
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 510 Session of
2019

INTRODUCED BY AUMENT, YUDICHAK, GORDNER, BOSCOLA, FOLMER, VOGEL,
LEACH, MENSCH, STREET, BREWSTER AND TARTAGLIONE,
APRIL 8, 2019

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
APRIL 8, 2019

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, for alternative energy
9 portfolio standards, for portfolio requirements in other
10 states, for health and safety standards and for interagency
11 responsibilities; and providing for Tier III alternative
12 energy sources credit program and for capacity payments to
13 alternative energy sources.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The definitions of "alternative energy credit,"
17 "alternative energy sources" and "reporting period" in section 2
18 of the act of November 30, 2004 (P.L.1672, No.213), known as the
19 Alternative Energy Portfolio Standards Act, are amended and the
20 section is amended by adding definitions to read:

21 Section 2. Definitions.

22 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Alternative energy credit." As follows:

4 (1) A tradable instrument that is used to establish,
5 verify and monitor compliance with this act.

6 (2) A unit of credit shall equal one megawatt hour of
7 electricity from an alternative energy source[.] and shall
8 only be used to satisfy the requirement to purchase one of
9 the following:

10 (i) Tier I;

11 (ii) Tier II; or

12 (iii) Tier III alternative energy credits.

13 (3) The alternative energy credit shall remain the
14 property of the alternative energy system until the
15 alternative energy credit is voluntarily transferred by the
16 alternative energy system.

17 * * *

18 "Alternative energy sources." The term shall include the
19 following existing and new sources for the production of
20 electricity:

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

22 (2) Solar thermal energy.

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

1 electricity consumption by those customers;

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

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

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

15 (14) Energy from nuclear fission used to generate
16 electricity.

17 * * *

18 "Load serving entity." An entity or the duly designated
19 agent of an entity, including a load aggregator or power
20 marketer, that has been granted the authority or has an
21 obligation pursuant to State or local law, regulation or
22 franchise to sell electric energy to end-users within the area
23 of the regional transmission organization and is currently
24 serving end-users within that area with electric energy. The
25 term shall include any end-use customer that qualifies under
26 State regulatory rules or a utility retail tariff to manage
27 directly its own supply of electric energy and use of
28 transmission and ancillary services.

29 * * *

30 "Reporting period or reporting year." The 12-month period

1 from June 1 through May 31. A reporting year shall be numbered
2 according to the calendar year in which it begins and ends.

3 * * *

4 "Tier I projected price." The figure, equal to the average
5 of the Tier I futures prices for the current reporting year and
6 the subsequent two reporting years, established by the
7 commission for each reporting year as the average of the closing
8 price on each trade date during the calendar year that ends
9 immediately prior to the start of the current reporting year for
10 alternative energy credits that are eligible to meet the Tier I
11 alternative energy requirement in this Commonwealth.

12 * * *

13 "Tier III alternative energy credit reporting price." The
14 figure, determined by the commission 60 days after the start of
15 the initial reporting year for the Tier III program and 60 days
16 prior to the start of each reporting year thereafter, which is
17 equal to the Tier I projected price but not less than the Tier
18 III price floor or greater than the Tier III price cap.

19 "Tier III alternative energy source." Energy derived from at
20 least one of the following:

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

22 (2) Solar thermal energy.

23 (3) Wind power.

24 (4) Low-impact hydropower.

25 (5) Geothermal energy.

26 (6) Nuclear fission or fusion.

27 "Tier III price cap." The figure, equal to the product of
28 60% and the weighted average price of credits that were retired
29 for Tier I compliance for the reporting year ending May 31,
30 2017, as reflected in the commission's 2017 Annual Report of

1 Alternative Energy Portfolio Standards Act of 2004.

2 "Tier III price floor." The figure, equal to the product of
3 50% and the weighted average price of credits that were retired
4 for Tier I compliance for the reporting year ending May 31,
5 2017, as reflected in the commission's 2017 Annual Report of
6 Alternative Energy Portfolio Standards Act of 2004.

7 "Tier III program period." The period commencing at the
8 beginning of the 14th reporting year of the alternative energy
9 credit program established under this act or June 1, 2019,
10 whichever is sooner, and each year thereafter.

11 * * *

12 Section 2. Section 3(a), (b)(3), (f), (g) and (h) of the act
13 are amended and the section is amended by adding a subsection to
14 read:

15 Section 3. Alternative energy portfolio standards.

16 (a) General compliance and cost recovery.--

17 (1) From the effective date of this act through and
18 including the 15th year after enactment of this act and each
19 year thereafter, the electric energy sold by an electric
20 distribution company or electric generation supplier to
21 retail electric customers in this Commonwealth shall be
22 comprised of electricity generated from alternative energy
23 sources and in the percentage amounts as described under
24 subsections (b) and (c).

25 (2) Electric distribution companies and electric
26 generation suppliers shall satisfy both requirements set
27 forth in subsections (b) and (c), provided, however, that an
28 electric distribution company or an electric generation
29 supplier shall be excused from its obligations under this
30 section to the extent that the commission determines that

1 force majeure exists.

2 (2.1) Beginning June 1, 2019, and each year thereafter,
3 Tier III alternative energy credits shall be purchased by
4 electric distribution companies under subsection (c.1),
5 except that an electric distribution company or an electric
6 generation supplier shall be excused from its obligation
7 under this section to the extent that the commission
8 determines that force majeure exists.

9 (3) All costs for:

10 (i) the purchase of electricity generated from Tier
11 I and Tier II alternative energy sources, including the
12 costs of the regional transmission organization, in
13 excess of the regional transmission organization real-
14 time locational marginal pricing, or its successor, at
15 the delivery point of the alternative energy source for
16 the electrical production of the alternative energy
17 sources; [and]

18 (ii) payments for Tier I and Tier II alternative
19 energy credits[, in both cases] that are voluntarily
20 acquired by an electric distribution company during the
21 cost recovery period on behalf of its customers shall be
22 deferred as a regulatory asset by the electric
23 distribution company and fully recovered, with a return
24 on the unamortized balance, pursuant to an automatic
25 energy adjustment clause under 66 Pa.C.S. § 1307
26 (relating to sliding scale of rates; adjustments) as a
27 cost of generation supply under 66 Pa.C.S. § 2807
28 (relating to duties of electric distribution companies)
29 in the first year after the expiration of its cost-
30 recovery period. After the cost-recovery period, any

1 direct or indirect costs for the purchase by electric
2 distribution companies of resources to comply with this
3 section, including, but not limited to, the purchase of
4 electricity generated from Tier I and Tier II alternative
5 energy sources, payments for alternative energy credits,
6 cost of credits banked, payments to any third party
7 administrators for performance under this act and costs
8 levied by a regional transmission organization to ensure
9 that Tier I and Tier II alternative energy sources are
10 reliable, shall be recovered on a full and current basis
11 pursuant to an automatic energy adjustment clause under
12 66 Pa.C.S. § 1307 as a cost of generation supply under 66
13 Pa.C.S. § 2807[.]; and

14 (iii) any direct and indirect costs incurred by
15 electric distribution companies to comply with subsection
16 (c.1) and sections 8.1 and 8.2, including, but not
17 limited to, the purchase of Tier III alternative energy
18 credits shall be recovered on a full and current basis
19 pursuant to an automatic energy adjustment clause under
20 66 Pa.C.S. § 1307.

21 (b) Tier I and solar photovoltaic shares.--

22 * * *

23 (3) Upon commencement of the beginning of the 6th
24 reporting year, the commission shall undertake a review of
25 the compliance by electric distribution companies and
26 electric generation suppliers with the requirements of this
27 act. The review shall also include the status of alternative
28 energy technologies within this Commonwealth and the capacity
29 to add additional alternative energy resources. The
30 commission shall use the results of this review to recommend

1 to the General Assembly additional compliance goals beyond
2 year 15 for Tier I and Tier II shares. The commission shall
3 work with the department in evaluating the future alternative
4 energy resource potential.

5 * * *

6 (c.1) Tier III share.--Subject to section 8.1(g)(2), during
7 the Tier III program period, each electric distribution company
8 shall purchase Tier III alternative energy credits equal to the
9 amount of credits available as determined by the commission
10 under section 8.1(d)(1). The obligations of an electric
11 distribution company under this subsection shall not be subject
12 to the provisions of 66 Pa.C.S. § 2807(e)(3.5) or (3.7).

13 * * *

14 (f) Alternative compliance payment.--

15 (1) At the end of each program reporting year, the
16 program administrator shall provide a report to the
17 commission and to each covered electric distribution company
18 showing their status level of alternative energy acquisition.

19 (2) The commission shall conduct a review of each
20 determination made under subsections (b) [and (c)], (c) and
21 (c.1). If, after notice and hearing, the commission
22 determines that an electric distribution company or electric
23 generation supplier has failed to comply with subsections (b)
24 [and (c)], (c) and (c.1), except as set forth in section
25 8.1(g)(2), the commission shall impose an alternative
26 compliance payment on that electric distribution company or
27 electric generation supplier.

28 (3) The alternative compliance payment, with the
29 exception of the solar photovoltaic share compliance
30 requirement set forth in subsection (b)(2) and the Tier III

1 share requirement set forth in subsection (c.1), shall be \$45
2 times the number of additional alternative energy credits
3 needed in order to comply with subsection (b) or (c).

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

12 (4.1) The alternative compliance payment for the Tier
13 III share shall be equal to twice the Tier III alternative
14 energy credit reporting period price for the applicable
15 reporting period times the number of additional alternative
16 energy credits needed to comply with subsection (c.1).

17 (5) The commission shall establish a process to provide
18 for, at least annually, a review of the alternative energy
19 market within this Commonwealth and the service territories
20 of the regional transmission organizations that manage the
21 transmission system in any part of this Commonwealth. The
22 commission will use the results of this study to identify any
23 needed changes to the cost associated with the alternative
24 compliance payment program. If the commission finds that the
25 costs associated with the alternative compliance payment
26 program must be changed, the commission shall present these
27 findings to the General Assembly for legislative enactment.

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

29 (1) Notwithstanding the provisions of 66 Pa.C.S. §§ 511
30 (relating to disposition, appropriation and disbursement of

1 assessments and fees) and 3315 (relating to disposition of
2 fines and penalties), alternative compliance payments imposed
3 pursuant to this act for failure to comply with subsections
4 (b) and (c) shall be paid into Pennsylvania's Sustainable
5 Energy Funds created under the commission's restructuring
6 orders under 66 Pa.C.S. Ch. 28 (relating to restructuring of
7 electric utility industry). Alternative compliance payments
8 shall be paid into a special fund of the Pennsylvania
9 Sustainable Energy Board, established by the commission under
10 Docket M-00031715, and made available to the Regional
11 Sustainable Energy Funds under procedures and guidelines
12 approved by the Pennsylvania Energy Board.

13 (2) The alternative compliance payments for failure to
14 comply with subsections (b) and (c) shall be utilized solely
15 for projects that will increase the amount of electric energy
16 generated from alternative energy resources for purposes of
17 compliance with subsections (b) and (c).

18 (3) Alternative compliance payments imposed under this
19 act for failure to comply with subsection (c.1) shall be paid
20 as follows:

21 (i) fifty percent consistent with paragraphs (1) and
22 (2); and

23 (ii) fifty percent to the commission to distribute
24 to Tier III alternative energy sources that qualify as a
25 Tier III alternative energy source under section 8.1 for
26 Tier III alternative energy credits that were otherwise
27 not purchased due to the failure to comply with
28 subsection (c.1) in an amount equal to each source's
29 proportional amount of credits that were not purchased
30 during that reporting year.

1 (h) Nonseverability.--The provisions of subsection [(a)] (a)
2 (1), (2), (3)(i) and (ii) are declared to be nonseverable. If
3 any provision of subsection [(a) is] (a)(1), (2), (3)(i) and
4 (ii) are held invalid, the remaining provisions of this act
5 shall be void.

6 Section 3. Sections 4 and 6 of the act are amended to read:
7 Section 4. Portfolio requirements in other states.

8 If an electric distribution [supplier] company or electric
9 generation [company] supplier provider sells electricity in any
10 other state and is subject to [renewable] alternative energy
11 portfolio requirements in that state, they shall list any such
12 requirement and shall indicate how it satisfied those
13 [renewable] alternative energy portfolio requirements. To
14 prevent double-counting, the electric distribution [supplier]
15 company or electric generation [company] supplier shall not
16 satisfy Pennsylvania's alternative energy portfolio requirements
17 using alternative energy used to satisfy another state's
18 portfolio requirements or alternative energy credits already
19 purchased by individuals, businesses or government bodies that
20 do not have a compliance obligation under this act unless the
21 individual, business or government body sells those credits to
22 the electric distribution company or electric generation
23 supplier. Energy derived from alternative energy sources inside
24 the geographical boundaries of this Commonwealth shall be
25 eligible to meet the compliance requirements under this act.
26 Energy derived from alternative energy sources located outside
27 the geographical boundaries of this Commonwealth but within the
28 service territory of a regional transmission organization that
29 manages the transmission system in any part of this Commonwealth
30 shall only be eligible to meet the compliance requirements of

1 electric distribution companies or electric generation suppliers
2 located within the service territory of the same regional
3 transmission organization. For purposes of compliance with this
4 act, alternative energy sources located in the PJM
5 Interconnection, L.L.C. regional transmission organization (PJM)
6 or its successor service territory shall be eligible to fulfill
7 compliance obligations of all Pennsylvania electric distribution
8 companies and electric generation suppliers. Energy derived from
9 alternative energy sources located outside the service territory
10 of a regional transmission organization that manages the
11 transmission system in any part of this Commonwealth shall not
12 be eligible to meet the compliance requirements of this act.
13 Electric distribution companies and electric generation
14 suppliers shall document that this energy was not used to
15 satisfy another state's [renewable] alternative energy portfolio
16 standards.

17 Section 6. Health and safety standards.

18 The department shall cooperate with the Department of Labor
19 and Industry as necessary in developing health and safety
20 standards, as needed, regarding facilities generating energy
21 from alternative energy sources. The department shall establish
22 appropriate and reasonable health and safety standards to ensure
23 uniform and proper compliance with this act by owners and
24 operators of facilities generating energy from alternative
25 energy sources as defined in this act. Alternative energy
26 sources fueled by nuclear fission shall continue to comply with
27 health and safety standards established by Federal regulatory
28 agencies.

29 Section 4. Section 7 of the act is amended by adding a
30 subsection to read:

1 Section 7. Interagency responsibilities.

2 * * *

3 (d) Enforcement of provisions.--In addition to any powers
4 expressly granted under this act, the commission shall enforce
5 the provisions of this act in accordance with the commission's
6 regulations and orders and the following shall apply:

7 (1) The commission may modify or rescind any regulation
8 or order promulgated by the commission to enforce this act,
9 whether or not the commission promulgated the regulation or
10 order prior to the effective date of this subsection.

11 (2) Nothing in this subsection shall be construed to
12 exclude any authority granted to the commission under 66
13 Pa.C.S. (relating to public utilities).

14 Section 5. The act is amended by adding sections to read:

15 Section 8.1. Tier III alternative energy sources credit
16 program.

17 (a) Tier III alternative energy source qualifications.--In
18 order to qualify as a Tier III alternative energy source under
19 subsection (b) for the purpose of receiving Tier III credits,
20 the Tier III alternative energy source shall satisfy all of the
21 following:

22 (1) The alternative energy source is interconnected with
23 capacity injection rights within the regional transmission
24 organization.

25 (2) If the alternative energy source were to cease
26 operation or fail to come in service:

27 (i) the ability of Pennsylvania, or regions of
28 Pennsylvania, to maintain or decrease existing levels of
29 volatile organic compounds or to comply with one or more
30 Federal or State air pollution control programs,

1 standards or goals is reduced;

2 (ii) the carbon dioxide emissions would increase as
3 a result of electricity consumed in this Commonwealth;

4 and

5 (iii) the ability of Pennsylvania to maintain or
6 decrease existing levels of carbon monoxide, lead,
7 ground-level ozone, particulate matter, nitrogen oxide or
8 sulfur dioxide is reduced.

9 (3) On or after January 1, 2017, the alternative energy
10 source:

11 (i) regardless of the Tier III alternative energy
12 source's location, did not receive tax exemptions,
13 deferrals, exclusions, allowances, payments, credits,
14 deductions or reimbursements from any other state
15 calculated in whole or in part using a metric that
16 provides value for emissions not produced by the
17 alternative energy source;

18 (ii) is not wholly owned by a municipal or
19 cooperative corporation or a group, association or
20 consortium of those corporations; and

21 (iii) did not at any point during the Tier III
22 program recover some or all of the capital or operating
23 costs of the resource through cost-based rates regulated
24 by a state.

25 (b) Qualification process.--The commission shall establish a
26 Tier III alternative energy source qualification process within
27 180 days of the effective date of this section. An alternative
28 energy source seeking to participate in the Tier III program
29 shall file written notice of at least all of the following:

30 (1) The source's qualifications as a Tier III

1 alternative energy source.

2 (2) The source's total estimated generation calculated
3 as follows:

4 (i) For existing Tier III alternative energy sources
5 derived from nuclear fission, the nameplate capacity of
6 the source.

7 (ii) For Tier III alternative energy sources not
8 derived from nuclear fission, the estimated generation is
9 equal to the source's estimated generation in the
10 reporting year for which the source is submitting an
11 application for Tier III credits.

12 (3) The generation for which the source is applying for
13 Tier III credits subject to the following:

14 (i) For Tier III sources derived from nuclear
15 fission, the applicant shall commit an amount equal to
16 the product of the Tier III capacity percentage
17 determined by the commission under subsection (d) (2)
18 multiplied by 8,760 hours per year multiplied by the
19 nameplate capacity of the source.

20 (ii) For Tier III sources other than sources derived
21 from nuclear fission, the applicant shall designate and
22 commit a portion of the applicant's generation for Tier
23 III credits for which the applicant does not receive any
24 other credits under this act.

25 (4) The source's commitment to apply for Tier III
26 credits as follows:

27 (i) Generation under paragraph (3) (i) shall require
28 a commitment for at least six reporting periods.

29 (ii) Generation under paragraph (3) (ii) shall
30 require a commitment for at least one reporting period.

1 (c) Written notice.--

2 (1) The written notice required under subsection (b)
3 shall be filed with the commission no later than 270 days
4 after the start of either of the following:

5 (i) The first Tier III program period for Tier III
6 sources derived from nuclear fission.

7 (ii) Each Tier III reporting period after the first
8 Tier III program year for Tier III sources other than
9 Tier III sources derived from nuclear fission.

10 (2) The written notice shall be transmitted to the
11 Legislative Reference Bureau for publication in the
12 Pennsylvania Bulletin in the first available issue following
13 the filing of the written notice.

14 (3) Comments in response to the notice shall be filed
15 with the commission no later than 20 days after the
16 publication of the notice.

17 (4) Reply comments shall be filed with the commission
18 within 10 days of the close of the initial comment period.

19 (d) Availability of Tier III credits.--

20 (1) The commission shall determine the number of Tier III
21 credits available at the beginning of the first Tier III
22 program period as being equal to approximately 50% of the
23 total number of megawatt hours of electricity distributed by
24 electric distribution companies in this Commonwealth, net of
25 system losses, for the latest calendar year reported in the
26 Electric Power Outlook edition published on the effective
27 date of this paragraph.

28 (2) The commission shall then determine, at the beginning
29 of each Tier III reporting year, the amount of Tier III
30 credits available to Tier III alternative energy sources

1 derived from nuclear fission by setting the Tier III capacity
2 percentage between 77% and 83%, based upon the availability
3 of Tier III alternative energy sources not derived from
4 nuclear fission that are estimated to be available and
5 eligible to receive Tier III credits in each reporting
6 period, multiplied by 8,760 hours per year multiplied by the
7 nameplate capacity of the plant.

8 (e) Selection for Tier III program.--

9 (1) Following the close of the reply-comment period
10 under subsection (c)(4), the commission shall review the
11 notice of qualifications and all comments and rank each
12 application based on how well the alternative energy source
13 satisfies the criteria outlined under subsections (a) and
14 (b).

15 (2) After ranking each applicant under paragraph (1),
16 the commission shall select the applicants that will
17 participate in the Tier III program according to the ranking
18 of the applicants beginning with the top-ranked applicant and
19 continuing in rank order until the total number of credits
20 available for the reporting period have been assigned to Tier
21 III alternative energy sources.

22 (3) If the commission, after ranking the applicants
23 under paragraph (1) and selecting the applicants under
24 paragraph (2) has Tier III credits remaining, the commission
25 shall select a marginal applicant to participate in the Tier
26 III program until the number of Tier III credits available
27 under subsection (d)(1) have been assigned.

28 (f) Tier III alternative energy source designation.--Once
29 designated, an alternative energy source shall continue to be
30 considered a Tier III alternative energy source for the time

1 period committed to under subsection (b) (4) as long as the
2 alternative energy source continues to meet the criteria under
3 this section.

4 (g) Transfer and payment for Tier III alternative energy
5 credits.--

6 (1) A Tier III alternative energy source shall transfer
7 all of the source's Tier III alternative energy credits for
8 that reporting period to each electric distribution company
9 as determined by the commission.

10 (2) Each electric distribution company shall purchase
11 the Tier III credits transferred under paragraph (1) and
12 remit payment for the credits purchased to each Tier III
13 alternative energy source, subject to the following:

14 (i) If the total quantity of Tier III alternative
15 energy credits available is less than the sum of the Tier
16 III shares for all electric distribution companies in
17 this Commonwealth, then each electric distribution
18 company's Tier III share for that reporting year shall be
19 the company's proportional share of Tier III credits; and
20 no alternative compliance payments shall be assessed
21 under section 3(f) (4.1). An electric distribution
22 company's proportional share shall be a percentage equal
23 to the total electric energy sold in a service territory
24 by the electric distribution company and electric
25 generation suppliers divided by the total electric energy
26 sold by all electric distribution companies and electric
27 generation suppliers in this Commonwealth.

28 (ii) If the sum of Tier III alternative energy
29 credits available from all Tier III alternative energy
30 sources is greater than the sum of the Tier III shares

1 for all electric distribution companies in this
2 Commonwealth, then each Tier III alternative energy
3 source shall be paid for the source's prorated share of
4 Tier III credits. Tier III alternative energy credits
5 available that exceed the sum of the Tier III shares for
6 all electric distribution companies in this Commonwealth
7 shall be retired. A Tier III alternative energy source's
8 prorated share shall be a percentage equal to the sum of
9 the Tier III shares for all electric distribution
10 companies in this Commonwealth divided by the sum of Tier
11 III alternative energy credits available from all Tier
12 III alternative energy sources.

13 (3) Credits purchased by an electric distribution
14 company may not be transferred, sold or assigned to any other
15 entity and may not be utilized to fulfill future obligations
16 under this act.

17 (h) Suspension of generation of a Tier III alternative
18 energy source.--A designated Tier III alternative energy source
19 shall be excused from the source's commitment to generate
20 electricity for the time period committed to under subsection
21 (b) (4) and shall no longer receive Tier III alternative energy
22 credits if one of the following occurs:

23 (1) The designated Tier III alternative energy source
24 suspends or ceases generation, despite the designated Tier
25 III alternative energy source's reasonable efforts to
26 continue generation, due to an event beyond its control. The
27 designated Tier III alternative energy source shall no longer
28 be excused from performance, and payment of Tier III
29 alternative credits shall resume, after conclusion of such an
30 event.

1 (2) The Commonwealth enacts a new law imposing a
2 material new tax, special assessment or fee on the generation
3 of electricity, the ownership or leasehold of a generating
4 unit or the privilege or occupation of the generation,
5 ownership or leasehold of generation units by a designated
6 Tier III alternative energy source.

7 (3) The Federal Government or the Commonwealth enacts a
8 law that materially reduces the Tier III alternative energy
9 credit reporting period price.

10 (4) The Federal Government or the Commonwealth takes
11 final action related to the provision of Tier III alternative
12 energy credits that has the effect of eliminating a material
13 portion of a designated Tier III alternative energy source's
14 anticipated future revenue, taking into account the benefits
15 to be provided to a designated Tier III alternative energy
16 source under the Tier III program.

17 (5) The Nuclear Regulatory Commission or its successor
18 agency terminates a designated Tier III alternative energy
19 source's license.

20 (i) Penalties.--

21 (1) A designated Tier III alternative energy source
22 operator that fails to fulfill its commitment to generate
23 electricity for the time period committed to under subsection
24 (b) (4) by ceasing generation for any reason not listed in
25 subsection (h) shall provide refunds as directed by the
26 commission in the amount calculated under paragraph (2).

27 (2) Subject to paragraph (5), the amount an owner of a
28 Tier III alternative energy source shall refund under
29 paragraph (1) shall be as follows:

30 (i) If the Tier III alternative energy source ceases

1 generation following the first reporting period, 100% of
2 the amount received under subsection (g) (2) and section
3 3(g) (3) (ii).

4 (ii) If the Tier III alternative energy source
5 ceases generation following the second reporting period,
6 80% of the amount received under subsection (g) (2) and
7 section 3(g) (3) (ii).

8 (iii) If the Tier III alternative energy source
9 ceases generation following the third reporting period,
10 60% of the amount received under subsection (g) (2) and
11 section 3(g) (3) (ii).

12 (iv) If the Tier III alternative energy source
13 ceases generation following the fourth reporting period,
14 40% of the amount received under subsection (g) (2) and
15 section 3(g) (3) (ii).

16 (v) If the Tier III alternative energy source ceases
17 generation following the fifth reporting period, 20% of
18 the amount received under subsection (g) (2) and section
19 3(g) (3) (ii).

20 (3) Nothing in this subsection shall be construed to
21 require an entity, other than the majority owner, that has an
22 ownership interest that is less than 15% in a Tier III
23 alternative energy source to refund payments received under
24 subsection (g) (2) or section 3(g) (3) (ii).

25 (4) For purposes of this subsection, if the ownership of
26 a Tier III alternative energy source changes during the term
27 of a six-year commitment to participate in the Tier III
28 program, the obligation of the former owner to refund
29 payments received under subsection (g) (2) and section 3(g) (3)
30 (ii) shall be transferred by covenant to the new owner.

1 (5) For the purposes of the calculation of the refund
2 under paragraph (2), the amount owed by a Tier III
3 alternative energy source owner shall be calculated based
4 solely on the amount of credits produced by each Tier III
5 alternative energy source and may not apply to additional
6 Tier III alternative energy sources owned by the same entity
7 and participating in the Tier III program.

8 (6) The commission has the following powers:

9 (i) Issue an order requiring the Tier III
10 alternative energy source to refund the amount it owes
11 under this subsection. This subparagraph includes:

12 (A) stating the exact amount to be refunded as
13 directed by the commission;

14 (B) setting the reasonable time within which
15 payments shall be made; and

16 (C) making findings upon pertinent questions of
17 fact.

18 (ii) Provide a mechanism for a return of the refund
19 from the Tier III alternative energy source to each
20 electric distribution company for purposes of
21 distribution to its customers. This subparagraph
22 includes:

23 (A) determining the amount to be returned to an
24 electric distribution company's proportional share of
25 the total payments made by all electric distribution
26 companies for the purchase of Tier III credits for
27 the reporting periods during its most recent time
28 period committed to under subsection (b) (4); and

29 (B) determining the amount to be refunded to the
30 electric distribution company's customers as a result

1 of the cost recovery under section 3(a)(3)(iii) for
2 the customer costs associated with the reporting
3 periods during the Tier III alternative energy
4 source's most recent time period committed to under
5 subsection (b)(4).

6 (j) Tier III alternative energy source audits.--

7 (1) The commission shall, annually or on a periodic
8 basis as determined by the commission, conduct an audit of
9 each Tier III alternative energy source participating in the
10 Tier III program. Any audit directed by the commission shall
11 commence 180 days following any payments to a Tier III
12 alternative energy source under subsection (g)(2). The
13 commission shall solicit input from the Department of
14 Environmental Protection as needed in the conduct of the
15 audit. The commission audit shall confirm through the audit
16 process whether each alternative energy source meets all of
17 the qualifying requirements under subsections (a) and (b).
18 The subject areas of the audit shall include all of the
19 following:

20 (i) Whether the alternative energy source is
21 interconnected with the regional transmission
22 organization.

23 (ii) The effect of cessation of generation of
24 electricity or failure to operate on air emissions
25 standards as contained in subsection (a)(2).

26 (iii) Confirmation that the alternative energy
27 source did not, regardless of the alternative energy
28 source's location, receive tax exemptions, deferrals,
29 exclusions, allowances, payments, credits, deductions or
30 reimbursements from any other state calculated in whole

1 or in part using a metric that provides value for
2 emissions not produced by the alternative energy source.

3 (iv) Confirmation that the alternative energy source
4 is not wholly owned by:

5 (A) a municipal or cooperative association; or

6 (B) a group, association or consortium of a
7 municipal or cooperative association.

8 (v) The source's total estimated generation
9 calculated under subsection (b)(2).

10 (vi) The generation for which the source is applying
11 for Tier III credits under subsection (b)(3).

12 (vii) Compliance with the commitment to sell
13 designated alternative energy generation for the time
14 period committed to under subsection (b)(4).

15 (viii) The number of credits received by the
16 alternative energy source for the program year covered by
17 the audit.

18 (ix) Payments received by the alternative energy
19 source for the program year covered by the audit and the
20 use of those payments by the generator to ensure the
21 continued viability of the alternative energy source to
22 achieve the standards under subsection (a)(2).

23 (2) Within 90 days of the conclusion of an audit under
24 this subsection, the commission shall submit a report
25 detailing the findings of the audit to:

26 (i) the Governor;

27 (ii) the chairperson and minority chairperson of the
28 Environmental Resources and Energy Committee of the
29 Senate;

30 (iii) the chairperson and minority chairperson of

1 the Environmental Resources and Energy Committee of the
2 House of Representatives;

3 (iv) the chairperson and minority chairperson of the
4 Consumer Protection and Professional Licensure Committee
5 of the Senate; and

6 (v) the chairperson and minority chairperson of the
7 Consumer Affairs Committee of the House of
8 Representatives.

9 (k) Administrative expenses.--

10 (1) In addition to any assessments authorized by 66
11 Pa.C.S. § 510 (relating to assessment for regulatory expenses
12 upon public utilities), the commission may impose an
13 assessment on the payments to Tier III alternative energy
14 sources.

15 (2) The assessment under paragraph (1) may not exceed 1%
16 of the value of all credits sold for each Tier III reporting
17 period for costs associated with the administration of the
18 Tier III program.

19 Section 8.2. Capacity payments to alternative energy sources.

20 (a) Election to participate in fixed resource requirement
21 program.--If permitted by the Federal Energy Regulatory
22 Commission, the commission shall create and administer a program
23 in which alternative energy systems may opt to supply and be
24 paid for capacity through a means other than the centralized
25 base residual auction for capacity operated by the regional
26 transmission organization. As permitted by the Federal Energy
27 Regulatory Commission, the program shall include:

28 (1) establishing a process through which an alternative
29 energy system is permitted to notify the regional
30 transmission organization, consistent with requirements

1 approved by the Federal Energy Regulatory Commission, of the
2 decision to opt out of the centralized base residual auction
3 for capacity and sell its capacity through other mechanisms;

4 (2) providing any determinations required by the
5 regional transmission organization with respect to such
6 alternative energy systems, including a calculation of the
7 commensurate amount of customer load that will not
8 participate in the centralized base residual auction for
9 capacity as a result of the alternative energy system's
10 decision to sell its capacity through other mechanisms, which,
11 if consistent with requirements approved by the Federal
12 Energy Regulatory Commission, shall be calculated pro rata
13 across all load serving entities in this Commonwealth; and

14 (3) subject to approval by the Federal Energy Regulatory
15 Commission, the amount paid for the capacity of each such
16 alternative energy system that opts out of the regional
17 transmission organization centralized base residual auction
18 for capacity for each applicable reporting period shall be
19 equal to the generation capacity of the system as determined
20 in accordance with regional transmission organization
21 requirements multiplied by the locational delivery area price
22 established by the regional transmission organization in the
23 base residual auction for capacity, or as determined in
24 accordance with a successor mechanism approved by the Federal
25 Energy Regulatory Commission, for the location in which the
26 system is located.

27 (b) Payments.--If the regional transmission organization
28 does not operate a settlement mechanism under which alternative
29 energy systems that make elections under subsection (a) can
30 receive payments from regional transmission organization load

1 serving entities, the commission shall calculate the total
2 amount due to each system under subsection (a) (3) and notify
3 each electric distribution company of its share of that amount
4 based upon the electric distribution company's pro rata share of
5 the electric energy sold to retail electric customers in this
6 Commonwealth during the applicable reporting period. Each
7 electric distribution company shall pay the amount to each
8 alternative energy system under subsection (a) (3), as determined
9 by the commission.

10 (c) Timing.--The commission shall create the program under
11 subsections (a) and (b) within 180 days after the later to occur
12 of:

- 13 (1) the effective date of this subsection; or
14 (2) the date on which the regional transmission
15 organization rules that allow alternative energy systems to
16 opt out of the centralized base residual auction are accepted
17 or approved by the Federal Energy Regulatory Commission.

18 Section 6. This act shall take effect June 1, 2019, or
19 immediately, whichever is sooner.