
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1146 Session of
2011

INTRODUCED BY HUGHES, TARTAGLIONE AND FERLO, JUNE 14, 2011

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JUNE 14, 2011

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 making a related repeal.

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

12 Section 1. The definition of "force majeure" in section 2 of
13 the act of November 30, 2004 (P.L.1672, No.213), known as the
14 Alternative Energy Portfolio Standards Act, amended July 17,
15 2007 (P.L.114, No.35), is amended to read:

16 Section 2. Definitions.

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

20 * * *

21 "Force majeure." Upon its own initiative or upon a request
22 of an electric distribution company or an electric generator

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

1 requests of force majeure can be made. If the commission further
2 determines that alternative energy resources are not reasonably
3 available in sufficient quantities in the marketplace for the
4 electric distribution companies and electric generation
5 suppliers to meet their obligations under this act, then the
6 commission shall modify the underlying obligation of the
7 electric distribution company or electric generation supplier or
8 recommend to the General Assembly that the underlying obligation
9 be eliminated. Commission modification of the electric
10 distribution company or electric generation supplier obligations
11 under this act shall be for that compliance period only.
12 Commission modification shall not automatically reduce the
13 obligation for subsequent compliance years. If the commission
14 modifies the electric distribution company or electric
15 generation supplier obligations under this act, the commission
16 may require the electric distribution company or electric
17 generation supplier to acquire additional alternative energy
18 credits in subsequent years equivalent to the obligation reduced
19 due to a force majeure declaration if the commission determines
20 that sufficient alternative energy credits exist in the
21 marketplace.

22 * * *

23 Section 2. Section 3(b), (c), (e)(7) and (12), (f), (g) and
24 (h) of the act, amended July 17, 2007 (P.L.114, No.35), are
25 amended and the section is amended by adding a subsection to
26 read:

27 Section 3. Alternative energy portfolio standards.

28 * * *

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

30 (1) [Two years after the effective date of this act, at

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

19 (i) 1.5013% for June 1, 2006, through May 31, 2007.

20 (ii) 1.503% for June 1, 2007, through May 31, 2008.

21 (iii) 2.0063% for June 1, 2008, through May 31,
22 2009.

23 (iv) 2.512% for June 1, 2009, through May 31, 2010.

24 (v) 3.0203% for June 1, 2010, through May 31, 2011.

25 (vi) 3.5504% for June 1, 2011, through May 31, 2012.

26 (vii) 4.0752% for June 1, 2012, through May 31,
27 2013.

28 (viii) 4.6218% for June 1, 2013, through May 31,
29 2014.

30 (ix) 5.4516% for June 1, 2014, through May 31, 2015.

1 (x) 6.05% for June 1, 2015, through May 31, 2016.

2 (xi) 6.66% for June 1, 2016, through May 31, 2017.

3 (xii) 7.25% for June 1, 2017, through May 31, 2018.

4 (xiii) 7.87% for June 1, 2018, through May 31, 2019.

5 (xiv) 8.75% for June 1, 2019, through May 31, 2020.

6 (xv) 9.72% for June 1, 2020, through May 31, 2021.

7 (xvi) 10.85% for June 1, 2021, through May 31, 2022.

8 (xvii) 12.15% for June 1, 2022, through May 31,
9 2023.

10 (xviii) 13.45% for June 1, 2023, through May 31,
11 2024.

12 (xix) 15.00% for June 1, 2024, and thereafter.

13 (1.1) The commission shall comply with the requirements
14 of 66 Pa.C.S. § 2814 (relating to additional alternative
15 energy sources) by annually increasing the percentage share
16 of Tier I alternative energy sources required to be sold by
17 an electric distribution company or electric generation
18 supplier under paragraph (1) to reflect any new alternative
19 energy source provided for by 66 Pa.C.S. § 2814. Any annual
20 increase will be applied to the next compliance year
21 requirement.

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

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

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

28 (iii) 0.0063% for June 1, 2008, through May 31,
29 2009.

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

1 (v) 0.0203% for June 1, 2010, through May 31, 2011.
2 [(vi) 0.0325% for June 1, 2011, through May 31,
3 2012.
4 (vii) 0.0510% for June 1, 2012, through May 31,
5 2013.
6 (viii) 0.0840% for June 1, 2013, through May 31,
7 2014.
8 (ix) 0.1440% for June 1, 2014, through May 31, 2015.
9 (x) 0.2500% for June 1, 2015, through May 31, 2016.
10 (xi) 0.2933% for June 1, 2016, through May 31, 2017.
11 (xii) 0.3400% for June 1, 2017, through May 31,
12 2018.
13 (xiii) 0.3900% for June 1, 2018, through May 31,
14 2019.
15 (xiv) 0.4433% for June 1, 2019, through May 31,
16 2020.
17 (xv) 0.5000% for June 1, 2020, and thereafter.]
18 (vi) 0.0504% for June 1, 2011, through May 31, 2012.
19 (vii) 0.0752% for June 1, 2012, through May 31,
20 2013.
21 (viii) 0.1218% for June 1, 2013, through May 31,
22 2014.
23 (ix) 0.2016% for June 1, 2014, through May 31, 2015.
24 (x) 0.3% for June 1, 2015, through May 31, 2016.
25 (xi) 0.41% for June 1, 2016, through May 31, 2017.
26 (xii) 0.5% for June 1, 2017, through May 31, 2018.
27 (xiii) 0.62% for June 1, 2018, through May 31, 2019.
28 (xiv) 0.75% for June 1, 2019, through May 31, 2020.
29 (xv) 0.97% for June 1, 2020, through May 31, 2021.
30 (xvi) 1.35% for June 1, 2021, through May 31, 2022.

1 (xvii) 1.9% for June 1, 2022, through May 31, 2023.

2 (xviii) 2.45% for June 1, 2023, through May 31,
3 2024.

4 (xix) 3% for June 1, 2024, and thereafter.

5 (3) Upon commencement of the beginning of the 6th
6 reporting year, and every five years thereafter, the
7 commission shall undertake a review of the compliance by
8 electric distribution companies and electric generation
9 suppliers with the requirements of this act. The review shall
10 also include the status of alternative energy technologies
11 within this Commonwealth and the capacity to add additional
12 alternative energy resources. The commission shall use the
13 results of this review to recommend to the General Assembly
14 additional compliance goals beyond year [15] 21. The
15 commission shall work with the department in evaluating the
16 future alternative energy resource potential.

17 (4) Electric energy and alternative energy credits from
18 solar photovoltaic and solar thermal energy technologies
19 supplied to retail customers shall be generated from solar
20 photovoltaic and solar thermal energy systems located within
21 this Commonwealth in meeting the requirements of paragraph
22 (2). This paragraph shall apply to all contracts or short-
23 term purchases made after December 31, 2010.

24 (5) Notwithstanding the other provisions of this act,
25 credits purchased or contracted for prior to the effective
26 date of this paragraph may be used to demonstrate compliance
27 under this subsection.

28 (c) Tier II share.--Of the electrical energy required to be
29 sold from alternative energy sources identified in Tier II, the
30 percentage that must be from these technologies is for:

- 1 (1) Years 1 through 4 - 4.2%.
2 (2) Years 5 through 9 - 6.2%.
3 (3) Years 10 through 14 - [8.2%] 11.2%.
4 (4) Years 15 and thereafter - [10.0%] 13.0%.

5 * * *

6 (e) Alternative energy credits.--

7 * * *

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

23 * * *

24 (12) (i) Unless a contractual provision explicitly
25 assigns alternative energy credits in a different manner,
26 the owner of the alternative energy system or a customer-
27 generator owns any and all alternative energy credits
28 associated with or created by the production of electric
29 energy by such facility or customer, and the owner or
30 customer shall be entitled to sell, transfer or take any

1 other action to which a legal owner of property is
2 entitled to take with respect to the credits.

3 (ii) This paragraph shall apply to all alternative
4 energy credits created pursuant to this act.

5 (f) Market Development and Long-Term Contracting.--

6 (1) The commission shall promote the development of
7 alternative energy through the adoption of alternative energy
8 credit procurement rules that ensure market diversity,
9 competition and a reliable supply of alternative energy
10 credits to all electric distribution companies and electric
11 generation suppliers. These rules shall include, but are not
12 limited to, long-term contracts for alternative energy
13 credits and electric distribution company procurement of
14 alternative energy credits at the request of competitive
15 retail suppliers.

16 (2) These rules shall require that each winning bid be
17 selected solely on the least cost alternative energy credit
18 offered and shall award contracts on a pay-as-bid basis. For
19 purposes of this subsection, the term "pay-as-bid" shall mean
20 winning bidders are paid according to their bid price and not
21 a single clearing price.

22 (3) The commission shall determine that each procurement
23 under this subsection is competitive based on its standard
24 protocols for determining competitiveness. If it is
25 determined that a procurement event was not competitive, the
26 commission shall set a date for another procurement event
27 which, in the case of the first procurement event, shall take
28 place no later than 180 days after the initial procurement
29 event and, in the case of the second procurement event, shall
30 take place no later than one year after the initial

1 procurement event.

2 (4) The commission shall require procurement of
3 qualifying Tier I alternative energy credits, other than
4 solar energy credits, subject to the following terms:

5 (i) The first procurement for 25% of the following
6 compliance year obligations under subsection (b), for a
7 contract period of at least ten years, shall be conducted
8 no later than 120 days after the effective date of this
9 subsection.

10 (ii) The second procurement for an additional 25% of
11 the following compliance year obligations under
12 subsection (b), for a contract period of at least ten
13 years, shall be conducted no later than December 31,
14 2011.

15 (iii) Alternative energy credits from resources
16 eligible to participate under these procurement rules
17 shall have an in-service date as of the effective date of
18 this section or later and shall be located in this
19 Commonwealth.

20 (5) The commission shall require procurement of
21 qualifying solar energy alternative energy credits subject to
22 the following terms:

23 (i) The process shall recognize that different
24 procurement approaches are necessary based on the size of
25 the solar energy systems used to serve residential,
26 commercial and government customers.

27 (ii) Aggregation of solar energy resources shall be
28 used for solar energy systems with a nameplate capacity
29 of no greater than 200 kilowatts and may be used for
30 other resources.

1 (iii) Financial security requirements imposed on
2 solar developers and other sellers not render solar
3 energy projects financially infeasible.

4 (iv) Contract periods for procurement mandated under
5 this subsection shall be at least ten years and shall be
6 subject to the following:

7 (A) The first procurement for at least 55% of
8 the following compliance year obligation under
9 subsection (b) shall be conducted no later than 120
10 days after the effective date of this subsection.

11 (B) The second procurement for at least 45% of
12 the compliance obligation under subsection (b) for
13 the following compliance year shall be conducted no
14 later than December 31, 2011.

15 (C) The third procurement for at least 30% of
16 the compliance obligation under subsection (b) for
17 the following compliance year shall be conducted no
18 later than December 31, 2012.

19 (D) The fourth procurement for at least 25% of
20 the compliance obligation under subsection (b) for
21 the following compliance year shall be conducted no
22 later than December 31, 2013.

23 (E) The fifth procurement for at least 20% of
24 the compliance obligation under subsection (b) for
25 the following compliance year shall be conducted no
26 later than December 31, 2014.

27 (F) For each compliance year commencing with
28 June 1, 2015, the procurement of at least 15% of the
29 compliance obligation under subsection (b) shall be
30 conducted no later than December 31 of the year

1 preceding that compliance year.

2 (v) Upon commencement of the compliance year ending
3 May 31, 2015, and thereafter in conjunction with the
4 reviews required under subsection (b)(3), the commission
5 shall undertake a review of the procurement processes
6 under this subsection, the compliance by electric
7 distribution companies and electric generation suppliers
8 with the requirements of this act and the overall market
9 conditions. The commission shall use the results of this
10 review to determine whether to modify the procurement
11 processes established in accordance with this subsection.

12 [~~(f)~~] (g) Alternative compliance payment.--

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

17 (2) The commission shall conduct a review of each
18 determination made under subsections (b) and (c). If, after
19 notice and hearing, the commission determines that an
20 electric distribution company or electric generation supplier
21 has failed to comply with subsections (b) and (c) in the
22 absence of force majeure, the commission shall impose an
23 alternative compliance payment on that company or supplier.

24 (3) The alternative compliance payment, with the
25 exception of the solar photovoltaic share compliance
26 requirement set forth in subsection (b)(2), shall be \$45
27 times the number of additional alternative energy credits
28 needed in order to comply with subsection (b) or (c).

29 (4) [The alternative compliance payment for the solar
30 photovoltaic share shall be 200% of the average market value

1 of solar renewable energy credits sold during the reporting
2 period within the service region of the regional transmission
3 organization, including, where applicable, the levelized up-
4 front rebates received by sellers of solar renewable energy
5 credits in other jurisdictions in the PJM Interconnection,
6 L.L.C. transmission organization (PJM) or its successor] The
7 alternative compliance payment for the solar alternative
8 share shall be set at \$450 per megawatt hour (MWh) per year
9 beginning January 1, 2011, and the amount shall be reduced by
10 3% each year thereafter.

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

22 [(g)] (h) Transfer to sustainable development funds.--

23 (1) Notwithstanding the provisions of 66 Pa.C.S. §§ 511
24 (relating to disposition, appropriation and disbursement of
25 assessments and fees) and 3315 (relating to disposition of
26 fines and penalties), alternative compliance payments imposed
27 pursuant to this act shall be paid into Pennsylvania's
28 Sustainable Energy Funds created under the commission's
29 restructuring orders under 66 Pa.C.S. Ch. 28 (relating to
30 restructuring of electric utility industry). Alternative

1 compliance payments shall be paid into a special fund of the
2 Pennsylvania Sustainable Energy Board, established by the
3 commission under Docket M-00031715, and made available to the
4 Regional Sustainable Energy Funds under procedures and
5 guidelines approved by the Pennsylvania Energy Board.

6 (2) The alternative compliance payments shall be
7 utilized solely for projects that will increase the amount of
8 electric energy generated from alternative energy resources
9 for purposes of compliance with subsections (b) and (c).

10 [(h)] (i) Nonseverability.--The provisions of subsection (a)
11 are declared to be nonseverable. If any provision of subsection
12 (a) is held invalid, the remaining provisions of this act shall
13 be void.

14 Section 3. Repeals are as follows:

15 (1) The General Assembly declares that the repeal under
16 paragraph (2) is necessary to effectuate the amendment of
17 section 3(e)(12) of the act.

18 (2) Section 3.1 of the act of July 17, 2007 (P.L.114,
19 No.35), entitled "An act amending the act of November 30,
20 2004 (P.L.1672, No.213), entitled, 'An act providing for the
21 sale of electric energy generated from renewable and
22 environmentally beneficial sources, for the acquisition of
23 electric energy generated from renewable and environmentally
24 beneficial sources by electric distribution and supply
25 companies and for the powers and duties of the Pennsylvania
26 Public Utility Commission,' further providing for the
27 definitions of 'alternative energy credit,' 'customer-
28 generator,' 'force majeure,' 'net metering,' and 'Tier I
29 alternative energy source,' for alternative energy portfolio
30 standards, for portfolio requirements in other states and for

1 interconnection standards for customer-generator facilities,"
2 is repealed.

3 Section 4. The following shall apply:

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

10 (2) Notwithstanding 66 Pa.C.S. §§ 508 (relating to
11 powers of the commission to vary, reform and revise
12 contracts) and 2102 (relating to approval of contracts with
13 affiliated interests), the Pennsylvania Public Utility
14 Commission may modify contracts or disallow costs of
15 alternative energy credit contracts under this act only when
16 the party seeking recovery of the costs of these contracts
17 is, after hearing, found to be at fault for the following:

18 (i) not complying with the commission-approved
19 alternative energy credit procurement rules; or

20 (ii) fraud, collusion or market manipulation with
21 regard to these contracts.

22 (3) Notwithstanding the other provisions of this act,
23 alternative energy credits acquired or contracted for prior
24 to the effective date of this section may be used to
25 demonstrate compliance under this act.

26 Section 5. This act shall take effect immediately.