

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 credit program and for capacity payments to
13 alternative 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" and "reporting period" in section 2
18 of the act of November 30, 2004 (P.L.1672, No.213), known as the
19 Alternative Energy Portfolio Standards Act, are amended and the
20 section is amended by adding definitions to read:

21 Section 2. Definitions.

22 The following words and phrases when used in this act shall
23 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Alternative energy credit." As follows:

3 (1) A tradable instrument that is used to establish,
4 verify and monitor compliance with this act.

5 (2) A unit of credit shall equal one megawatt hour of
6 electricity from an alternative energy source[.] and shall
7 only be used to satisfy the requirement to purchase one of
8 the following:

9 (i) Tier I;

10 (ii) Tier II; or

11 (iii) Tier III alternative energy credits.

12 (3) The alternative energy credit shall remain the
13 property of the alternative energy system until the
14 alternative energy credit is voluntarily transferred by the
15 alternative energy system.

16 * * *

17 "Alternative energy sources." The term shall include the
18 following existing and new sources for the production of
19 electricity:

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

21 (2) Solar thermal energy.

22 (3) Wind power.

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

28 (5) Low-impact hydropower consisting of any technology
29 that produces electric power and that harnesses the
30 hydroelectric potential of moving water impoundments,

1 provided such incremental hydroelectric development:

2 (i) does not adversely change existing impacts to
3 aquatic systems;

4 (ii) meets the certification standards established
5 by the Low Impact Hydropower Institute and American
6 Rivers, Inc., or their successors;

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

9 (iv) protects against erosion; and

10 (v) protects cultural and historic resources.

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

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

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

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

1 (8) Biologically derived methane gas, which shall
2 include methane from the anaerobic digestion of organic
3 materials from yard waste, such as grass clippings and
4 leaves, food waste, animal waste and sewage sludge. The term
5 also includes landfill methane gas.

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

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

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

24 (12) Demand-side management consisting of the management
25 of customer consumption of electricity or the demand for
26 electricity through the implementation of:

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

(ii) load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand; or

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

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

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

* * *

"Load serving entity." An entity or the duly designated agent of an entity, including a load aggregator or power marketer, that has been granted the authority or has an obligation pursuant to State or local law, regulation or franchise to sell electric energy to end-users within the area of the regional transmission organization and is currently serving end-users within that area with electric energy. The term shall include any end-use customer that qualifies under State regulatory rules or a utility retail tariff to manage directly its own supply of electric energy and use of transmission and ancillary services.

* * *

"Reporting period or reporting year." The 12-month period from June 1 through May 31. A reporting year shall be numbered

1 according to the calendar year in which it begins and ends.

2 * * *

3 "Tier I projected price." The figure, equal to the average
4 of the Tier I futures prices for the current reporting year and
5 the subsequent two reporting years, established by the
6 commission for each reporting year as the average of the closing
7 price on each trade date during the calendar year that ends
8 immediately prior to the start of the current reporting year for
9 alternative energy credits that are eligible to meet the Tier I
10 alternative energy requirement in this Commonwealth.

11 * * *

12 "Tier III alternative energy credit reporting price." The
13 figure, determined by the commission 60 days after the start of
14 the initial reporting year for the Tier III program and 60 days
15 prior to the start of each reporting year thereafter, which is
16 equal to the Tier I projected price but not less than the Tier
17 III price floor or greater than the Tier III price cap.

18 "Tier III alternative energy source." Energy derived from at
19 least one of the following:

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

21 (2) Solar thermal energy.

22 (3) Wind power.

23 (4) Low-impact hydropower.

24 (5) Geothermal energy.

25 (6) Nuclear fission or fusion.

26 "Tier III price cap." The figure, equal to the product of
27 60% and the weighted average price of credits that were retired
28 for Tier I compliance for the reporting year ending May 31,
29 2017, as reflected in the commission's 2017 Annual Report of
30 Alternative Energy Portfolio Standards Act of 2004.

1 "Tier III price floor." The figure, equal to the product of
2 50% and the weighted average price of credits that were retired
3 for Tier I compliance for the reporting year ending May 31,
4 2017, as reflected in the commission's 2017 Annual Report of
5 Alternative Energy Portfolio Standards Act of 2004.

6 "Tier III program period." The period commencing at the
7 beginning of the 14th reporting year of the alternative energy
8 credit program established under this act or June 1, 2019,
9 whichever is sooner, and each year thereafter.

10 * * *

11 Section 2. Section 3(a), (b)(3), (f), (g) and (h) of the act
12 are amended and the section is amended by adding a subsection to
13 read:

14 Section 3. Alternative energy portfolio standards.

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

16 (1) From the effective date of this act through and
17 including the 15th year after enactment of this act and each
18 year thereafter, the electric energy sold by an electric
19 distribution company or electric generation supplier to
20 retail electric customers in this Commonwealth shall be
21 comprised of electricity generated from alternative energy
22 sources and in the percentage amounts as described under
23 subsections (b) and (c).

24 (2) Electric distribution companies and electric
25 generation suppliers shall satisfy both requirements set
26 forth in subsections (b) and (c), provided, however, that an
27 electric distribution company or an electric generation
28 supplier shall be excused from its obligations under this
29 section to the extent that the commission determines that
30 force majeure exists.

1 (2.1) Beginning June 1, 2019, and each year thereafter,
2 Tier III alternative energy credits shall be purchased by
3 electric distribution companies under subsection (c.1),
4 except that an electric distribution company or an electric
5 generation supplier shall be excused from its obligation
6 under this section to the extent that the commission
7 determines that force majeure exists.

8 (3) All costs for:

9 (i) the purchase of electricity generated from Tier
10 I and Tier II alternative energy sources, including the
11 costs of the regional transmission organization, in
12 excess of the regional transmission organization real-
13 time locational marginal pricing, or its successor, at
14 the delivery point of the alternative energy source for
15 the electrical production of the alternative energy
16 sources; [and]

17 (ii) payments for Tier I and Tier II alternative
18 energy credits[, in both cases] that are voluntarily
19 acquired by an electric distribution company during the
20 cost recovery period on behalf of its customers shall be
21 deferred as a regulatory asset by the electric
22 distribution company and fully recovered, with a return
23 on the unamortized balance, pursuant to an automatic
24 energy adjustment clause under 66 Pa.C.S. § 1307
25 (relating to sliding scale of rates; adjustments) as a
26 cost of generation supply under 66 Pa.C.S. § 2807
27 (relating to duties of electric distribution companies)
28 in the first year after the expiration of its cost-
29 recovery period. After the cost-recovery period, any
30 direct or indirect costs for the purchase by electric

1 distribution companies of resources to comply with this
2 section, including, but not limited to, the purchase of
3 electricity generated from Tier I and Tier II alternative
4 energy sources, payments for alternative energy credits,
5 cost of credits banked, payments to any third party
6 administrators for performance under this act and costs
7 levied by a regional transmission organization to ensure
8 that Tier I and Tier II alternative energy sources are
9 reliable, shall be recovered on a full and current basis
10 pursuant to an automatic energy adjustment clause under
11 66 Pa.C.S. § 1307 as a cost of generation supply under 66
12 Pa.C.S. § 2807[.]; and

13 (iii) any direct and indirect costs incurred by
14 electric distribution companies to comply with subsection
15 (c.1) and sections 8.1 and 8.2, including, but not
16 limited to, the purchase of Tier III alternative energy
17 credits shall be recovered on a full and current basis
18 pursuant to an automatic energy adjustment clause under
19 66 Pa.C.S. § 1307.

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

21 * * *

22 (3) Upon commencement of the beginning of the 6th
23 reporting year, the commission shall undertake a review of
24 the compliance by electric distribution companies and
25 electric generation suppliers with the requirements of this
26 act. The review shall also include the status of alternative
27 energy technologies within this Commonwealth and the capacity
28 to add additional alternative energy resources. The
29 commission shall use the results of this review to recommend
30 to the General Assembly additional compliance goals beyond

1 year 15 for Tier I and Tier II shares. The commission shall
2 work with the department in evaluating the future alternative
3 energy resource potential.

4 * * *

5 (c.1) Tier III share.--Subject to section 8.1(q)(2), during
6 the Tier III program period, each electric distribution company
7 shall purchase Tier III alternative energy credits equal to the
8 amount of credits available as determined by the commission
9 under section 8.1(d)(1). The obligations of an electric
10 distribution company under this subsection shall not be subject
11 to the provisions of 66 Pa.C.S. § 2807(e)(3.5) or (3.7).

12 * * *

13 (f) Alternative compliance payment.--

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

18 (2) The commission shall conduct a review of each
19 determination made under subsections (b) [and (c)], (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)], (c) and (c.1), except as set forth in section
24 8.1(q)(2), the commission shall impose an alternative
25 compliance payment on that electric distribution company or
26 electric generation supplier.

27 (3) The alternative compliance payment, with the
28 exception of the solar photovoltaic share compliance
29 requirement set forth in subsection (b)(2) and the Tier III
30 share requirement set forth in subsection (c.1), shall be \$45

1 times the number of additional alternative energy credits
2 needed in order to comply with subsection (b) or (c).

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

11 (4.1) The alternative compliance payment for the Tier
12 III share shall be equal to twice the Tier III alternative
13 energy credit reporting period price for the applicable
14 reporting period times the number of additional alternative
15 energy credits needed 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) Alternative compliance payments imposed under this
18 act for failure to comply with subsection (c.1) shall be paid
19 as follows:

20 (i) fifty percent consistent with paragraphs (1) and
21 (2); and

22 (ii) fifty percent to the commission to distribute
23 to Tier III alternative energy sources that qualify as a
24 Tier III alternative energy source under section 8.1 for
25 Tier III alternative energy credits that were otherwise
26 not purchased due to the failure to comply with
27 subsection (c.1) in an amount equal to each source's
28 proportional amount of credits that were not purchased
29 during that reporting year.

30 (h) Nonseverability.--The provisions of subsection [(a)] (a)

1 (1), (2), (3)(i) and (ii) are declared to be nonseverable. If
2 any provision of subsection [(a) is] (a)(1), (2), (3)(i) and
3 (ii) are held invalid, the remaining provisions of this act
4 shall be void.

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

6 Section 4. Portfolio requirements in other states.

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

1 located within the service territory of the same regional
2 transmission organization. For purposes of compliance with this
3 act, alternative energy sources located in the PJM
4 Interconnection, L.L.C. regional transmission organization (PJM)
5 or its successor service territory shall be eligible to fulfill
6 compliance obligations of all Pennsylvania electric distribution
7 companies and electric generation suppliers. Energy derived from
8 alternative energy sources located outside the service territory
9 of a regional transmission organization that manages the
10 transmission system in any part of this Commonwealth shall not
11 be eligible to meet the compliance requirements of this act.
12 Electric distribution companies and electric generation
13 suppliers shall document that this energy was not used to
14 satisfy another state's [renewable] alternative energy portfolio
15 standards.

16 Section 6. Health and safety standards.

17 The department shall cooperate with the Department of Labor
18 and Industry as necessary in developing health and safety
19 standards, as needed, regarding facilities generating energy
20 from alternative energy sources. The department shall establish
21 appropriate and reasonable health and safety standards to ensure
22 uniform and proper compliance with this act by owners and
23 operators of facilities generating energy from alternative
24 energy sources as defined in this act. Alternative energy
25 sources fueled by nuclear fission shall continue to comply with
26 health and safety standards established by Federal regulatory
27 agencies.

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

30 Section 7. Interagency responsibilities.

1 * * *

2 (d) Enforcement of provisions.--In addition to any powers
3 expressly granted under this act, the commission shall enforce
4 the provisions of this act in accordance with the commission's
5 regulations and orders and the following shall apply:

6 (1) The commission may modify or rescind any regulation
7 or order promulgated by the commission to enforce this act,
8 whether or not the commission promulgated the regulation or
9 order prior to the effective date of this subsection.

10 (2) Nothing in this subsection shall be construed to
11 exclude any authority granted to the commission under 66
12 Pa.C.S. (relating to public utilities).

13 Section 5. The act is amended by adding sections to read:
14 Section 8.1. Tier III alternative energy sources credit
15 program.

16 (a) Tier III alternative energy source qualifications.--In
17 order to qualify as a Tier III alternative energy source under
18 subsection (b) for the purpose of receiving Tier III credits,
19 the Tier III alternative energy source shall satisfy all of the
20 following:

21 (1) The alternative energy source is interconnected with
22 capacity injection rights within the regional transmission
23 organization.

24 (2) If the alternative energy source were to cease
25 operation or fail to come in service:

26 (i) the ability of Pennsylvania, or regions of
27 Pennsylvania, to maintain or decrease existing levels of
28 volatile organic compounds or to comply with one or more
29 Federal or State air pollution control programs,
30 standards or goals is reduced;

1 (ii) the carbon dioxide emissions would increase as
2 a result of electricity consumed in this Commonwealth;
3 and

4 (iii) the ability of Pennsylvania to maintain or
5 decrease existing levels of carbon monoxide, lead,
6 ground-level ozone, particulate matter, nitrogen oxide or
7 sulfur dioxide is reduced.

8 (3) On or after January 1, 2017, the alternative energy
9 source:

10 (i) regardless of the Tier III alternative energy
11 source's location, did not receive tax exemptions,
12 deferrals, exclusions, allowances, payments, credits,
13 deductions or reimbursements from any other state
14 calculated in whole or in part using a metric that
15 provides value for emissions not produced by the
16 alternative energy source;

17 (ii) is not wholly owned by a municipal or
18 cooperative corporation or a group, association or
19 consortium of those corporations; and

20 (iii) did not at any point during the Tier III
21 program recover some or all of the capital or operating
22 costs of the resource through cost-based rates regulated
23 by a state.

24 (b) Qualification process.--The commission shall establish a
25 Tier III alternative energy source qualification process within
26 180 days of the effective date of this section. An alternative
27 energy source seeking to participate in the Tier III program
28 shall file written notice of at least all of the following:

29 (1) The source's qualifications as a Tier III
30 alternative energy source.

1 (2) The source's total estimated generation calculated
2 as follows:

3 (i) For existing Tier III alternative energy sources
4 derived from nuclear fission, the nameplate capacity of
5 the source.

6 (ii) For Tier III alternative energy sources not
7 derived from nuclear fission, the estimated generation is
8 equal to the source's estimated generation in the
9 reporting year for which the source is submitting an
10 application for Tier III credits.

11 (3) The generation for which the source is applying for
12 Tier III credits subject to the following:

13 (i) For Tier III sources derived from nuclear
14 fission, the applicant shall commit an amount equal to
15 the product of the Tier III capacity percentage
16 determined by the commission under subsection (d)(2)
17 multiplied by 8,760 hours per year multiplied by the
18 nameplate capacity of the source.

19 (ii) For Tier III sources other than sources derived
20 from nuclear fission, the applicant shall designate and
21 commit a portion of the applicant's generation for Tier
22 III credits for which the applicant does not receive any
23 other credits under this act.

24 (4) The source's commitment to apply for Tier III
25 credits as follows:

26 (i) Generation under paragraph (3)(i) shall require
27 a commitment for at least six reporting periods.

28 (ii) Generation under paragraph (3)(ii) shall
29 require a commitment for at least one reporting period.

30 (c) Written notice.--

1 (1) The written notice required under subsection (b)
2 shall be filed with the commission no later than 270 days
3 after the start of either of the following:

4 (i) The first Tier III program period for Tier III
5 sources derived from nuclear fission.

6 (ii) Each Tier III reporting period after the first
7 Tier III program year for Tier III sources other than
8 Tier III sources derived from nuclear fission.

9 (2) The written notice shall be transmitted to the
10 Legislative Reference Bureau for publication in the
11 Pennsylvania Bulletin in the first available issue following
12 the filing of the written notice.

13 (3) Comments in response to the notice shall be filed
14 with the commission no later than 20 days after the
15 publication of the notice.

16 (4) Reply comments shall be filed with the commission
17 within 10 days of the close of the initial comment period.

18 (d) Availability of Tier III credits.--

19 (1) The commission shall determine the number of Tier III
20 credits available at the beginning of the first Tier III
21 program period as being equal to approximately 50% of the
22 total number of megawatt hours of electricity distributed by
23 electric distribution companies in this Commonwealth, net of
24 system losses, for the latest calendar year reported in the
25 Electric Power Outlook edition published on the effective
26 date of this paragraph.

27 (2) The commission shall then determine, at the beginning
28 of each Tier III reporting year, the amount of Tier III
29 credits available to Tier III alternative energy sources
30 derived from nuclear fission by setting the Tier III capacity

1 percentage between 77% and 83%, based upon the availability
2 of Tier III alternative energy sources not derived from
3 nuclear fission that are estimated to be available and
4 eligible to receive Tier III credits in each reporting
5 period, multiplied by 8,760 hours per year multiplied by the
6 nameplate capacity of the plant.

7 (e) Selection for Tier III program.--

8 (1) Following the close of the reply-comment period
9 under subsection (c)(4), the commission shall review the
10 notice of qualifications and all comments and rank each
11 application based on how well the alternative energy source
12 satisfies the criteria outlined under subsections (a) and
13 (b).

14 (2) After ranking each applicant under paragraph (1),
15 the commission shall select the applicants that will
16 participate in the Tier III program according to the ranking
17 of the applicants beginning with the top-ranked applicant and
18 continuing in rank order until the total number of credits
19 available for the reporting period have been assigned to Tier
20 III alternative energy sources.

21 (3) If the commission, after ranking the applicants
22 under paragraph (1) and selecting the applicants under
23 paragraph (2) has Tier III credits remaining, the commission
24 shall select a marginal applicant to participate in the Tier
25 III program until the number of Tier III credits available
26 under subsection (d)(1) have been assigned.

27 (f) Tier III alternative energy source designation.--Once
28 designated, an alternative energy source shall continue to be
29 considered a Tier III alternative energy source for the time
30 period committed to under subsection (b)(4) as long as the

1 alternative energy source continues to meet the criteria under
2 this section.

3 (g) Transfer and payment for Tier III alternative energy
4 credits.--

5 (1) A Tier III alternative energy source shall transfer
6 all of the source's Tier III alternative energy credits for
7 that reporting period to each electric distribution company
8 as determined by the commission.

9 (2) Each electric distribution company shall purchase
10 the Tier III credits transferred under paragraph (1) and
11 remit payment for the credits purchased to each Tier III
12 alternative energy source, subject to the following:

13 (i) If the total quantity of Tier III alternative
14 energy credits available is less than the sum of the Tier
15 III shares for all electric distribution companies in
16 this Commonwealth, then each electric distribution
17 company's Tier III share for that reporting year shall be
18 the company's proportional share of Tier III credits; and
19 no alternative compliance payments shall be assessed
20 under section 3(f)(4.1). 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 available from all Tier III alternative energy
29 sources is greater than the sum of the Tier III shares
30 for all electric distribution companies in this

1 Commonwealth, then each Tier III alternative energy
2 source shall be paid for the source's prorated share of
3 Tier III credits. Tier III alternative energy credits
4 available that exceed the sum of the Tier III shares for
5 all electric distribution companies in this Commonwealth
6 shall be retired. A Tier III alternative energy source's
7 prorated share shall be a percentage equal to the sum of
8 the Tier III shares for all electric distribution
9 companies in this Commonwealth divided by the sum of Tier
10 III alternative energy credits available from all Tier
11 III alternative energy sources.

12 (3) Credits purchased by an electric distribution
13 company may not be transferred, sold or assigned to any other
14 entity and may not be utilized to fulfill future obligations
15 under this act.

16 (h) Suspension of generation of a Tier III alternative
17 energy source.--A designated Tier III alternative energy source
18 shall be excused from the source's commitment to generate
19 electricity for the time period committed to under subsection
20 (b)(4) and shall no longer receive Tier III alternative energy
21 credits if one of the following occurs:

22 (1) The designated Tier III alternative energy source
23 suspends or ceases generation, despite the designated Tier
24 III alternative energy source's reasonable efforts to
25 continue generation, due to an event beyond its control. The
26 designated Tier III alternative energy source shall no longer
27 be excused from performance, and payment of Tier III
28 alternative credits shall resume, after conclusion of such an
29 event.

30 (2) The Commonwealth enacts a new law imposing a

1 material new tax, special assessment or fee on the generation
2 of electricity, the ownership or leasehold of a generating
3 unit or the privilege or occupation of the generation,
4 ownership or leasehold of generation units by a designated
5 Tier III alternative energy source.

6 (3) The Federal Government or the Commonwealth enacts a
7 law that materially reduces the Tier III alternative energy
8 credit reporting period price.

9 (4) The Federal Government or the Commonwealth takes
10 final action related to the provision of Tier III alternative
11 energy credits that has the effect of eliminating a material
12 portion of a designated Tier III alternative energy source's
13 anticipated future revenue, taking into account the benefits
14 to be provided to a designated Tier III alternative energy
15 source under the Tier III program.

16 (5) The Nuclear Regulatory Commission or its successor
17 agency terminates a designated Tier III alternative energy
18 source's license.

19 (i) Penalties.--

20 (1) A designated Tier III alternative energy source
21 operator that fails to fulfill its commitment to generate
22 electricity for the time period committed to under subsection
23 (b)(4) by ceasing generation for any reason not listed in
24 subsection (h) shall provide refunds as directed by the
25 commission in the amount calculated under paragraph (2).

26 (2) Subject to paragraph (5), the amount an owner of a
27 Tier III alternative energy source shall refund under
28 paragraph (1) shall be as follows:

29 (i) If the Tier III alternative energy source ceases
30 generation following the first reporting period, 100% of

1 the amount received under subsection (q)(2) and section
2 3(q)(3)(ii).

3 (ii) If the Tier III alternative energy source
4 ceases generation following the second reporting period,
5 80% of the amount received under subsection (q)(2) and
6 section 3(q)(3)(ii).

7 (iii) If the Tier III alternative energy source
8 ceases generation following the third reporting period,
9 60% of the amount received under subsection (q)(2) and
10 section 3(q)(3)(ii).

11 (iv) If the Tier III alternative energy source
12 ceases generation following the fourth reporting period,
13 40% of the amount received under subsection (q)(2) and
14 section 3(q)(3)(ii).

15 (v) If the Tier III alternative energy source ceases
16 generation following the fifth reporting period, 20% of
17 the amount received under subsection (q)(2) and section
18 3(q)(3)(ii).

19 (3) Nothing in this subsection shall be construed to
20 require an entity, other than the majority owner, that has an
21 ownership interest that is less than 15% in a Tier III
22 alternative energy source to refund payments received under
23 subsection (q)(2) or section 3(q)(3)(ii).

24 (4) For purposes of this subsection, if the ownership of
25 a Tier III alternative energy source changes during the term
26 of a six-year commitment to participate in the Tier III
27 program, the obligation of the former owner to refund
28 payments received under subsection (q)(2) and section 3(q)(3)
29 (ii) shall be transferred by covenant to the new owner.

30 (5) For the purposes of the calculation of the refund

1 under paragraph (2), the amount owed by a Tier III
2 alternative energy source owner shall be calculated based
3 solely on the amount of credits produced by each Tier III
4 alternative energy source and may not apply to additional
5 Tier III alternative energy sources owned by the same entity
6 and participating in the Tier III program.

7 (6) The commission has the following powers:

8 (i) Issue an order requiring the Tier III
9 alternative energy source to refund the amount it owes
10 under this subsection. This subparagraph includes:

11 (A) stating the exact amount to be refunded as
12 directed by the commission;

13 (B) setting the reasonable time within which
14 payments shall be made; and

15 (C) making findings upon pertinent questions of
16 fact.

17 (ii) Provide a mechanism for a return of the refund
18 from the Tier III alternative energy source to each
19 electric distribution company for purposes of
20 distribution to its customers. This subparagraph
21 includes:

22 (A) determining the amount to be returned to an
23 electric distribution company's proportional share of
24 the total payments made by all electric distribution
25 companies for the purchase of Tier III credits for
26 the reporting periods during its most recent time
27 period committed to under subsection (b) (4); and

28 (B) determining the amount to be refunded to the
29 electric distribution company's customers as a result
30 of the cost recovery under section 3(a) (3) (iii) for

1 the customer costs associated with the reporting
2 periods during the Tier III alternative energy
3 source's most recent time period committed to under
4 subsection (b)(4).

5 (j) Tier III alternative energy source audits.--

6 (1) The commission shall, annually or on a periodic
7 basis as determined by the commission, conduct an audit of
8 each Tier III alternative energy source participating in the
9 Tier III program. Any audit directed by the commission shall
10 commence 180 days following any payments to a Tier III
11 alternative energy source under subsection (g)(2). The
12 commission shall solicit input from the Department of
13 Environmental Protection as needed in the conduct of the
14 audit. The commission audit shall confirm through the audit
15 process whether each alternative energy source meets all of
16 the qualifying requirements under subsections (a) and (b).
17 The subject areas of the audit shall include all of the
18 following:

19 (i) Whether the alternative energy source is
20 interconnected with the regional transmission
21 organization.

22 (ii) The effect of cessation of generation of
23 electricity or failure to operate on air emissions
24 standards as contained in subsection (a)(2).

25 (iii) Confirmation that the alternative energy
26 source did not, regardless of the alternative energy
27 source's location, receive tax exemptions, deferrals,
28 exclusions, allowances, payments, credits, deductions or
29 reimbursements from any other state calculated in whole
30 or in part using a metric that provides value for

1 emissions not produced by the alternative energy source.

2 (iv) Confirmation that the alternative energy source
3 is not wholly owned by:

4 (A) a municipal or cooperative association; or

5 (B) a group, association or consortium of a
6 municipal or cooperative association.

7 (v) The source's total estimated generation
8 calculated under subsection (b)(2).

9 (vi) The generation for which the source is applying
10 for Tier III credits under subsection (b)(3).

11 (vii) Compliance with the commitment to sell
12 designated alternative energy generation for the time
13 period committed to under subsection (b)(4).

14 (viii) The number of credits received by the
15 alternative energy source for the program year covered by
16 the audit.

17 (ix) Payments received by the alternative energy
18 source for the program year covered by the audit and the
19 use of those payments by the generator to ensure the
20 continued viability of the alternative energy source to
21 achieve the standards under subsection (a)(2).

22 (2) Within 90 days of the conclusion of an audit under
23 this subsection, the commission shall submit a report
24 detailing the findings of the audit to:

25 (i) the Governor;

26 (ii) the chairperson and minority chairperson of the
27 Environmental Resources and Energy Committee of the
28 Senate;

29 (iii) the chairperson and minority chairperson of
30 the Environmental Resources and Energy Committee of the

1 House of Representatives;

2 (iv) the chairperson and minority chairperson of the
3 Consumer Protection and Professional Licensure Committee
4 of the Senate; and

5 (v) the chairperson and minority chairperson of the
6 Consumer Affairs Committee of the House of
7 Representatives.

8 (k) Administrative expenses.--

9 (1) In addition to any assessments authorized by 66
10 Pa.C.S. § 510 (relating to assessment for regulatory expenses
11 upon public utilities), the commission may impose an
12 assessment on the payments to Tier III alternative energy
13 sources.

14 (2) The assessment under paragraph (1) may not exceed 1%
15 of the value of all credits sold for each Tier III reporting
16 period for costs associated with the administration of the
17 Tier III program.

18 Section 8.2. Capacity payments to alternative energy sources.

19 (a) Election to participate in fixed resource requirement
20 program.--If permitted by the Federal Energy Regulatory
21 Commission, the commission shall create and administer a program
22 in which alternative energy systems may opt to supply and be
23 paid for capacity through a means other than the centralized
24 base residual auction for capacity operated by the regional
25 transmission organization. As permitted by the Federal Energy
26 Regulatory Commission, the program shall include:

27 (1) establishing a process through which an alternative
28 energy system is permitted to notify the regional
29 transmission organization, consistent with requirements
30 approved by the Federal Energy Regulatory Commission, of the

1 decision to opt out of the centralized base residual auction
2 for capacity and sell its capacity through other mechanisms;

3 (2) providing any determinations required by the
4 regional transmission organization with respect to such
5 alternative energy systems, including a calculation of the
6 commensurate amount of customer load that will not
7 participate in the centralized base residual auction for
8 capacity as a result of the alternative energy system's
9 decision to sell its capacity through other mechanisms, which,
10 if consistent with requirements approved by the Federal
11 Energy Regulatory Commission, shall be calculated pro rata
12 across all load serving entities in this Commonwealth; and

13 (3) subject to approval by the Federal Energy Regulatory
14 Commission, the amount paid for the capacity of each such
15 alternative energy system that opts out of the regional
16 transmission organization centralized base residual auction
17 for capacity for each applicable reporting period shall be
18 equal to the generation capacity of the system as determined
19 in accordance with regional transmission organization
20 requirements multiplied by the locational delivery area price
21 established by the regional transmission organization in the
22 base residual auction for capacity, or as determined in
23 accordance with a successor mechanism approved by the Federal
24 Energy Regulatory Commission, for the location in which the
25 system is located.

26 (b) Payments.--If the regional transmission organization
27 does not operate a settlement mechanism under which alternative
28 energy systems that make elections under subsection (a) can
29 receive payments from regional transmission organization load
30 serving entities, the commission shall calculate the total

1 amount due to each system under subsection (a)(3) and notify
2 each electric distribution company of its share of that amount
3 based upon the electric distribution company's pro rata share of
4 the electric energy sold to retail electric customers in this
5 Commonwealth during the applicable reporting period. Each
6 electric distribution company shall pay the amount to each
7 alternative energy system under subsection (a)(3), as determined
8 by the commission.

9 (c) Timing.--The commission shall create the program under
10 subsections (a) and (b) within 180 days after the later to occur
11 of:

12 (1) the effective date of this subsection; or
13 (2) the date on which the regional transmission
14 organization rules that allow alternative energy systems to
15 opt out of the centralized base residual auction are accepted
16 or approved by the Federal Energy Regulatory Commission.

17 Section 6. This act shall take effect June 1, 2019, or
18 immediately, whichever is sooner.