
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 11 Session of
2019

INTRODUCED BY MEHAFFIE, HICKERNELL, MILLARD, TOOIL, RADER,
HERSHEY, YOUNGBLOOD, BARRAR, ZIMMERMAN, HILL-EVANS,
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SOLOMON, KORTZ, GREGORY AND MARSHALL, MARCH 12, 2019

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 12, 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 and for capacity payments to alternative
13 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," "force majeure" and "reporting
18 period" in section 2 of the act of November 30, 2004 (P.L.1672,
19 No.213), known as the Alternative Energy Portfolio Standards
20 Act, are amended and the section is amended by adding
21 definitions to read:

22 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 and shall only be used to
8 satisfy the requirement to purchase Tier I, Tier II or Tier III
9 alternative energy credits. The alternative energy credit shall
10 remain the property of the alternative energy system until the
11 alternative energy credit is voluntarily transferred by the
12 alternative energy system.

13 * * *

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

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

18 (2) Solar thermal energy.

19 (3) Wind power.

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

25 (5) Low-impact hydropower consisting of any technology
26 that produces electric power and that harnesses the
27 hydroelectric potential of moving water impoundments,
28 provided such incremental hydroelectric development:

29 (i) does not adversely change existing impacts to
30 aquatic systems;

1 (ii) meets the certification standards established
2 by the Low Impact Hydropower Institute and American
3 Rivers, Inc., or their successors;

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

6 (iv) protects against erosion; and

7 (v) protects cultural and historic resources.

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

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

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

22 (ii) any solid nonhazardous, cellulosic waste
23 material that is segregated from other waste materials,
24 such as waste pallets, crates and landscape or right-of-
25 way tree trimmings or agricultural sources, including
26 orchard tree crops, vineyards, grain, legumes, sugar and
27 other crop by-products or residues.

28 (8) Biologically derived methane gas, which shall
29 include methane from the anaerobic digestion of organic
30 materials from yard waste, such as grass clippings and

1 leaves, food waste, animal waste and sewage sludge. The term
2 also includes landfill methane gas.

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

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

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

21 (12) Demand-side management consisting of the management
22 of customer consumption of electricity or the demand for
23 electricity through the implementation of:

24 (i) energy efficiency technologies, management
25 practices or other strategies in residential, commercial,
26 institutional or government customers that reduce
27 electricity consumption by those customers;

28 (ii) load management or demand response
29 technologies, management practices or other strategies in
30 residential, commercial, industrial, institutional and

1 government customers that shift electric load from
2 periods of higher demand to periods of lower demand; or

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

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

11 (14) Energy from nuclear fission used to generate
12 electricity.

13 * * *

14 "Force majeure." Upon its own initiative or upon a request
15 of an electric distribution company or an electric generator
16 supplier, the Pennsylvania Public Utility Commission, within 60
17 days, shall determine if alternative energy resources are
18 reasonably available in the marketplace in sufficient quantities
19 for the electric distribution companies and electric generation
20 suppliers to meet their obligations for that reporting period
21 under this act. In making this determination, the commission
22 shall consider whether electric distribution companies or
23 electric generation suppliers have made a good faith effort to
24 acquire sufficient alternative energy to comply with their
25 obligations. Such good faith efforts shall include, but are not
26 limited to, banking alternative energy credits during their
27 transition periods, seeking alternative energy credits through
28 competitive solicitations and seeking to procure alternative
29 energy credits or alternative energy through long-term
30 contracts. In further making its determination, the commission

1 shall assess the availability of alternative energy credits in
2 the Generation Attributes Tracking System (GATS) or its
3 successor and the availability of alternative energy credits
4 generally in Pennsylvania and other jurisdictions in [the PJM
5 Interconnection, L.L.C. regional transmission organization (PJM)
6 or its successor] PJM. The commission may also require
7 solicitations for alternative energy credits as part of default
8 service before requests of force majeure can be made. If the
9 commission further determines that alternative energy resources
10 are not reasonably available in sufficient quantities in the
11 marketplace for the electric distribution companies and electric
12 generation suppliers to meet their obligations under this act,
13 then the commission shall modify the underlying obligation of
14 the electric distribution company or electric generation
15 supplier or recommend to the General Assembly that the
16 underlying obligation be eliminated. Commission modification of
17 the electric distribution company or electric generation
18 supplier obligations under this act shall be for that compliance
19 period only. Commission modification shall not automatically
20 reduce the obligation for subsequent compliance years. If the
21 commission modifies the electric distribution company or
22 electric generation supplier obligations under this act, the
23 commission may require the electric distribution company or
24 electric generation supplier to acquire additional alternative
25 energy credits in subsequent years equivalent to the obligation
26 reduced due to a force majeure declaration if the commission
27 determines that sufficient alternative energy credits exist in
28 the marketplace.

29 "Load-serving entities." As follows:

30 (1) Entities or the duly designated agents of the

1 entities, including load aggregators or power marketers,
2 that:

3 (i) serve end users within the PJM region; and
4 (ii) have been granted the authority or have an
5 obligation under a State law, local ordinance, regulation
6 or franchise to sell electric energy to end users located
7 within the PJM region.

8 (2) The term shall include end use customers that
9 qualify under State rules or utility retail tariffs to manage
10 directly their own supply of electric power and energy and
11 use of transmission and ancillary services.

12 * * *

13 "PJM." The PJM Interconnection, L.L.C. regional transmission
14 organization or its successor.

15 * * *

16 ["Reporting period."] "Reporting period" or "reporting year."
17 The 12-month period from June 1 through May 31. A reporting year
18 shall be numbered according to the calendar year in which it
19 begins and ends.

20 * * *

21 "Tier I projected price." The Tier I projected price shall
22 equal the average of the Tier I futures price for the current
23 reporting year and the subsequent two reporting years. For the
24 purposes of calculating the Tier I projected price, the Tier I
25 futures price for each reporting year shall be the average of
26 the closing price on each trade date during the calendar year
27 that ends immediately prior to the start of the current
28 reporting year for alternative energy credits that are eligible
29 to meet the Tier I renewable energy requirement in this
30 Commonwealth.

1 "Tier III alternative energy credit reporting period price."

2 As follows:

3 (1) Except as provided under paragraph (2), the Tier III
4 alternative energy credit reporting period price shall be
5 determined by the commission 60 days before the start of each
6 reporting year.

7 (2) For the first reporting period for the Tier III
8 program, the commission may determine the Tier III
9 alternative energy credit reporting period price no later
10 than 60 days after the start of the reporting year.

11 (3) The Tier III alternative energy credit reporting
12 period price shall be equal to the Tier I projected price and
13 shall not be less than the Tier III price floor or greater
14 than the Tier III price cap.

15 "Tier III alternative energy source." A zero-emission
16 alternative energy source that:

17 (1) Is derived from:

18 (i) Solar photovoltaic and solar thermal energy.

19 (ii) Wind power.

20 (iii) Low-impact hydropower.

21 (iv) Geothermal energy.

22 (v) Nuclear fission.

23 (2) Satisfies all of the following:

24 (i) The alternative energy source is interconnected
25 with capacity injection rights within the regional
26 transmission organization with responsibility for this
27 Commonwealth.

28 (ii) If the alternative energy source were to cease
29 operation or fail to come in-service, all of the
30 following would occur:

1 (A) The ability of this Commonwealth or regions
2 of this Commonwealth to maintain or decrease existing
3 levels of volatile organic compounds or to comply
4 with Federal or State air pollution control programs,
5 standards or goals is reduced.

6 (B) The carbon dioxide emissions that result
7 from electricity consumed in this Commonwealth are
8 negatively impacted.

9 (C) The ability of this Commonwealth to maintain
10 or decrease existing levels of carbon monoxide, lead,
11 ground-level ozone, particulate matter, nitrogen
12 oxide or sulfur dioxide is negatively impacted.

13 (3) On or after January 1, 2017, satisfies any of the
14 following:

15 (i) Regardless of the alternative energy source's
16 location, did not receive tax exemptions, deferrals,
17 exclusions, allowances, payments, credits, deductions or
18 reimbursements from another state calculated in whole or
19 in part using a metric that provides value for emissions
20 not produced by the alternative energy source.

21 (ii) Is not wholly owned by a municipal or
22 cooperative corporation or a group, association or
23 consortium of a municipal or cooperative corporations.

24 (iii) Did not, at any point during the Tier III
25 program, recover some or all of the capital or operating
26 costs of the resource through cost-based rates regulated
27 by a state.

28 "Tier III price cap." As follows:

29 (1) Except as provided under paragraph (2), the Tier III
30 price cap shall be initially equal to the product of 65% and

1 the weighted average price of credits that were retired for
2 Tier I compliance for the reporting year ending May 31, 2017,
3 as reflected in the commission's 2017 Annual Report of
4 Alternative Energy Portfolio Standards Act of 2004.

5 (2) If the Commonwealth participates in a Statewide
6 emissions fee program or a regional multistate greenhouse gas
7 program, the initial Tier III price cap shall be adjusted
8 annually by the ratio of the average price for allowances
9 under the program for the previous reporting year in price
10 per ton divided by \$15 per ton.

11 "Tier III price floor." As follows:

12 (1) Except as provided under paragraph (2), the Tier III
13 price floor shall be initially equal to the product of 50%
14 and the weighted average price of credits that were retired
15 for Tier I compliance for the reporting year ending May 31,
16 2017, as reflected in the commission's 2017 Annual Report of
17 Alternative Energy Portfolio Standards Act of 2004.

18 (2) If the Commonwealth participates in a Statewide
19 emissions fee program or a regional multistate greenhouse gas
20 program, the initial Tier III price floor shall be adjusted
21 annually by the ratio of the average price for allowances
22 under the program for the previous reporting year in price
23 per ton divided by \$15 per ton.

24 "Tier III program." The period commencing at the beginning
25 of the 14th reporting year on June 1, 2019, to May 31, 2020.

26 * * *

27 Section 2. Section 3(a), (b), (e), (f) and (g) of the act
28 are amended and the section is amended by adding a subsection to
29 read:

30 Section 3. Alternative energy portfolio standards.

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

2 (1) From the effective date of this act through and
3 including the 15th year after enactment of this act and each
4 year thereafter, 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 comprised of electricity generated from alternative energy
8 sources and in the percentage amounts as described under
9 subsections (b) and (c).

10 (2) Electric distribution companies and electric
11 generation suppliers shall satisfy both requirements set
12 forth in subsections (b) and (c), provided, however, that an
13 electric distribution company or an electric generation
14 supplier shall be excused from its obligations under this
15 section to the extent that the commission determines that
16 force majeure exists.

17 (2.1) Beginning June 1, 2019, and each year thereafter,
18 Tier III alternative energy credits shall be purchased by
19 electric distribution companies as described under subsection
20 (c.1), provided, however, that an electric distribution
21 company shall be excused from its obligations under this
22 section to the extent that the commission determines that
23 force majeure exists.

24 (3) All costs for:

25 (i) the purchase of electricity generated from Tier
26 I and Tier II alternative energy sources, including the
27 costs of the regional transmission organization, in
28 excess of the regional transmission organization real-
29 time locational marginal pricing, or its successor, at
30 the delivery point of the alternative energy source for

1 the electrical production of the alternative energy
2 sources; and

3 (ii) payments for Tier I and Tier II alternative
4 energy credits[, in both cases] that are voluntarily
5 acquired by an electric distribution company during the
6 cost recovery period on behalf of its customers shall be
7 deferred as a regulatory asset by the electric
8 distribution company and fully recovered, with a return
9 on the unamortized balance, pursuant to an automatic
10 energy adjustment clause under 66 Pa.C.S. § 1307
11 (relating to sliding scale of rates; adjustments) as a
12 cost of generation supply under 66 Pa.C.S. § 2807
13 (relating to duties of electric distribution companies)
14 in the first year after the expiration of its cost-
15 recovery period. After the cost-recovery period, any
16 direct or indirect costs for the purchase by electric
17 distribution companies of resources to comply with this
18 section, including, but not limited to, the purchase of
19 electricity generated from Tier I and Tier II alternative
20 energy sources, payments for alternative energy credits,
21 cost of credits banked, payments to any third party
22 administrators for performance under this act and costs
23 levied by a regional transmission organization to ensure
24 that Tier I and Tier II alternative energy sources are
25 reliable, shall be recovered on a full and current basis
26 pursuant to an automatic energy adjustment clause under
27 66 Pa.C.S. § 1307 as a cost of generation supply under 66
28 Pa.C.S. § 2807.

29 (4) Any direct and indirect costs incurred by electric
30 distribution companies to comply with subsection (c.1) and

1 sections 8.1 and 8.2, including, but not limited to, the
2 purchase of Tier III alternative energy credits and payments
3 to any third-party administrators for performance under this
4 act shall be recovered on a full and current basis pursuant
5 to a nonbypassable adjustment clause under 66 Pa.C.S. § 1307.

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

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

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

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

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

30 (iii) 0.0063% for June 1, 2008, through May 31,

- 1 2009.
- 2 (iv) 0.0120% for June 1, 2009, through May 31, 2010.
- 3 (v) 0.0203% for June 1, 2010, through May 31, 2011.
- 4 (vi) 0.0325% for June 1, 2011, through May 31, 2012.
- 5 (vii) 0.0510% for June 1, 2012, through May 31,
- 6 2013.
- 7 (viii) 0.0840% for June 1, 2013, through May 31,
- 8 2014.
- 9 (ix) 0.1440% for June 1, 2014, through May 31, 2015.
- 10 (x) 0.2500% for June 1, 2015, through May 31, 2016.
- 11 (xi) 0.2933% for June 1, 2016, through May 31, 2017.
- 12 (xii) 0.3400% for June 1, 2017, through May 31,
- 13 2018.
- 14 (xiii) 0.3900% for June 1, 2018, through May 31,
- 15 2019.
- 16 (xiv) 0.4433% for June 1, 2019, through May 31,
- 17 2020.
- 18 (xv) 0.5000% for June 1, 2020, and thereafter.

19 (3) Upon commencement of the beginning of the 6th
20 reporting year, the commission shall undertake a review of
21 the compliance by electric distribution companies and
22 electric generation suppliers with the requirements of this
23 act. The review shall also include the status of alternative
24 energy technologies within this Commonwealth and the capacity
25 to add additional alternative energy resources. The
26 commission shall use the results of this review to recommend
27 to the General Assembly additional compliance goals beyond
28 year 15 for Tier I and Tier II shares. The commission shall
29 work with the department in evaluating the future alternative
30 energy resource potential.

1 * * *

2 (c.1) Tier III share.--

3 (1) During the Tier III program, electric distribution
4 companies shall purchase Tier III alternative energy credits
5 equal to 50% of the total electric energy, net of system
6 losses, sold in a reporting period in a service territory by
7 the electric distribution companies and electric generation
8 suppliers in accordance with section 8.1(c)(3).

9 Notwithstanding any other provision of law, the obligations
10 of electric distribution companies under this subsection
11 shall not be subject to 66 Pa.C.S. § 2807(e)(3.5) or (3.7).
12 Nothing in this subsection shall be construed to obligate an
13 electric distribution company to purchase electric energy
14 from a Tier III alternative energy source.

15 (2) This subsection shall expire after an effective cost
16 of carbon emissions exists in this Commonwealth that is equal
17 to no less than an average of \$15 per ton over three
18 consecutive reporting periods as a result of the enactment of
19 a Statewide emissions fee program or participation by the
20 Commonwealth in a regional multistate greenhouse gas program.

21 (3) Upon the enactment of a Statewide emissions fee
22 program or participation by the Commonwealth in a regional
23 multistate greenhouse gas program, the commission shall
24 submit a notice to the Legislative Reference Bureau for
25 publication in the Pennsylvania Bulletin.

26 (4) This subsection shall expire on the date the notice
27 under paragraph (3) is published in the Pennsylvania
28 Bulletin.

29 * * *

30 (e) Alternative energy credits.--

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

6 (2) The commission shall approve an independent entity
7 to serve as the alternative energy credits program
8 administrator. The administrator shall have those powers and
9 duties assigned by commission regulations. Such powers and
10 duties shall include, but not be limited to, the following:

11 (i) To create and administer an alternative energy
12 credits certification, tracking and reporting program.

13 This program should include, at a minimum, a process for
14 qualifying alternative energy systems and determining the
15 manner credits can be created, accounted for, transferred
16 and retired.

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

19 (3) All qualifying alternative energy systems must
20 include a qualifying meter to record the cumulative electric
21 production to verify the [advanced] alternative energy credit
22 value. Qualifying meters will be approved by the commission
23 as defined in paragraph (4).

24 (4) (i) An electric distribution company or electric
25 generation supplier shall comply with the applicable
26 requirements of this section by purchasing sufficient
27 alternative energy credits and submitting documentation
28 of compliance to the program administrator.

29 (ii) For purposes of this subsection, one
30 alternative energy credit shall represent one megawatt

1 hour of qualified alternative electric generation,
2 whether self-generated, purchased along with the electric
3 commodity or separately through a tradable instrument and
4 otherwise meeting the requirements of commission
5 regulations and the program administrator.

6 (5) The alternative energy credits program shall include
7 provisions requiring a reporting period as defined in section
8 2 for all covered entities under this act. The alternative
9 energy credits program shall also include a true-up period as
10 defined in section 2. The true-up period shall provide
11 entities covered under this act the ability to obtain the
12 required number of alternative energy credits or to make up
13 any shortfall of the alternative energy credits they may be
14 required to obtain to comply with this act. A force majeure
15 provision shall also be provided for under the true-up period
16 provisions.

17 (6) An electric distribution company and electric
18 generation supplier may bank or place in reserve Tier I and
19 Tier II alternative energy credits produced in one reporting
20 year for compliance in either or both of the two subsequent
21 reporting years, subject to the limitations set forth in this
22 subsection and provided that the electric distribution
23 company and electric generation supplier are in compliance
24 for all previous reporting years. In addition, the electric
25 distribution company and electric generation supplier shall
26 demonstrate to the satisfaction of the commission that such
27 credits:

28 (i) were in excess of the alternative energy credits
29 needed for compliance in the year in which they were
30 generated and that such excess credits have not

1 previously been used for compliance under this act;

2 (ii) were produced by the generation of electrical
3 energy by alternative energy sources and sold to retail
4 customers during the year in which they were generated;
5 and

6 (iii) have not otherwise been nor will be sold,
7 retired, claimed or represented as part of satisfying
8 compliance with alternative or renewable energy portfolio
9 standards in other states.

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

25 (8) The commission or its designee shall develop a
26 registry of pertinent information regarding all available
27 alternative energy credits, credit transactions among
28 electric distribution companies and electric generation
29 suppliers, the number of alternative energy credits sold or
30 transferred and the price paid for the sale or transfer of

1 the credits. The registry shall provide current information
2 to electric distribution companies, electric generation
3 suppliers and the general public on the status of alternative
4 energy credits created, sold or transferred within this
5 Commonwealth.

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

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

24 (11) The commission shall within 120 days of the
25 effective date of this act develop a depreciation schedule
26 for alternative energy credits created through demand-side
27 management, energy efficiency and load management
28 technologies and shall develop standards for tracking and
29 verifying savings from energy efficiency, load management and
30 demand-side management measures. The commission shall allow

1 for a 60-day public comment period and shall issue final
2 standards within 30 days of the close of the public comment
3 period.

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

13 (f) Alternative compliance payment.--

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

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

26 (3) The alternative compliance payment, with the
27 exception of the solar photovoltaic share compliance
28 requirement set forth in [~~subsection~~] subsections (b) (2) and
29 (c.1), shall be \$45 times the number of additional
30 alternative energy credits needed in order to comply with

1 subsection (b) or (c).

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

11 (4.1) The alternative compliance payment for the Tier
12 III share shall be 200% of the Tier III alternative energy
13 credit reporting period price for the applicable reporting
14 period times the number of additional alternative energy
15 credits needed in order to comply with subsection (c.1).

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

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

28 (1) Notwithstanding the provisions of 66 Pa.C.S. §§ 511
29 (relating to disposition, appropriation and disbursement of
30 assessments and fees) and 3315 (relating to disposition of

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

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

17 (3) The alternative compliance payments for failure to
18 comply with subsection (c.1) shall be divided as follows:

19 (i) Fifty percent shall be paid consistent with
20 paragraphs (1) and (2).

21 (ii) Fifty percent shall be utilized by the
22 alternative energy credits program administrator to pay
23 Tier III alternative energy sources for Tier III
24 alternative energy credits that were otherwise not
25 purchased due to the failure to comply with subsection
26 (c.1).

27 * * *

28 Section 3. Sections 4 and 6 of the act are amended to read:

29 Section 4. Portfolio requirements in other states.

30 If an electric distribution [**supplier**] company or electric

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

1 sources located outside the service territory of a regional
2 transmission organization that manages the transmission system
3 in any part of this Commonwealth shall not be eligible to meet
4 the compliance requirements of this act. Electric distribution
5 companies and electric generation suppliers shall document that
6 this energy was not used to satisfy another state's renewable
7 energy portfolio standards.

8 Section 6. Health and safety standards.

9 The department shall cooperate with the Department of Labor
10 and Industry as necessary in developing health and safety
11 standards, as needed, regarding facilities generating energy
12 from Tier I and Tier II alternative energy sources. The
13 department shall establish appropriate and reasonable health and
14 safety standards to ensure uniform and proper compliance with
15 this act by owners and operators of facilities generating energy
16 from Tier I and Tier II alternative energy sources as defined in
17 this act.

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

20 Section 7. Interagency responsibilities.

21 * * *

22 (d) Enforcement.--In addition to any powers expressly
23 specified under this act, the commission may enforce the
24 provisions of this act in accordance with the commission's
25 regulations and orders and the commission may modify or rescind
26 the regulations or orders. Nothing in this subsection shall be
27 construed to exclude any authority which the commission would
28 otherwise have under this act or 66 Pa.C.S. (relating to public
29 utilities).

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

1 Section 8.1. Tier III alternative energy sources.

2 (a) Participation.--An alternative energy source seeking to
3 apply for participation in the Tier III program shall file a
4 written notice with the commission. The written notice shall
5 contain all of the following information:

6 (1) The alternative energy source's qualifications as a
7 Tier III alternative energy source.

8 (2) The estimated generation of the alternative energy
9 resources consistent with subsection (b)(2).

10 (3) The alternative energy source's commitment to sell
11 the entire output of the alternative energy source as Tier
12 III credits for at least six reporting periods with the
13 commission no later than 90 days after the start of the first
14 Tier III program reporting period. The provisions of
15 subsection (b) shall apply for the entire first reporting
16 period if the alternative energy source is designated as a
17 Tier III alternative energy source by the commission.

18 (b) Review.--

19 (1) The alternative energy source shall submit the
20 notice filed under subsection (a) to the Legislative
21 Reference Bureau for publication in the Pennsylvania Bulletin
22 in the first available issue after filing the notice with the
23 commission. Any comments in response to the notice filed
24 under subsection (a) shall be submitted no later than 20 days
25 after the notice is published in the Pennsylvania Bulletin
26 and any reply comments shall be submitted no later than 10
27 days after the initial comments are submitted.

28 (2) The commission shall review each notice filed under
29 subsection (a) and all comments submitted under this
30 paragraph and rank each applicant for participation in the

1 Tier III program from first to last based on how well the
2 alternative energy source satisfies the criteria specified
3 under this act. No later than 90 days after reviewing each
4 notice filed under subsection (a), the commission shall
5 select the applicants that will participate in the Tier III
6 program according to their ranking. Beginning with the top-
7 ranked applicant and continuing in rank order, the commission
8 shall select applicants up to the point at which the combined
9 sum of megawatt hours of estimated generation by all selected
10 applicants equals approximately 50% of the total number of
11 megawatt hours of electricity distributed by electric
12 distribution companies in this Commonwealth, net of system
13 losses, for the latest calendar year reported in the most
14 recent Electric Power Outlook or other report reviewing the
15 generation, transmission and distribution capacity in this
16 Commonwealth published by the commission. For the purposes of
17 this calculation, the estimated generation shall be as
18 follows:

19 (i) For existing alternative energy resources fueled
20 by nuclear fission, the estimated generation shall be
21 equal to the product of 77% multiplied by 8,760 hours per
22 year multiplied by the nameplate capacity of the plant.

23 (ii) For existing alternative energy resources not
24 fueled by nuclear fission, the estimated generation shall
25 be equal to the generation output of the resources in the
26 calendar year which concludes immediately prior to the
27 date upon which qualification applications are due.

28 (iii) For new alternative energy resources, the
29 estimated generation is equal to the product of 8,760
30 hours per year multiplied by the nameplate capacity of

1 the resource multiplied by the average capacity factor of
2 similar existing resources.

3 (3) The commission shall select the marginal applicant
4 to participate in the Tier III program if the addition of 50%
5 of the estimated generation produced by the marginal
6 applicant does not cause the combined sum of megawatt hours
7 of estimated generation from all selected applicants,
8 including the marginal unit, to exceed 50% of the total
9 number of megawatt hours of electricity distributed by
10 electric distribution companies in this Commonwealth in the
11 calendar year which concludes immediately prior to the date
12 upon which qualification applications are due.

13 (4) Once designated as a Tier III alternative energy
14 source, an alternative energy source shall continue to be
15 considered a Tier III alternative energy source as long as
16 the alternative energy source continues to meet the criteria
17 specified under this act.

18 (c) Transfers and payments.--

19 (1) No later than 35 days after the close of each
20 reporting period, each Tier III alternative energy source
21 shall transfer all Tier III alternative energy credits for
22 the reporting period to the alternative energy credit program
23 administrator. The program administrator shall hold the Tier
24 III alternative energy credits on behalf of the Tier III
25 alternative energy sources for the sole purpose of
26 administering the Tier III program.

27 (2) No later than seven days after all Tier III
28 alternative energy sources have transferred the credits under
29 paragraph (1), each electric distribution company shall
30 purchase Tier III alternative energy credits from the

1 alternative energy credit program administrator at the Tier
2 III alternative energy credit reporting period price for the
3 reporting period to satisfy each electric distribution
4 company's Tier III obligations.

5 (3) No later than seven days after each electric
6 distribution company purchases Tier III alternative energy
7 credits under paragraph (2), the alternative energy credit
8 program administrator shall pay each Tier III alternative
9 energy source for the Tier III alternative energy credits
10 transferred to the alternative energy credit program
11 administrator under paragraph (1) in accordance with the
12 following:

13 (i) If the total quantity of Tier III alternative
14 energy credits transferred to the alternative energy
15 credit program administrator is less than the sum of the
16 Tier III shares for all electric distribution companies
17 in this Commonwealth, then each electric distribution
18 company's Tier III share for that delivery year shall be
19 each electric distribution company's proportional share
20 of transferred Tier III credits. An electric distribution
21 company's proportional share shall be a percentage equal
22 to the total electric energy sold in a service territory
23 by the electric distribution company and electric
24 generation suppliers divided by the total electric energy
25 sold by all electric distribution companies and electric
26 generation suppliers in this Commonwealth.

27 (ii) If the sum of Tier III alternative energy
28 credits transferred to the alternative energy credit
29 program administrator from all Tier III alternative
30 energy sources is greater than the sum of the Tier III

1 shares for all electric distribution companies in this
2 Commonwealth, then each Tier III alternative energy
3 source shall be paid for each of the Tier III alternative
4 energy source's prorated share of transferred Tier III
5 credits. Tier III alternative energy credits transferred
6 to the program administrator that exceed the sum of the
7 Tier III shares for all electric distribution companies
8 in this Commonwealth shall be retired. An alternative
9 energy source's prorated share shall be a percentage
10 equal to the sum of Tier III shares for all electric
11 distribution companies in this Commonwealth divided by
12 the sum of Tier III alternative energy credits
13 transferred to the program administrator from all Tier
14 III alternative energy sources. Credits purchased by
15 electric distribution companies may not be transferred,
16 sold or assigned to any other entity.

17 (d) Suspension of operations.--

18 (1) A designated Tier III alternative energy source
19 shall be excused from the designated Tier III alternative
20 energy source's commitment to operate for at least six
21 reporting periods and shall no longer receive Tier III
22 alternative energy credits if any of the following apply:

23 (i) The designated Tier III alternative energy
24 source suspends or ceases operations, despite the
25 designated Tier III alternative energy source's
26 reasonable efforts to continue operations, due to an
27 event beyond the designated Tier III alternative energy
28 source's control, including, but not limited to, acts of
29 God, flood, drought, earthquake, storm, fire, lightning,
30 epidemic, war, riot, labor or material shortage, sabotage

1 or explosion. The designated Tier III alternative energy
2 source shall no longer be excused from performance and
3 payment of Tier III alternative credits after the
4 conclusion of an event specified under this subparagraph.

5 (ii) The General Assembly enacts a new law imposing
6 a material new tax, special assessment or fee on the
7 generation of electricity, the ownership or leasehold of
8 a generating unit or the privilege or occupation of the
9 generation, ownership or leasehold of generation units by
10 a designated Tier III alternative energy source.

11 (iii) The Congress of the United States or General
12 Assembly enacts a law that materially reduces the Tier
13 III alternative energy credit reporting period price.

14 (iv) The Federal Government or the Commonwealth
15 takes final action relating to the provision of Tier III
16 alternative energy credits that has the effect of
17 eliminating a material portion of a designated Tier III
18 alternative energy source's anticipated future revenue,
19 taking into account the benefits to be provided to a
20 designated Tier III alternative energy source under the
21 Tier III program.

22 (v) The designated Tier III alternative energy
23 source requires capital expenditures in excess of
24 \$40,000,000 that were not known or reasonably foreseeable
25 at the time of the submission of the alternative energy
26 source's qualifications under subsection (a) as a Tier
27 III alternative energy source and the capital
28 expenditures are expenditures that a prudent owner or
29 operator of a designated Tier III alternative energy
30 source would not undertake.

1 (vi) The United States Nuclear Regulatory Commission
2 terminates the designated Tier III alternative energy
3 source's license.

4 (e) Expiration.--

5 (1) This section shall expire after an effective cost of
6 carbon emissions exists in this Commonwealth that is equal to
7 no less than an average of \$15 per ton over three consecutive
8 reporting periods as a result of the enactment of a Statewide
9 emissions fee program or participation by the Commonwealth in
10 a regional multistate greenhouse gas program. Tier III
11 alternative energy sources shall receive payments for Tier
12 III alternative energy credits as provided under subsection
13 (c) for credits generated prior to the effective date of the
14 enactment of a Statewide emissions fee program or
15 participation by the Commonwealth in a regional multistate
16 greenhouse gas program.

17 (2) Upon the enactment of a Statewide emissions fee
18 program or participation by the Commonwealth in a regional
19 multistate greenhouse gas program, the commission shall
20 submit a notice to the Legislative Reference Bureau for
21 publication in the Pennsylvania Bulletin.

22 (3) This section shall expire on the date the notice
23 under paragraph (2) is published in the Pennsylvania
24 Bulletin.

25 Section 8.2. Capacity payments to alternative energy sources.

26 (a) Program.--The alternative energy credits program
27 administrator shall establish and administer a program in which
28 alternative energy systems may opt to supply and be paid for
29 capacity through a means other than the centralized base
30 residual auction for capacity operated by PJM as authorized by

1 the Federal Energy Regulatory Commission. The duties of the
2 program administrator shall include, but not be limited to, all
3 of the following:

4 (1) Establishing a process by which an alternative
5 energy system is permitted to notify PJM, consistent with
6 requirements approved by the Federal Energy Regulatory
7 Commission, of the decision to opt out of the centralized
8 base residual auction for capacity and sell the alternative
9 energy system's capacity through other mechanisms.

10 (2) Providing any determinations required by PJM with
11 respect to an alternative energy system, including a
12 calculation of the commensurate amount of customer load that
13 will not participate in the centralized base residual auction
14 for capacity as a result of an alternative energy system's
15 decision to sell the alternative energy system's capacity
16 through other mechanisms. If consistent with requirements
17 approved by the Federal Energy Regulatory Commission, the
18 alternative energy system's capacity shall be calculated pro
19 rata across all load-serving entities in this Commonwealth.

20 (3) Determining the amount that will be paid for the
21 capacity of an alternative energy system that opts out of the
22 centralized base residual auction for capacity for each
23 applicable reporting period, which shall be equal to the
24 generation capacity of the alternative energy system as
25 determined in accordance with PJM requirements multiplied by
26 the locational delivery area price established by PJM in the
27 centralized base residual auction for capacity or successor
28 mechanism approved by the Federal Energy Regulatory
29 Commission for the location where the alternative energy
30 system is located.

1 (b) Payments.--In the event that PJM does not operate a
2 settlement mechanism under which alternative energy systems that
3 make elections under subsection (a) can receive payments from
4 load-serving entities, the alternative energy credits program
5 administrator shall calculate the total amount due to the
6 alternative energy system under subsection (a)(3) and notify the
7 electric distribution company of the electric distribution
8 company's share of the amount based upon the electric
9 distribution company's pro rata share of the electric energy
10 sold to retail electric customers in this Commonwealth during
11 the applicable reporting period. No later than seven days after
12 the electric distribution company receives the notice under this
13 subsection, the electric distribution company shall pay the
14 amount to the program administrator. The electric distribution
15 company shall then forward the amount due to the alternative
16 energy system under subsection (a)(3).

17 (c) Deadline.--The alternative energy credits program
18 administrator shall establish the program under subsection (a)
19 within 90 days after the later of the following:

20 (1) The effective date of this section.

21 (2) The date when PJM rules that allow alternative
22 energy systems to opt out of the centralized base residual
23 auction are authorized by the Federal Energy Regulatory
24 Commission.

25 Section 6. This act shall take effect in 60 days.