SPONSOR: Sen. Hansen & Sen. S. McBride & Rep. Osienski & Rep. Heffernan & Rep. S. Moore & Rep. Bush
Sens. Brown, Gay, Lockman, Mantzavinos, Paradee, Pinkney, Poore, Sokola, Sturgeon, Townsend; Reps. Baumbach, Bentz, Brady, Dorsey Walker, Griffith, Kowalko, Lynn, Mitchell, Morrison, Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 33

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO RENEWABLE ENERGY PORTFOLIO STANDARDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 354, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 354. Renewable energy portfolio standards, eligible energy resources and industrial exemption.

(a) The total retail sales of each Retail Electricity Product delivered to Delaware end-use customers by a commission-regulated utility ~~retail electricity supplier~~ or municipal electric company during any given compliance year shall include a minimum percentage of electrical energy sales with eligible energy resources and solar photovoltaics as follows:

SCHEDULE I

Compliance Year (beginning June 1st)	Minimum Cumulative Percentage from Eligible Energy Resources	Minimum Cumulative Percentage from Solar Photovoltaics*
~~2010~~	~~5.00%~~	~~0.018%~~
~~2011~~	~~7.00%~~	~~0.20%~~
~~2012~~	~~8.50%~~	~~0.40%~~
~~2013~~	~~10.00%~~	~~0.60%~~
~~2014~~	~~11.50%~~	~~0.80%~~
~~2015~~	~~13.00%~~	~~1.00%~~
~~2016~~	~~14.50%~~	~~1.25%~~
~~2017~~	~~16.00%~~	~~1.50%~~
2018	17.50%	1.75%
2019	19.00%	2.00%

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2020	20.00%	2.25%
2021	21.00%	2.50%
2022	22.00%	2.75%
2023	23.00%	3.00%
2024	24.00%	3.25%
2025	25.00%	3.50%
2026	25.50%	3.75%
2027	26.00%	4.00%
2028	26.50%	4.25%
2029	27.00%	4.50%
2030	28.00%	5.00%
2031	30.00%	5.80%
2032	32.00%	6.60%
2033	34.00%	7.40%
2034	37.00%	8.40%
2035	40.00%	10.00%

* Minimum Percentage from Eligible Energy Resources

Includes the Minimum Percentage from Solar Photovoltaics.

~~Any portion of a retail electricity supplier's renewable energy supply portfolio for 2007, 2008 and 2009 compliance years that is acquired under wholesale renewable energy supply entered into pursuant to the 2005 or 2006 Delaware Standard Offer Service (SOS) auctions shall be subject to the provisions of this subchapter, as set forth in Schedule I (Revised) below that were in effect on the date of the 2005 or 2006 SOS auction:~~

~~SCHEDULE I (Revised)~~

~~Compliance Year (beginning June 1st)~~	~~Minimum Cumulative Percentage Percentage from Eligible Energy Resources~~	~~Minimum Cumulative Percentage from Solar Photovoltaics*~~
~~2007~~	~~—~~	~~1.00%~~
~~2008~~	~~0.011%~~	~~1.50%~~
~~2009~~	~~0.014%~~	~~2.00%~~
~~2010~~	~~0.018%~~	~~5.00%~~

~~2011~~ ~~0.048%~~ ~~7.00%~~

~~2012~~ ~~0.099%~~ ~~8.50%~~

~~2013~~ ~~0.201%~~ ~~10.00%~~

~~2014~~ ~~0.354%~~ ~~11.50%~~

~~2015~~ 0 ~~.559%~~ ~~13.00%~~

~~2016~~ ~~0.803%~~ ~~14.50%~~

~~2017~~ ~~1.112%~~ ~~16.00%~~

~~2018~~ ~~1.547%~~ ~~18.00%~~

~~2019~~ ~~2.005%~~ ~~20.00%~~

~~* Minimum Percentage from Eligible Energy Resources~~

~~Includes the Minimum Percentage from Solar Photovoltaics.~~

(b) Cumulative minimum percentage requirements of eligible energy resources and solar photovoltaics shall be established by Commission rules for compliance year ~~2026~~ 2036 and each subsequent year. ~~In no case shall the~~ The minimum percentages established by Commission rules may not be lower than those required for compliance year ~~2025~~ 2035 in Schedule I, subsection (a) of this section. Each of the rules setting such minimum percentage ~~shall~~ must be adopted at least 2 years ~~prior to~~ before the minimum percentage being required.

~~(c) Beginning in compliance year 2010, and in each compliance year thereafter, the Commission may review the status of Schedule I and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 25% from eligible energy resources. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.~~

~~(d) Beginning in compliance year 2014, and in each compliance year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 25%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the alternative compliance payment for 3 consecutive years, despite adequate planning by the commission-regulated electric companies and, where applicable, the retail electricity suppliers with existing contractual electric supply obligations. The Commission may only accelerate the scheduled percentage increases after finding that the average price for renewable energy credits eligible for RPS compliance has, for 2 consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy~~

~~Office. Rules that would alter the percentage targets shall be promulgated at least 2 years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.~~

~~(i) The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative solar photovoltaics requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying with this requirement during a compliance year exceeds 1% of the total retail cost of electricity for retail electricity suppliers during the same compliance year. In the event of a freeze, the minimum cumulative percentage from solar photovoltaics shall remain at the percentage for the year in which the freeze is instituted. The freeze shall be lifted upon a finding by the Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 1% threshold. The total cost of compliance shall include the costs associated with any ratepayer funded state solar rebate program, SREC purchases, and solar alternative compliance.~~

~~(j) The State Energy Coordinator in consultation with the Commission, may freeze the minimum cumulative eligible energy resources requirement for regulated utilities if the Delaware Energy Office determines that the total cost of complying with this requirement during a compliance year exceeds 3% of the total retail cost of electricity for retail electricity suppliers during the same compliance year. In the event of a freeze, the minimum cumulative percentage from eligible energy resources shall remain at the percentage for the year in which the freeze is instituted. The freeze shall be lifted upon a finding by the Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 3% threshold. The total cost of compliance shall include the costs associated with any ratepayer funded state renewable energy rebate program, REC purchases, and alternative compliance payments.~~

Section 2. Amend § 358, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 358. Issuance of renewable energy credits; reporting requirement; alternative compliance payment.

(d) In lieu of standard means of compliance with this ~~statute,~~ subchapter, any ~~retail electricity supplier~~ commission-regulated utility may pay into the Fund an alternative compliance payment of $25 for each megawatt-hour deficiency between the credits available and used by a ~~retail electricity supplier~~ commission-regulated utility in a given compliance year for eligible non-solar renewable energy resources and the credits necessary for such ~~retail electricity supplier~~ commission-regulated utility to meet the year's renewable energy portfolio standard. A municipal electric company may pay the alternative compliance payment into a fund established by its municipal members. If alternative compliance payments representing 15% or more of the total number of RECs for eligible non-solar renewable energy resources are paid into the Fund for each of 2 consecutive compliance years, the minimum cumulative percentage from eligible energy resources specified in Schedule I of § 354(a) of this title remains at the percentage specified for the immediately preceding

year and does not increase from that percentage until a year passes during which less than 15% of the REC obligation is satisfied by alternative compliance payments. After the year in which less than 15% of the REC obligation is satisfied by alternative compliance payments, the annual increases in Schedule I of § 354(a) of this title resume, starting from the percentage specified for the year immediately before the current compliance year. A freeze of the minimum cumulative percentage from eligible non-solar technology does not permit a freeze of the minimum cumulative percentage from eligible solar energy resources. ~~In subsequent years, the alternative compliance payments for any retail electricity supplier or municipal electricity company shall increase as follows:~~

~~(1) If a retail electricity supplier has paid an alternative compliance payment of $25 for each megawatt-hour in any previous year, then the alternative compliance payment shall be $50 for each megawatt-hour.~~

~~(2) If a retail electricity supplier has paid an alternative compliance payment of $50 for each megawatt-hour in any previous year, then the alternative compliance payment shall be $80 for each megawatt-hour.~~

~~(3) Alternative compliance payments shall not be more than $80 for each megawatt-hour.~~

~~(4) The State Energy Coordinator shall have the authority to review the alternative compliance payment on an as needed or annual basis to determine reasonableness compared to market REC prices. Following an analysis conducted by the Delaware Energy Office, , the State Energy Coordinator shall also have the authority to adjust the alternative compliance payment by 10% in order to achieve reasonableness.~~

(e) In lieu of standard means of compliance with this ~~statute,~~ subchapter, ~~any retail electricity supplier~~ a commission-regulated utility may pay into the Fund a Solar Alternative Compliance Payment of ~~$400~~ $150 for each megawatt-hour deficiency between the credits available and used by a ~~retail electricity supplier~~ commission-regulated utility in a given compliance year and the credits necessary for such ~~retail electricity supplier~~ commission-regulated utility to meet the year's Renewable Energy Portfolio Standard. A municipal electric company may pay the solar alternative compliance payment into a fund established by its municipal members. If solar alternative compliance payments representing 15% or more of the total number of SRECs are paid into the Fund for each of 2 consecutive compliance years, the minimum cumulative percentage from solar technology specified in Schedule I of § 354(a) of this title remains at the percentage specified for the immediately preceding year and does not increase from that percentage until a year passes during which less than 15% of the SREC obligation is satisfied by solar alternative compliance payments. After the year in which less than 15% of the total SREC obligation is satisfied by solar alternative compliance payments, the annual increases set forth in Schedule I of § 354(a) of this title resume, starting from the percentage specified for the year immediately before the current compliance year. A freeze of the minimum cumulative percentage from solar technology does not freeze the minimum cumulative percentage from eligible energy resources. ~~In subsequent years, the solar~~

~~alternative compliance payments for any retail electricity supplier or municipal electricity company shall increase as follows:~~

~~(1) If a retail electricity supplier has paid a solar alternative compliance payment of $400 for each megawatt-hour in any previous year, then the solar alternative compliance payment shall be $450 for each megawatt-hour.~~

~~(2) If a retail electricity supplier has paid a solar alternative compliance payment of $450 for each megawatt-hour in any previous year, then the solar alternative compliance payment shall be $500 for each megawatt-hour.~~

~~(3) The State Energy Coordinator shall have the authority to review the solar alternative compliance payment on an as needed or annual basis to determine reasonableness compared to market-based SREC prices. Following an analysis conducted by the Delaware Energy Office, the State Energy Coordinator shall also have the authority to adjust the solar alternative compliance payment by 20% in order to achieve reasonableness, but not higher than 20% of the competitive market cost of an SREC, determined by the quarterly weighted average cost of meeting the requirement through purchase of an SREC as analyzed by the Delaware Energy Office.~~

Section 3. Amend § 362, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 362. Rules and regulations.

(a) The Commission shall adopt rules and regulations necessary to implement the provisions of this subchapter as it applies to retail electricity suppliers. The Commission shall make its regulations as consistent as possible with those of other states in the region with similar requirements in order to minimize the compliance burdens imposed by this ~~statute~~ subchapter and in order to avoid duplication of effort.

~~(b) For regulated utilities, the Commission shall further adopt rules and regulations to specify the procedures for freezing the minimum cumulative solar photovoltaic requirement as authorized under § 354(i) and (j) of this title, and for adjusting the alternative compliance payment and solar alternative compliance payment as authorized under § 358(d)(4) and (e)(3) of this title.~~

Section 4. Amend § 363, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by re-designating accordingly:

§ 363. Special provisions for municipal electric companies and rural electric cooperatives.

(a) Any municipal electric company and any rural electric cooperative may elect to exempt itself from the requirements of this subchapter, if it develops and implements a comparable program to the renewable energy portfolio standards for its ratepayers beginning in ~~2013~~ 2022.

(b) In the event that a municipal electric company or rural electric cooperative elects to exempt itself from the requirements of this subchapter, it shall submit a plan at the beginning of ~~2013~~ 2022 to its local regulatory authority, the Delaware General Assembly, and the ~~Delaware Energy Office~~ Department of Natural Resources and Environmental Control detailing its approach to achieve a level of renewable energy penetration in its service territory, and shall submit an annual compliance report to its local regulatory authority, the Delaware General Assembly, and the ~~Delaware Energy Office~~ Department of Natural Resources and Environmental Control detailing its progress toward yearly targets.

(c) The Board of Directors for a rural electric cooperative or local regulatory authority of a municipal electric company shall base renewable energy portfolio standard decisions on the need, value and feasibility of the renewable energy resources pertaining to the economic and environmental well being of their members. The Board of Directors for a rural electric cooperative or local regulatory authority of a municipal electric company shall continue to evaluate all renewable energy resources including but not limited to: wind, biomass, hydroelectric and solar and submit an annual report to the General Assembly and their membership as to their determination.

(d) In the event that a municipal electric company or rural electric cooperative elects to exempt itself, it shall either contribute to the Green Energy Fund at levels commensurate with other retail electricity suppliers or create an independent, self-administered fund separate from the Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which it shall make payments of at least $0.178 for each megawatt-hour it sells, transmits, or distributes in this State.

~~(e) The total cost of compliance with this section shall include the costs associated with any ratepayer funded renewable energy rebate programs, REC and SREC purchases, or other costs incurred in meeting renewable energy programs.~~

~~(f) The total cost of complying with eligible energy resources shall not exceed 3% of the total cost of the purchased power of the utility for any calendar year.~~

~~(g) The total cost of complying with the solar photovoltaic program shall not exceed 1% of the total cost of the purchased power of the affected utility for any calendar year.~~

~~(h) At no time during any calendar year shall the total cost of compliance with this section result in an increase of an average consumer's monthly bill in excess of 4%.~~

~~(i) The Board of Directors of a rural electric cooperative and the local regulatory authority of a municipal electric company may approve an increase in the limit on the cost of compliance, as specified in subsections (f) and (g) of this section above.~~

(~~j~~e) In pursuit of their renewable energy goals, a municipal electric company or rural electric cooperative shall receive all appropriate multiple credits for specific energy sources, as established under §§ 356 and 357 of this title and sited in Delaware for the life of contracts for renewable energy credits.

SYNOPSIS

This Act modifies the Renewable Energy Portfolio Standards Act to do the following:

(1) Continues increasing the required minimum percentage of electrical energy sales to Delaware end-use customers from renewable energy sources through 2035.

(2) Makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

(3) Eliminates "cost-cap" mechanism for freezing the RPS and replaces it with a market-based mechanism.

(4) Clarifies the rulemaking authority for this Act.

Author: Senator Hansen