

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 1203** Session of
2007

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GRUCELA, FABRIZIO, WALKO AND GEIST, MAY 24, 2007

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 25, 2007

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 and for interconnection standards for customer-
11 generator facilities.

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

14 Section 1. The definitions of "alternative energy credit,"
15 "customer-generator," "force majeure" and "Tier I alternative
16 energy source" in section 2 of the act of November 30, 2004
17 (P.L.1672, No.213), known as the Alternative Energy Portfolio
18 Standards Act, are amended to read:

19 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
7 from an alternative energy source. The alternative energy credit
8 shall remain the property of the alternative energy system until
9 the alternative energy credit is voluntarily transferred by the
10 alternative energy system.

11 * * *

12 "Customer-generator." A nonutility owner or operator of a
13 net metered distributed generation system with a nameplate
14 capacity of not greater than 50 kilowatts if installed at a
15 residential service or not larger than [1,000] 3,000 kilowatts
16 at other customer service locations, except for customers whose
17 systems are above [one megawatt] three megawatts and up to [two]
18 five megawatts who make their systems available to operate in
19 parallel with the electric utility during grid emergencies as
20 defined by the regional transmission organization or where a
21 microgrid is in place for the primary or secondary purpose of
22 maintaining critical infrastructure, such as homeland security
23 assignments, emergency services facilities, hospitals, traffic
24 signals, wastewater treatment plants or telecommunications
25 facilities, provided that technical rules for operating
26 generators interconnected with facilities of an electric
27 distribution company, electric cooperative or municipal electric
28 system have been promulgated by the Institute of Electrical and
29 Electronic Engineers and the Pennsylvania Public Utility
30 Commission.

1 * * *

2 "Force majeure." Upon its own initiative or upon a request
3 of an electric distribution company or an electric generator
4 supplier, the Pennsylvania Public Utility Commission, within 60
5 days, shall determine if alternative energy resources are
6 reasonably available in the marketplace in sufficient quantities
7 for the electric distribution companies and electric generation
8 suppliers to meet their obligations for that reporting period
9 under this act. In making this determination the commission
10 shall consider whether electric distribution companies or
11 electric generation suppliers have made a good faith effort to
12 acquire sufficient alternative energy to comply with their
13 obligations. Such good faith efforts shall include, but are not
14 limited to, banking alternative energy credits during their
15 transition periods, seeking alternative energy credits through
16 competitive solicitations and seeking to procure alternative
17 energy credits or alternative energy through long-term
18 contracts. In further making its determination the commission
19 shall assess the availability of alternative energy credits in
20 the Generation Attributes Tracking System (GATS) or its
21 successor, and the availability of alternative energy credits
22 generally in Pennsylvania and other jurisdictions in the PJM
23 Interconnection, L.L.C. regional transmission organization (PJM)
24 or its successor. The commission may also require solicitations
25 for alternative energy credits as part of default service before
26 requests of force majeure can be made. If the commission further
27 determines that alternative energy resources are not reasonably
28 available in sufficient quantities in the marketplace for the
29 electric distribution companies and electric generation
30 suppliers to meet their obligations under this act, then the

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

17 * * *

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

19 (1) Solar photovoltaic and solar thermal energy.

20 (2) Wind power.

21 (3) Low-impact hydropower.

22 (4) Geothermal energy.

23 (5) Biologically derived methane gas.

24 (6) Fuel cells.

25 (7) Biomass energy.

26 (8) Coal mine methane.

27 * * *

28 Section 2. Sections 3(b), (e) and (f), 4 and 5 of the act
29 are amended to read:

30 Section 3. Alternative energy portfolio standards.

1 * * *

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

3 (1) Two years after the effective date of this act, at
4 least 1.5% of the electric energy sold by an electric
5 distribution company or electric generation supplier to
6 retail electric customers in this Commonwealth shall be
7 generated from Tier I alternative energy sources. Except as
8 provided in this section, the minimum percentage of electric
9 energy required to be sold to retail electric customers from
10 alternative energy sources shall increase to 2% three years
11 after the effective date of this act. The minimum percentage
12 of electric energy required to be sold to retail electric
13 customers from alternative energy sources shall increase by
14 at least 0.5% each year so that at least 8% of the electric
15 energy sold by an electric distribution company or electric
16 generation supplier to retail electric customers in that
17 certificated territory in the 15th year after the effective
18 date of this subsection is sold from Tier I alternative
19 energy resources.

20 (2) [Of the electric energy required to be sold from
21 Tier I sources, the total percentage that must be sold from
22 solar photovoltaic technologies is for:] The total percentage
23 of the electric energy sold by an electric distribution
24 company or an electric generation supplier to retail electric
25 customers in this Commonwealth that must be sold from solar
26 photovoltaic technologies is:

27 [(i) Years 1 through 4 - 0.0013%.

28 (ii) Years 5 through 9 - 0.0203%.

29 (iii) Years 10 through 14 - 0.2500%.

30 (iv) Years 15 and thereafter - 0.5000%.]

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

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

3 (iii) 0.0063% for June 1, 2008, through May 31,
4 2009.

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

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

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

8 (vii) 0.0510% for June 1, 2012, through May 31,
9 2013.

10 (viii) 0.0840% for June 1, 2013, through May 31,
11 2014.

12 (ix) 0.1440% for June 1, 2014, through May 31, 2015.

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

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

15 (xii) 0.3400% for June 1, 2017, through May 31,
16 2018.

17 (xiii) 0.3900% for June 1, 2018, through May 31,
18 2019.

19 ~~(xiv) 0.4433% for June 1, 2019, and thereafter.~~ <—

20 (XIV) 0.4433% FOR JUNE 1, 2019, THROUGH MAY 31, <—
21 2020.

22 (XV) 0.5000% FOR JUNE 1, 2020, AND THEREAFTER.

23 THE PERCENTAGES IN THIS PARAGRAPH SHALL APPLY TO ALL
24 RETAIL ELECTRICITY SALES IN THIS COMMONWEALTH.

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

1 to add additional alternative energy resources. The
2 commission shall use the results of this review to recommend
3 to the General Assembly additional compliance goals beyond
4 year 15. The commission shall work with the department in
5 evaluating the future alternative energy resource potential.

6 * * *

7 (e) Alternative energy credits.--

8 (1) The commission shall establish an alternative energy
9 credits program as needed to implement this act. The
10 provision of services pursuant to this section shall be
11 exempt from the competitive procurement procedures of 62
12 Pa.C.S. (relating to procurement).

13 (2) The commission shall approve an independent entity
14 to serve as the alternative energy credits program
15 administrator. The administrator shall have those powers and
16 duties assigned by commission regulations. Such powers and
17 duties shall include, but not be limited to, the following:

18 (i) To create and administer an alternative energy
19 credits certification, tracking and reporting program.
20 This program should include, at a minimum, a process for
21 qualifying alternative energy systems and determining the
22 manner credits can be created, accounted for, transferred
23 and retired.

24 (ii) To submit reports to the commission at such
25 times and in such manner as the commission shall direct.

26 (3) All qualifying alternative energy systems must
27 include a qualifying meter to record the cumulative electric
28 production to verify the advanced energy credit value.
29 Qualifying meters will be approved by the commission as
30 defined in paragraph (4).

1 (4) (i) An electric distribution company or electric
2 generation supplier shall comply with the applicable
3 requirements of this section by purchasing sufficient
4 alternative energy credits and submitting documentation
5 of compliance to the program administrator.

6 (ii) For purposes of this subsection, one
7 alternative energy credit shall represent one megawatt
8 hour of qualified alternative electric generation,
9 whether self-generated, purchased along with the electric
10 commodity or separately through a tradable instrument and
11 otherwise meeting the requirements of commission
12 regulations and the program administrator.

13 (5) The alternative energy credits program shall include
14 provisions requiring a reporting period as defined in section
15 2 for all covered entities under this act. The alternative
16 energy credits program shall also include a true-up period as
17 defined in section 2. The true-up period shall provide
18 entities covered under this act the ability to obtain the
19 required number of alternative energy credits or to make up
20 any shortfall of the alternative energy credits they may be
21 required to obtain to comply with this act. A force majeure
22 provision shall also be provided for under the true-up period
23 provisions.

24 (6) An electric distribution company and electric
25 generation supplier may bank or place in reserve alternative
26 energy credits produced in one reporting year for compliance
27 in either or both of the two subsequent reporting years,
28 subject to the limitations set forth in this subsection and
29 provided that the electric distribution company and electric
30 generation supplier are in compliance for all previous

1 reporting years. In addition, the electric distribution
2 company and electric generation supplier shall demonstrate to
3 the satisfaction of the commission that such credits:

4 (i) were in excess of the alternative energy credits
5 needed for compliance in the year in which they were
6 generated and that such excess credits have not
7 previously been used for compliance under this act;

8 (ii) were produced by the generation of electrical
9 energy by alternative energy sources and sold to retail
10 customers during the year in which they were generated;
11 and

12 (iii) have not otherwise been nor will be sold,
13 retired, claimed or represented as part of satisfying
14 compliance with alternative or renewable energy portfolio
15 standards in other states.

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

1 (8) The commission or its designee shall develop a
2 registry of pertinent information regarding all available
3 alternative energy credits, credit transactions among
4 electric distribution companies and electric generation
5 suppliers, the number of alternative energy credits sold or
6 transferred and the price paid for the sale or transfer of
7 the credits. The registry shall provide current information
8 to electric distribution companies, electric generation
9 suppliers and the general public on the status of alternative
10 energy credits created, sold or transferred within this
11 Commonwealth.

12 (9) The commission may impose an administrative fee on
13 an alternative energy credit transaction. The amount of this
14 fee may not exceed the actual direct cost of processing the
15 transaction by the alternative energy credits administrator.
16 The commission is authorized to utilize up to 5% of the
17 alternative compliance fees generated under subsection (f)
18 for administrative expenses directly associated with this
19 act.

20 (10) The commission shall establish regulations
21 governing the verification and tracking of energy efficiency
22 and demand-side management measures pursuant to this act,
23 which shall include benefits to all utility customer classes.
24 When developing regulations, the commission must give
25 reasonable consideration to existing and proposed regulations
26 and rules in existence in the regional transmission
27 organizations that manage the transmission system in any part
28 of this Commonwealth. All verified reductions shall accrue
29 credits starting with the passage of this act.

30 (11) The commission shall within 120 days of the

1 effective date of this act develop a depreciation schedule
2 for alternative energy credits created through demand-side
3 management, energy efficiency and load management
4 technologies and shall develop standards for tracking and
5 verifying savings from energy efficiency, load management and
6 demand-side management measures. The commission shall allow
7 for a 60-day public comment period and shall issue final
8 standards within 30 days of the close of the public comment
9 period.

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

19 (ii) This paragraph shall apply to all alternative
20 energy credits which were created pursuant to this act
21 prior to the effective date of this paragraph and which
22 will be created after the effective date of this
23 paragraph, regardless of when any underlying contract for
24 the purchase of electric energy or other products from
25 the generator that qualifies as an alternative energy
26 system was executed.

27 (f) Alternative compliance payment.--

28 (1) At the end of each program year, the program
29 administrator shall provide a report to the commission and to
30 each covered electric distribution company showing their

1 status level of alternative energy acquisition.

2 (2) The commission shall conduct a review of each
3 determination made under subsections (b) and (c). If, after
4 notice and hearing, the commission determines that an
5 electric distribution company or electric generation supplier
6 has failed to comply with subsections (b) and (c), the
7 commission shall impose an alternative compliance payment on
8 that company or supplier.

9 (3) The alternative compliance payment, with the
10 exception of the solar photovoltaic share compliance
11 requirement set forth in subsection (b)(2), shall be \$45
12 times the number of additional alternative energy credits
13 needed in order to comply with subsection (b) or (c).

14 (4) The alternative compliance payment for the solar
15 photovoltaic share shall be 200% of the average market value
16 of solar renewable energy credits sold during the reporting
17 period within the service region of the regional transmission
18 organization, including, where applicable, the levelized up-
19 front rebates received by sellers of solar renewable energy
20 credits in other jurisdictions in the PJM Interconnection,
21 L.L.C. transmission organization (PJM) or its successor.

22 (5) The commission shall establish a process to provide
23 for, at least annually, a review of the alternative energy
24 market within this Commonwealth and the service territories
25 of the regional transmission organizations that manage the
26 transmission system in any part of this Commonwealth. The
27 commission will use the results of this study to identify any
28 needed changes to the cost associated with the alternative
29 compliance payment program. If the commission finds that the
30 costs associated with the alternative compliance payment

1 program must be changed, the commission shall present these
2 findings to the General Assembly for legislative enactment.

3 * * *

4 Section 4. Portfolio requirements in other states.

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

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

14 Electric distribution companies and electric generation
15 suppliers shall document that this energy was not used to
16 satisfy another state's renewable energy portfolio standards.

17 Section 5. Interconnection standards for customer-generator
18 facilities.

19 Excess generation from net-metered customer-generators shall
20 receive full retail value for all energy produced on an annual
21 basis. The commission shall develop technical and net metering
22 interconnection rules for customer-generators intending to
23 operate renewable onsite generators in parallel with the
24 electric utility grid, consistent with rules defined in other
25 states within the service region of the regional transmission
26 organization that manages the transmission system in any part of
27 this Commonwealth. The commission shall convene a stakeholder
28 process to develop Statewide technical and net metering rules
29 for customer-generators. The commission shall develop these
30 rules within nine months of the effective date of this act.

1 Section 3. The addition of section 3(e)(12) of the act shall
2 apply to all alternative energy credits created under the act
3 before, on or after the effective date of this section,
4 regardless of when any underlying contract for the purchase of
5 electric energy or other products from the generator that
6 qualifies as an alternative energy system was executed.

7 Section 4. This act shall take effect immediately.