

No. 2007-35

## AN ACT

HB 1203

Amending the act of November 30, 2004 (P.L.1672, No.213), entitled, "An act providing for the sale of electric energy generated from renewable and environmentally beneficial sources, for the acquisition of electric energy generated from renewable and environmentally beneficial sources by electric distribution and supply companies and for the powers and duties of the Pennsylvania Public Utility Commission," further providing for the definitions of "alternative energy credit," "customer-generator," "force majeure," "net metering" and "Tier I alternative energy source," for alternative energy portfolio standards, for portfolio requirements in other states and for interconnection standards for customer-generator facilities.

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

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

Section 2. Definitions.

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

"Alternative energy credit." A tradable instrument that is used to establish, verify and monitor compliance with this act. A unit of credit shall equal one megawatt hour of electricity from an alternative energy source. *The alternative energy credit shall remain the property of the alternative energy system until the alternative energy credit is voluntarily transferred by the alternative energy system.*

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"Customer-generator." A nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service or not larger than [1,000] 3,000 kilowatts at other customer service locations, except for customers whose systems are above [one megawatt] *three megawatts* and up to [two] *five* megawatts who make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the *primary or secondary* purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an

electric distribution company, electric cooperative or municipal electric system have been promulgated by the Institute of Electrical and Electronic Engineers and the Pennsylvania Public Utility Commission.

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“Force majeure.” Upon its own initiative or upon a request of an electric distribution company or an electric generator supplier, the Pennsylvania Public Utility Commission, within 60 days, shall determine if alternative energy resources are reasonably available in the marketplace in sufficient quantities for the electric distribution companies and electric generation suppliers to meet their obligations for that reporting period under this act. *In making this determination, the commission shall consider whether electric distribution companies or electric generation suppliers have made a good faith effort to acquire sufficient alternative energy to comply with their obligations. Such good faith efforts shall include, but are not limited to, banking alternative energy credits during their transition periods, seeking alternative energy credits through competitive solicitations and seeking to procure alternative energy credits or alternative energy through long-term contracts. In further making its determination, the commission shall assess the availability of alternative energy credits in the Generation Attributes Tracking System (GATS) or its successor and the availability of alternative energy credits generally in Pennsylvania and other jurisdictions in the PJM Interconnection, L.L.C. regional transmission organization (PJM) or its successor. The commission may also require solicitations for alternative energy credits as part of default service before requests of force majeure can be made.* If the commission further determines that alternative energy resources are not reasonably available in sufficient quantities in the marketplace for the electric distribution companies and electric generation suppliers to meet their obligations under this act, then the commission shall modify the underlying obligation of the electric distribution company or electric generation supplier or recommend to the General Assembly that the underlying obligation be eliminated. *Commission modification of the electric distribution company or electric generation supplier obligations under this act shall be for that compliance period only. Commission modification shall not automatically reduce the obligation for subsequent compliance years. If the commission modifies the electric distribution company or electric generation supplier obligations under this act, the commission may require the electric distribution company or electric generation supplier to acquire additional alternative energy credits in subsequent years equivalent to the obligation reduced due to a force majeure declaration if the commission determines that sufficient alternative energy credits exist in the marketplace.*

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“Net metering.” The means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when [the renewable energy generating system is

intended primarily] *any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity. Virtual meter aggregation on properties owned or leased and operated by a customer-generator and located within two miles of the boundaries of the customer-generator's property and within a single electric distribution company's service territory shall be eligible for net metering.*

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

- (1) Solar photovoltaic *and solar thermal* energy.
- (2) Wind power.
- (3) Low-impact hydropower.
- (4) Geothermal energy.
- (5) Biologically derived methane gas.
- (6) Fuel cells.
- (7) Biomass energy.
- (8) Coal mine methane.

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Section 2. Section 3(b) and (f) of the act are amended and subsection (e) is amended by adding a paragraph to read:

Section 3. Alternative energy portfolio standards.

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(b) Tier I and solar photovoltaic shares.—

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

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

- [(i) Years 1 through 4 - 0.0013%.
- (ii) Years 5 through 9 - 0.0203%.

- (iii) Years 10 through 14 - 0.2500%.
- (iv) Years 15 and thereafter - 0.5000%.]
  - (i) 0.0013% for June 1, 2006, through May 31, 2007.
  - (ii) 0.0030% for June 1, 2007, through May 31, 2008.
  - (iii) 0.0063% for June 1, 2008, through May 31, 2009.
  - (iv) 0.0120% for June 1, 2009, through May 31, 2010.
  - (v) 0.0203% for June 1, 2010, through May 31, 2011.
  - (vi) 0.0325% for June 1, 2011, through May 31, 2012.
  - (vii) 0.0510% for June 1, 2012, through May 31, 2013.
  - (viii) 0.0840% for June 1, 2013, through May 31, 2014.
  - (ix) 0.1440% for June 1, 2014, through May 31, 2015.
  - (x) 0.2500% for June 1, 2015, through May 31, 2016.
  - (xi) 0.2933% for June 1, 2016, through May 31, 2017.
  - (xii) 0.3400% for June 1, 2017, through May 31, 2018.
  - (xiii) 0.3900% for June 1, 2018, through May 31, 2019.
  - (xiv) 0.4433% for June 1, 2019, through May 31, 2020.
  - (xv) 0.5000% for June 1, 2020, and thereafter.

(3) Upon commencement of the beginning of the 6th reporting year, the commission shall undertake a review of the compliance by electric distribution companies and electric generation suppliers with the requirements of this act. The review shall also include the status of alternative energy technologies within this Commonwealth and the capacity to add additional alternative energy resources. The commission shall use the results of this review to recommend to the General Assembly additional compliance goals beyond year 15. The commission shall work with the department in evaluating the future alternative energy resource potential.

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(e) Alternative energy credits.—

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

(f) Alternative compliance payment.—

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

(2) The commission shall conduct a review of each determination made under subsections (b) and (c). If, after notice and hearing, the commission determines that an electric distribution company or electric

generation supplier has failed to comply with subsections (b) and (c), the commission shall impose an alternative compliance payment on that company or supplier.

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

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

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

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Section 3. Sections 4 and 5 of the act are amended to read:

Section 4. Portfolio requirements in other states.

If an electric distribution supplier or electric generation company provider sells electricity in any other state and is subject to renewable energy portfolio requirements in that state, they shall list any such requirement and shall indicate how it satisfied those renewable energy portfolio requirements. To prevent double-counting, the electric distribution supplier or electric generation company shall not satisfy Pennsylvania's alternative energy portfolio requirements using alternative energy used to satisfy another state's portfolio requirements[. **Energy derived only from alternative energy sources inside the geographical boundaries of this Commonwealth or within the service territory of any regional transmission organization that manages the transmission system in any part of this Commonwealth shall be eligible to meet the compliance requirements under this act.] or alternative energy credits already purchased by individuals, businesses or government bodies that do not have a compliance obligation under this act unless the individual, business or government body sells those credits to the electric distribution company or electric generation supplier. Energy derived from alternative energy sources inside the geographical boundaries of this Commonwealth shall be eligible to meet the compliance**

*requirements under this act. Energy derived from alternative energy sources located outside the geographical boundaries of this Commonwealth but within the service territory of a regional transmission organization that manages the transmission system in any part of this Commonwealth shall only be eligible to meet the compliance requirements of electric distribution companies or electric generation suppliers located within the service territory of the same regional transmission organization. For purposes of compliance with this act, alternative energy sources located in the PJM Interconnection, L.L.C. regional transmission organization (PJM) or its successor service territory shall be eligible to fulfill compliance obligations of all Pennsylvania electric distribution companies and electric generation suppliers. Energy derived from alternative energy sources located outside the service territory of a regional transmission organization that manages the transmission system in any part of this Commonwealth shall not be eligible to meet the compliance requirements of this act.* Electric distribution companies and electric generation suppliers shall document that this energy was not used to satisfy another state's renewable energy portfolio standards.

Section 5. Interconnection standards for customer-generator facilities.

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

Section 3.1. Notwithstanding the addition of section 3(e)(12) of the act, nothing in this act is intended to reverse or modify the Pennsylvania Public Utility Commission's order Docket Number P-00052149.

Section 4. This act shall take effect immediately.

APPROVED—The 17th day of July, A.D. 2007.

EDWARD G. RENDELL