alternative energy sources," "alternative energy system,"

15 "force majeure" and "Tier 1 alternative energy source" in

16 section 2 of the act of November 30, 2004 (P.L.1672, No.213),

17 known as the Alternative Energy Portfolio Standards Act, amended

18 July 17, 2007 (P.L.114, No.35), are amended and the section is

19 amended by adding a definition to read:

20 Section 2. Definitions.

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

4 "Alternative energy credit." A tradable instrument that is
5 used to establish, verify and monitor compliance with this act.
6 A unit of credit shall equal one megawatt hour of electricity or
7 3,413,000 British thermal units (3,413 MMBtu) of solar thermal
8 energy from an alternative energy source. The alternative energy
9 credit shall remain the property of the alternative energy
10 system until the alternative energy credit is voluntarily
11 transferred by the alternative energy system.

12 * * *

13 "Alternative energy sources." The term shall include the
14 following existing and new sources for the production of
15 electricity:

16 (1) Solar photovoltaic or other solar electric energy.

17 (2) Solar thermal energy[.] which shall mean solar
18 equipment that generates energy that is equivalent to the
19 generation of electricity and is eligible for solar renewable
20 energy credits by using solar radiation for the purpose of
21 heating, and shall exclude systems used for a hot tub or
22 swimming pool.

23 (3) Wind power.

24 (4) Large-scale hydropower, which shall mean the
25 production of electric power by harnessing the hydroelectric
26 potential of moving water impoundments, including pumped
27 storage that does not meet the requirements of low-impact
28 hydropower under paragraph (5).

29 (5) Low-impact hydropower consisting of any technology
30 that produces electric power and that harnesses the

1 hydroelectric potential of moving water impoundments,
2 provided such incremental hydroelectric development:

3 (i) does not adversely change existing impacts to
4 aquatic systems;

5 (ii) meets the certification standards established
6 by the Low Impact Hydropower Institute and American
7 Rivers, Inc., or their successors;

8 (iii) provides an adequate water flow for protection
9 of aquatic life and for safe and effective fish passage;

10 (iv) protects against erosion; and

11 (v) protects cultural and historic resources.

12 (6) Geothermal energy, which shall mean electricity
13 produced by extracting hot water or steam from geothermal
14 reserves in the earth's crust and supplied to steam turbines
15 that drive generators to produce electricity.

16 (7) Biomass energy, which shall mean the generation of
17 electricity utilizing the following:

18 (i) organic material from a plant that is grown for
19 the purpose of being used to produce electricity or is
20 protected by the Federal Conservation Reserve Program
21 (CRP) and provided further that crop production on CRP
22 lands does not prevent achievement of the water quality
23 protection, soil erosion prevention or wildlife
24 enhancement purposes for which the land was primarily set
25 aside; or

26 (ii) any solid nonhazardous, cellulosic waste
27 material that is segregated from other waste materials,
28 such as waste pallets, crates and landscape or right-of-
29 way tree trimmings or agricultural sources, including
30 orchard tree crops, vineyards, grain, legumes, sugar and

1 other crop by-products or residues.

2 (8) Biologically derived methane gas, which shall
3 include methane from the anaerobic digestion of organic
4 materials from yard waste, such as grass clippings and
5 leaves, food waste, animal waste and sewage sludge. The term
6 also includes landfill methane gas.

7 (9) Fuel cells, which shall mean any electrochemical
8 device that converts chemical energy in a hydrogen-rich fuel
9 directly into electricity, heat and water without combustion.

10 (10) Waste coal, which shall include the combustion of
11 waste coal in facilities in which the waste coal was disposed
12 or abandoned prior to July 31, 1982, or disposed of
13 thereafter in a permitted coal refuse disposal site
14 regardless of when disposed of, and used to generate
15 electricity, or such other waste coal combustion meeting
16 alternate eligibility requirements established by regulation.
17 Facilities combusting waste coal shall use at a minimum a
18 combined fluidized bed boiler and be outfitted with a
19 limestone injection system and a fabric filter particulate
20 removal system. Alternative energy credits shall be
21 calculated based upon the proportion of waste coal utilized
22 to produce electricity at the facility.

23 (11) Coal mine methane, which shall mean methane gas
24 emitting from abandoned or working coal mines.

25 (12) Demand-side management consisting of the management
26 of customer consumption of electricity or the demand for
27 electricity through the implementation of:

28 (i) energy efficiency technologies, management
29 practices or other strategies in residential, commercial,
30 institutional or government customers that reduce

electricity consumption by those customers;

(ii) load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand; or

(iii) industrial by-product technologies consisting of the use of a by-product from an industrial process, including the reuse of energy from exhaust gases or other manufacturing by-products that are used in the direct production of electricity at the facility of a customer.

(13) Distributed generation system, which shall mean the small-scale power generation of electricity and useful thermal energy.

"Alternative energy system." A facility or energy system that:

(1) uses a form of alternative energy source to generate electricity and delivers the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization[.]; or

(2) qualifies as a solar thermal energy system.

* * *

"Force majeure." Upon its own initiative or upon a request of an electric distribution company or an electric generator supplier, the Pennsylvania Public Utility Commission, within 60 days, shall determine if alternative energy resources are reasonably available in the marketplace in sufficient quantities for the electric distribution companies and electric generation suppliers to meet their obligations for that reporting period

1 under this act. The commission shall declare a force majeure for
2 any reporting period if the commission determines that the price
3 of available alternative energy credits exceeds the cost of the
4 alternative energy compliance payments established under this
5 act. In making this determination, the commission shall consider
6 whether electric distribution companies or electric generation
7 suppliers have made a good faith effort to acquire sufficient
8 alternative energy to comply with their obligations. Such good
9 faith efforts shall include, but are not limited to, banking
10 alternative energy credits during their transition periods,
11 seeking alternative energy credits through competitive
12 solicitations and seeking to procure alternative energy credits
13 or alternative energy through long-term contracts. In further
14 making its determination, the commission shall assess the
15 availability of alternative energy credits in the Generation
16 Attributes Tracking System (GATS) or its successor and the
17 availability of alternative energy credits generally in
18 Pennsylvania and other jurisdictions in the PJM Interconnection,
19 L.L.C. regional transmission organization (PJM) or its
20 successor. The commission may also require solicitations for
21 alternative energy credits as part of default service before
22 requests of force majeure can be made. If the commission further
23 determines that alternative energy resources are not reasonably
24 available in sufficient quantities in the marketplace for the
25 electric distribution companies and electric generation
26 suppliers to meet their obligations under this act, then the
27 commission shall modify the underlying obligation of the
28 electric distribution company or electric generation supplier or
29 recommend to the General Assembly that the underlying obligation
30 be eliminated. Commission modification of the electric

1 distribution company or electric generation supplier obligations
2 under this act shall be for that compliance period only.
3 Commission modification shall not automatically reduce the
4 obligation for subsequent compliance years. If the commission
5 modifies the electric distribution company or electric
6 generation supplier obligations under this act, the commission
7 may require the electric distribution company or electric
8 generation supplier to acquire additional alternative energy
9 credits in subsequent years equivalent to the obligation reduced
10 due to a force majeure declaration if the commission determines
11 that sufficient alternative energy credits exist in the
12 marketplace.

13 * * *

14 "Solar technology." The term includes solar photovoltaic and
15 solar thermal energy technology.

16 "Tier I alternative energy source." Energy derived from:

- 17 (1) Solar photovoltaic [and solar thermal] energy.
- 18 (2) Wind power.
- 19 (3) Low-impact hydropower.
- 20 (4) Geothermal energy.
- 21 (5) Biologically derived methane gas.
- 22 (6) Fuel cells.
- 23 (7) Biomass energy.
- 24 (8) Coal mine methane.
- 25 (9) Solar thermal energy.

26 * * *

27 Section 2. Section 3(b)(2), (e)(3), (4), (7) and (12), (f)
28 (4) and (g)(2) of the act, amended or added July 17, 2007
29 (P.L.114, No.35), are amended and subsection (f) is amended by
30 adding a paragraph to read:

1 Section 3. Alternative energy portfolio standards.

2 * * *

3 (b) Tier I and solar photovoltaic solar technology shares.--

4 * * *

5 (2) The total percentage of the electric energy sold by
6 an electric distribution company or electric generation
7 supplier to retail electric customers in this Commonwealth
8 that must be sold from solar photovoltaic technologies is:

9 (i) 0.0013% for June 1, 2006, through May 31, 2007.

10 (ii) 0.0030% for June 1, 2007, through May 31, 2008.

11 (iii) 0.0063% for June 1, 2008, through May 31,
12 2009.

13 (iv) 0.0120% for June 1, 2009, through May 31, 2010.

14 (v) 0.0203% for June 1, 2010, through May 31, 2011.

15 (vi) 0.0325% for June 1, 2011, through May 31, 2012.

16 (vii) [0.0510%] 0.1500% for June 1, 2012, through
17 May 31, 2013.

18 (viii) [0.0840%] 0.1700% for June 1, 2013, through
19 May 31, 2014.

20 (ix) [0.1440%] 0.2041% for June 1, 2014, through May
21 31, 2015.

22 (x) 0.2500% for June 1, 2015, through May 31, 2016.

23 (xi) 0.2933% for June 1, 2016, through May 31, 2017.

24 (xii) 0.3400% for June 1, 2017, through May 31,
25 2018.

26 (xiii) 0.3900% for June 1, 2018, through May 31,
27 2019.

28 (xiv) [0.4433%] 0.4200% for June 1, 2019, through
29 May 31, 2020.

30 [(xv) 0.5000% for June 1, 2020, and thereafter.]

1 (xv) 0.4323% for June 1, 2020, through May 31, 2021.

2 (xvi) 0.4458% for June 1, 2021, through May 31,
3 2022.

4 (xvii) 0.4594% for June 1, 2022, through May 31,
5 2023.

6 (xviii) 0.4729% for June 1, 2023, through May 31,
7 2024.

8 (xix) 0.4865% for June 1, 2024, through May 31,
9 2025.

10 (xx) 0.5000% for June 1, 2025, and thereafter.

11 * * *

12 (e) Alternative energy credits.--

13 * * *

14 (3) All qualifying alternative energy systems must
15 include a qualifying meter to record the cumulative electric
16 or solar thermal energy production to verify the advanced
17 energy credit value. Qualifying meters will be approved by
18 the commission as defined in paragraph (4).

19 (4) (i) An electric distribution company or electric
20 generation supplier shall comply with the applicable
21 requirements of this section by purchasing sufficient
22 alternative energy credits and submitting documentation of
23 compliance to the program administrator.

24 (ii) For purposes of this subsection, one
25 alternative energy credit shall represent one megawatt
26 hour of qualified alternative electric or 3,413,000
27 British thermal units (3,413 MMBtu) of solar thermal
28 energy generation, whether self-generated, purchased
29 along with the electric commodity or separately through a
30 tradable instrument and otherwise meeting the

requirements of commission regulations and the program administrator.

* * *

(7) An electric distribution company or an electric generation supplier with sales that are exempted under subsection (d) may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost-recovery period and after the effective date of this act. Bankable credits shall be limited to credits associated with electricity or solar thermal energy sold from Tier I and Tier II sources during a reporting year which exceeds the volume of sales from such sources by an electric distribution company or electric generation supplier during the 12-month period immediately preceding the effective date of this act. All credits banked under this subsection shall be available for compliance with subsections (b) and (c) for no more than two reporting years following the conclusion of the cost-recovery period.

* * *

(12) Unless a contractual provision explicitly assigns alternative energy credits in a different manner, the owner of the alternative energy system or a customer-generator owns any and all alternative energy credits associated with or created by the production of electric or solar thermal energy by such facility or customer, and the owner or customer shall be entitled to sell, transfer or take any other action to which a legal owner of property is entitled to take with respect to the credits.

(f) Alternative compliance payment.--

* * *

1 (4) [The] Except as otherwise provided in paragraph
2 (4.1), the alternative compliance payment for the solar
3 photovoltaic share shall be 200% of the average market value
4 of solar renewable energy credits sold during the reporting
5 period within the service region of the regional transmission
6 organization, including, where applicable, the levelized up-
7 front rebates received by sellers of solar renewable energy
8 credits in other jurisdictions in the PJM Interconnection,
9 L.L.C. transmission organization (PJM) or its successor.

10 (4.1) (i) The alternative compliance payment for the
11 solar technology share for the 2012-2013 through 2018-2019
12 reporting periods shall be \$285. Thereafter, the amount of
13 the alternative compliance payment for the solar technology
14 share shall be reduced by two percent during each subsequent
15 reporting period and the commission shall publish the reduced
16 amount as a notice in the Pennsylvania Bulletin.

17 (ii) The alternative compliance payment under
18 subparagraph (i) shall not apply in any reporting period
19 that the commission declares a force majeure.

20 * * *

21 (g) Transfer to sustainable development funds.--

22 * * *

23 (2) The alternative compliance payments shall be
24 utilized solely for projects that will increase the amount of
25 electric energy or solar thermal energy generated from
26 alternative energy resources for purposes of compliance with
27 subsections (b) and (c).

28 * * *

29 Section 3. The act is amended by adding a section to read:

30 Section 5.1. Sale and installation of customer-generator

1 alternative energy systems.

2 (a) Prohibited conduct.--A person may not:

3 (1) engage in unfair or deceptive acts, practices or
4 advertising in connection with the sale or installation of a
5 customer-generator alternative energy system; or

6 (2) engage in any conduct in connection with the sale or
7 installation of a customer-generator alternative energy
8 system which creates the likelihood of confusion or
9 misunderstanding by the purchaser of the financial risks or
10 benefits associated with alternative energy systems,
11 including the creation, price or sale of alternative energy
12 credits.

13 (b) Penalty.--A violation of this section shall be deemed a
14 violation of act of December 17, 1968 (P.L.1224, No.387), known
15 as the Unfair Trade Practices and Consumer Protection Law.

16 Section 4. This act shall apply only prospectively and may
17 not be applied or interpreted to have any effect on, or
18 application to, any contract or registration of solar technology
19 existing before the effective date of this section.

20 Section 5. This act shall take effect in 60 days.