

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To require the Public Service Commission to implement a renewable energy portfolio standard through which a fixed percentage of electric provider's supply source would be from renewable energy; require the standard to be met by the obtaining renewable energy credits; require the Public Service Commission to adopt regulations governing the application and transfer of credits and implementation of this act; provide for the eligibility of energy from specified sources; require electricity suppliers to submit an annual compliance report to the Public Service Commission which demonstrates an electricity supplier's compliance with the renewable energy portfolio standard or the amount of electricity sales by which the electricity supplier failed to meet the applicable renewable energy portfolio standard; require electricity suppliers to pay compliance fees for failure to comply with the renewable energy portfolio standard; provide for the recovery of fees and costs associated with complying with the renewable energy portfolio standard; establish a Renewable Energy Development Fund to be administered by the District of Columbia Energy Office; require the Public Service Commission to facilitate a renewable electricity tracking system; require the Public Service Commission to report to the Council each year on the status of implementation of this act; and require the Public Service Commission to establish standards to account for customer generation from eligible renewable resources for compliance with the renewable energy portfolio standard.

BE IT ENACTED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act be cited as the "Renewable Energy Portfolio Standard Act of 2004".

Sec. 2. The Council of the District of Columbia finds that:

(1) It is in the public interest to recognize the economic, environmental, fuel diversity, and security benefits of renewable energy resources, to establish a market for electricity from these resources in the District of Columbia, and to lower the cost to consumers of electricity produced from these resources.

(2) It is in the public interest to ensure that the benefits of electricity from renewable energy resources, including long-term decreased emissions and reliance on and vulnerability from imported energy sources, increased energy security and economic development, and a healthier environment, accrue to the public at large.

(3) Electricity suppliers and consumers share an obligation to develop a minimum level of these resources in the electricity supply portfolio of the District of Columbia.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) "Brush" means shrubs and stands of short, scrubby trees that do not reach merchantable size.

(2) "Commission" means the Public Service Commission.

(3) "Customer generation" means generation that is not principally dedicated to selling power into the wholesale market.

(4) "Dunnage" means loose materials or padding used to support or protect cargo within shipping containers.

(5) "Energy Office" means the District of Columbia Energy Office.

(6) "Electricity supplier" means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers. The term excludes the following:

(A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;

(B)(i) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or

(ii) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not:

(I) Take title to electricity;

(II) Market electric services to the individually-metered tenants of his or her building; or

(III) Engage in the resale of electric services to others;

(C) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and

(D) A consolidator.

(7) "Fund" means the District of Columbia Renewable Energy Development Fund.

(8) "PJM Interconnection" means the regional transmission organization that is regulated by the Federal Energy Regulatory Commission that functionally controls the transmission system for the region that includes the District of Columbia.

(9) "Qualifying biomass" means a solid, nonhazardous, cellulosic waste material that is segregated from other waste materials, and is derived from any of the following forest-related resources, with the exception of old growth timber, unsegregated solid waste, or post-consumer wastepaper:

(A) Mill residue;

(B) Precommercial soft wood thinning;

(C) Slash;

(D) Brush;

(E) Yard waste;

(F) A waste pallet, crate, or dunnage;

(G) Agricultural sources, including tree crops, vineyard materials, grain, legumes, sugar, and other crop by-products or residues; or

(H) Cofired biomass, subject to the condition under section 5(f).

(10) "Renewable energy credit" or "credit" means a credit representing one megawatt-hour of electricity consumed within the PJM Interconnection region that is derived from a tier one renewable source or a tier two renewable source that is located:

(A) In the PJM Interconnection region or in a state that is adjacent to the PJM Interconnection region; or

(B) Outside the area described in subparagraph (A) of this paragraph but in a control area that is adjacent to the PJM Interconnection region, if the electricity is delivered into the PJM Interconnection region.

(11) "Renewable energy portfolio standard" or "standard" means the percentage of electricity sales at retail in the District of Columbia that is to be derived from tier one renewable sources and tier two renewable sources in accordance with section 4(c).

(12) "Renewable on-site generator" means a person that generates electricity on site from a tier one renewable source or tier two renewable source for the person's own use.

(13) "Slash" means:

(A) Tree tops, branches, bark, or other residue left on the ground after logging or other forestry operations; or

(B) Tree debris left after a natural catastrophe.

(14) "Solar energy" means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy.

(15) "Tier one renewable source" means one or more of the following types of energy sources:

(A) Solar energy;

(B) Wind;

(C) Qualifying biomass;

(D) Methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

(E) Geothermal;

(F) Ocean, including energy from waves, tides, currents, and thermal differences; and

(G) Fuel cells producing electricity from a tier one renewable source under subparagraph (C) or (D) of this paragraph.

(16) "Tier two renewable source" means one or more of the following types of energy sources:

(A) Hydroelectric power other than pumped storage generation; or

(B) Waste-to-energy.

Sec. 4. Renewable energy portfolio standard.

(a) The Commission shall implement a renewable energy portfolio standard which applies to all District of Columbia retail electricity sales, except as provided under subsection (b) of this section.

(b) If the standard becomes applicable to electricity sold to a customer after the start of a calendar year, the standard shall not apply to electricity sold to the customer during that portion of the year before the standard became applicable.

(c) The renewable energy portfolio standard shall be as follows:

(1) In 2007, 1.5% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.005% from solar energy;

- (2) In 2008, 2% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.011 % from solar energy;
- (3) In 2009, 2.5% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.019 % from solar energy;
- (4) In 2010, 3% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.028 % from solar energy;
- (5) In 2011, 3.5% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.38% from solar energy;
- (6) In 2012, 4% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.066 % from solar energy;
- (7) In 2013, 4.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.083 % from solar energy;
- (8) In 2014, 5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.104 % from solar energy;
- (9) In 2015, 5.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.128 % from solar energy;
- (10) In 2016, 6% from tier one renewable sources, 2% from tier two renewable sources, and not less than 0.157 % from solar energy;
- (11) In 2017, 6.5% from tier one renewable sources, 1.5% from tier two renewable sources, and not less than 0.192% from solar energy;
- (12) In 2018, 7% from tier one renewable sources, 1% from tier two renewable sources, and not less than 0.233% from solar energy;
- (13) In 2019, 7.5% from tier one renewable sources, 0.5% from tier two renewable sources, and not less than 0.281 % from solar energy;
- (14) In 2020, 8.5% from tier one renewable sources, 0% from tier two renewable sources, and not less than 0.329% from solar energy;
- (15) In 2021, 9.5% from tier one renewable sources, 0 % from tier two renewable sources, and not less than 0.386 % from solar energy;
- (16) In 2022 and later, 11% from tier one renewable sources, 0 % from tier two renewable sources, and not less than 0.386 % from solar energy.

(d) Subject to subsections (a) and (c) of this section, an electricity supplier shall meet the standard by obtaining the equivalent amount of renewable energy credits that equal the percentage required under this section for each electricity product sold at retail by the electricity supplier.

Sec. 5. Renewable energy credits.

- (a) Energy from a tier one renewable source:
 - (1) Shall be eligible for inclusion in meeting the standard regardless of when the generating system or facility was placed in service; and
 - (2) May be applied to the percentage requirements of the standard for either tier one renewable sources or tier two renewable sources.
- (b) Energy from a tier two renewable source shall be eligible for inclusion in meeting the renewable energy portfolio standard through 2017 if it is generated at a system or facility that existed and was operational as of January 1, 2004.
- (c) On or after January 1, 2006, an electricity supplier may:
 - (1) Receive renewable energy credits; and

(2) Accumulate renewable energy credits under this act.

(d) On or before December 31, 2006, an electricity supplier shall receive 120% credit toward meeting the renewable energy portfolio standard for energy derived from wind or solar sources.

(e) After December 31, 2006, and on or before December 31, 2009, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from wind or solar sources.

(f) On or before December 31, 2009, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from methane under section 3(14)(D).

(g)(1) An electricity supplier may not use the incineration of solid waste to meet more than 20% of the standard for tier two renewable sources for a given year.

(2) After December 31, 2012, the incineration of solid waste shall not be eligible to generate renewable energy credits.

(h)(1) An electricity supplier shall receive credit toward meeting the standard for electricity derived from the biomass fraction of biomass cofired with other fuels.

(2) Credits that a renewable on-site generator surrenders to its electricity supplier to meet the standard and that the electricity supplier relies on in submitting its compliance report shall not be resold or retransferred by the renewable on-site generator.

(3) The renewable on-site generator may retain or transfer any credits in excess of the amount needed to satisfy the standard for the renewable on-site generator's load.

(4) A renewable on-site generator that satisfies the standard applicable to the renewable on-site generator's load under this subsection shall not be required to contribute to a compliance fee recovered under section 7.

(5) The Commission shall adopt regulations or orders governing the application and transfer of credits under this subsection.

(i) A tier one renewable source or tier two renewable source that creates a renewable energy credit shall comply with all applicable environmental and administrative requirements, including air quality, water quality, solid waste, and right-to-know provisions, permit conditions, and administrative orders.

Sec. 6. Reporting requirements and compliance fee.

(a) Each electricity supplier shall submit an annual compliance report to the Commission, by a date and in a form prescribed by the Commission.

(b)(1) Each report shall include clear and concise information that:

(A) Demonstrates that the electricity supplier has complied with the applicable standard under section 4 and includes the submission of the required amount of renewable energy credits; or

(B) Demonstrates the amount of electricity sales by which the electricity supplier fails to meet the applicable renewable energy portfolio standard.

(2) Each report shall also include any other information that the Commission by regulation or order may consider relevant.

(c) If an electricity supplier fails to comply with the renewable energy portfolio standard for the applicable year, the electricity supplier shall pay into the Fund a compliance fee of:

(1) Two and ½ cents for each kilowatt-hour of shortfall from required tier one renewable sources;

- (2) One cent for each kilowatt-hour of shortfall from required tier two renewable sources; and
- (3) Thirty cents for each kilowatt-hour of shortfall from required solar energy sources.

Sec. 7. Recovery of fees and costs.

(a) The Commission shall allow the local distribution company to recover actual dollar-for-dollar prudently costs incurred, including a compliance fee under section 6, in complying with a mandated renewable energy portfolio standard. The electricity distribution company may also pass through its prudently incurred additional costs, if any, associated with complying with the standard, through the end of the year of standard offer service in which the requirement took effect.

(b) An electricity supplier may recover a compliance fee if:

- (1) The payment of a compliance fee is the least-cost measure to ratepayers as compared to the purchase of tier one renewable sources, tier two renewable sources, or solar energy to comply with a renewable energy portfolio standard; or
- (2) There are insufficient tier one renewable sources, tier two renewable sources, or solar energy available for the electricity supplier to comply with a renewable energy portfolio standard.

(c) Any cost recovery under this section:

- (1) May be in the form of a nonbypassable surcharge to current applicable customers; and
- (2) Shall be disclosed on applicable customer bills.

Sec. 8. Renewable Energy Development Fund.

(a) There is established a fund designated as the Renewable Energy Development Fund, which shall be separate from the General Fund of the District of Columbia and shall be used solely for the purposes set forth in this section. All fees, payment, investment earnings, or other funds received, and all interest on the funds, shall be deposited into the Fund without regard to fiscal year limitation and shall not any time be transferred to, or lapse into, or be commingled with the General Fund of the District of Columbia or any other fund or account of the District of Columbia. The Fund shall be continually available for the uses and purposes set forth in subsection (c) of this section.

(b) The Fund established by this section shall be administered by the Energy Office. The Energy Office shall receive and review applications for loans and grants for eligible projects from the Fund.

(c) The Fund shall be used solely for the purpose of making loans and grants to support the creation of new solar energy sources in the District of Columbia and for otherwise administering the Fund.

(d) Proceeds for the Fund shall be collected from the following:

- (1) Compliance fees paid under section 6;
- (2) Payments received in repayment of a loan;
- (3) Investment earnings of the Fund; and
- (4) Any other money from any other source accepted for the benefit of the Fund.

(e) The Energy Office shall establish the eligibility criteria for projects supported by the Fund. The Energy Office may allow the use of money of the Fund for administrative expenses

related to the Fund and project review and oversight.

Sec. 9. Renewable electricity tracking system.

(a) The Commission shall select a market-based renewable electricity tracking system to facilitate the creation and transfer of renewable energy credits.

(b) The Commission may designate the Energy Office to administer the electricity tracking system. The Commission or the Energy Office may contract with a for-profit or a nonprofit entity to assist in the administration of the electricity tracking system required under this section.

(c) To the extent practicable, the tracking system shall be the generation attributes tracking system developed by PJM Interconnection.

Sec. 10. Application of renewable energy credits.

(a) An electricity supplier may use accumulated renewable energy credits to meet the renewable energy portfolio standard by submitting them to the Commission as evidence of compliance.

(b) A renewable energy credit may be sold or otherwise transferred.

(c) Except as authorized under section (d) of this section, a renewable energy credit shall exist for 3 years from the date created.

(d) A renewable energy credit may be diminished or extinguished before the expiration of 3 years by:

(1) The electricity supplier that received the credit;

(2) A nonaffiliated entity of the electricity supplier:

(A) That purchased the credit from the electricity supplier receiving the credit;

(B) To whom the electricity supplier otherwise transferred the credit; or

(3) Demonstrated compliance by the generating facility with the requirements of section 5(i).

Sec. 11. Rules, duties, and powers of the Commission.

(a) The Commission may impose an administrative fee on a renewable energy credit transaction, but the amount of the fee may not exceed the Commission's actual direct cost of processing the transaction.

(b) On or before April 1 of each year, the Commission shall provide a report to the Council on the status of implementation of this act, including the availability of tier one renewable sources, certification of the number of credits generated by the utilities meeting the requirements of section 4, and any other such information as the Council shall consider necessary.

(c) The Commission shall adopt regulations to implement the provisions of this act.

(d) The Commission shall establish standards, by order or regulation, to account for customer generation from eligible renewable resources for compliance with section 4.

Sec. 12. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 13. Effective date.

This act shall take effect following approval by the Mayor (or in event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia