

112TH CONGRESS
2D SESSION

H. R. 5967

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal renewable electricity and energy efficiency standard for certain electric utilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 2012

Mr. MARKEY (for himself and Mr. WELCH) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To amend title VI of the Public Utility Regulatory Policies Act of 1978 to establish a Federal renewable electricity and energy efficiency standard for certain electric utilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Renewable
5 Energy and Efficiency Act”.

1 **SEC. 2. COMBINED EFFICIENCY AND RENEWABLE ELEC-**
2 **TRICITY STANDARD.**

3 (a) IN GENERAL.—Title VI of the Public Utility Reg-
4 ulatory Policies Act of 1978 is amended by adding at the
5 end the following:

6 **“SEC. 610. COMBINED EFFICIENCY AND RENEWABLE ELEC-**
7 **TRICITY STANDARD.**

8 “(a) DEFINITIONS.—For purposes of this section:

9 “(1) CHP SAVINGS.—The term ‘CHP savings’
10 means—

11 “(A) CHP system savings from a combined
12 heat and power system that commences oper-
13 ation after the date of enactment of this sec-
14 tion; and

15 “(B) the increase in CHP system savings
16 from, at any time after the date of the enact-
17 ment of this section, upgrading, replacing, ex-
18 panding, or increasing the utilization of a com-
19 bined heat and power system that commenced
20 operation on or before the date of enactment of
21 this section.

22 “(2) CHP SYSTEM SAVINGS.—The term ‘CHP
23 system savings’ means the increment of electric out-
24 put of a combined heat and power system that is at-
25 tributable to the higher efficiency of the combined

1 system (as compared to the efficiency of separate
2 production of the electric and thermal outputs).

3 “(3) COMBINED HEAT AND POWER SYSTEM.—

4 The term ‘combined heat and power system’ means
5 a system that uses the same energy source both for
6 the generation of electrical or mechanical power and
7 the production of steam or another form of useful
8 thermal energy, provided that—

9 “(A) the system meets such requirements
10 relating to efficiency and other operating char-
11 acteristics as the Commission may promulgate
12 by regulation; and

13 “(B) the net sales of electricity by the fa-
14 cility to customers not consuming the thermal
15 output from that facility will not exceed 50 per-
16 cent of total annual electric generation by the
17 facility.

18 “(4) CUSTOMER FACILITY SAVINGS.—The term
19 ‘customer facility savings’ means a reduction in end-
20 use electricity consumption (including recycled en-
21 ergy savings) at a facility of an end-use consumer of
22 electricity served by a retail electric supplier, as
23 compared to—

1 “(A) in the case of a new facility, con-
2 sumption at a reference facility of average effi-
3 ciency;

4 “(B) in the case of an existing facility,
5 consumption at such facility during a base pe-
6 riod, except as provided in subparagraphs (C)
7 and (D);

8 “(C) in the case of new equipment that re-
9 places existing equipment with remaining useful
10 life, the projected consumption of the existing
11 equipment for the remaining useful life of such
12 equipment, and thereafter, consumption of new
13 equipment of average efficiency of the same
14 equipment type; and

15 “(D) in the case of new equipment that re-
16 places existing equipment at the end of the use-
17 ful life of the existing equipment, consumption
18 by new equipment of average efficiency of the
19 same equipment type.

20 “(5) DISTRIBUTED RENEWABLE GENERATION
21 FACILITY.—The term ‘distributed renewable genera-
22 tion facility’ means a facility that—

23 “(A) generates renewable electricity;

24 “(B) primarily serves 1 or more electricity
25 consumers at or near the facility site; and

1 “(C) is no greater than 2 megawatts in ca-
2 pacity.

3 “(6) ELECTRICITY SAVINGS.—The term ‘elec-
4 tricity savings’ means reductions in electricity con-
5 sumption, relative to business-as-usual projections,
6 achieved through measures implemented after the
7 date of enactment of this section, limited to—

8 “(A) customer facility savings of elec-
9 tricity, adjusted to reflect any associated in-
10 crease in fuel consumption at the facility;

11 “(B) reductions in distribution system
12 losses of electricity achieved by a retail elec-
13 tricity distributor, as compared to losses attrib-
14 utable to new or replacement distribution sys-
15 tem equipment of average efficiency;

16 “(C) CHP savings; and

17 “(D) fuel cell savings.

18 “(7) FEDERAL RENEWABLE ELECTRICITY
19 CREDIT.—The term ‘Federal renewable electricity
20 credit’ means a credit, representing one megawatt
21 hour of renewable electricity, issued pursuant to sub-
22 section (e).

23 “(8) FUEL CELL.—The term ‘fuel cell’ means a
24 device that directly converts the chemical energy of
25 a fuel and an oxidant into electricity by electro-

1 chemical processes occurring at separate electrodes
2 in the device.

3 “(9) FUEL CELL SAVINGS.—The term ‘fuel cell
4 savings’ means the electricity saved by a fuel cell
5 that is installed after the date of enactment of this
6 section, or by upgrading a fuel cell that commenced
7 operation on or before the date of enactment of this
8 section, as a result of the greater efficiency with
9 which the fuel cell transforms fuel into electricity as
10 compared with sources of electricity delivered
11 through the grid, provided that—

12 “(A) the fuel cell meets such requirements
13 relating to efficiency and other operating char-
14 acteristics as the Commission may promulgate
15 by regulation; and

16 “(B) the net sales of electricity from the
17 fuel cell to customers not consuming the ther-
18 mal output from the fuel cell, if any, do not ex-
19 ceed 50 percent of the total annual electricity
20 generation by the fuel cell.

21 “(10) QUALIFIED HYDROPOWER.—The term
22 ‘qualified hydropower’ means—

23 “(A) energy produced from increased effi-
24 ciency achieved, or additions of capacity made,
25 on or after January 1, 2001, at a hydroelectric

1 facility that was placed in service before that
2 date and does not include additional energy
3 generated as a result of operational changes not
4 directly associated with efficiency improvements
5 or capacity additions; or

6 “(B) energy produced from generating ca-
7 pacity added to a dam on or after January 1,
8 2001, provided that the Commission certifies
9 that—

10 “(i) the dam was placed in service be-
11 fore the date of the enactment of this sec-
12 tion and was operated for flood control,
13 navigation, or water supply purposes and
14 was not producing hydroelectric power
15 prior to the addition of such capacity;

16 “(ii) the hydroelectric project installed
17 on the dam is licensed (or is exempt from
18 licensing) by the Commission and is in
19 compliance with the terms and conditions
20 of the license or exemption, and with other
21 applicable legal requirements for the pro-
22 tection of environmental quality, including
23 applicable fish passage requirements; and

24 “(iii) the hydroelectric project in-
25 stalled on the dam is operated so that the

1 water surface elevation at any given loca-
2 tion and time that would have occurred in
3 the absence of the hydroelectric project is
4 maintained, subject to any license or ex-
5 emption requirements that require changes
6 in water surface elevation for the purpose
7 of improving the environmental quality of
8 the affected waterway.

9 “(11) RECYCLED ENERGY SAVINGS.—The term
10 ‘recycled energy savings’ means a reduction in elec-
11 tricity consumption that results from a modification
12 of an industrial or commercial system that com-
13 menced operation before the date of enactment of
14 this section, in order to recapture electrical, mechan-
15 ical, or thermal energy that would otherwise be
16 wasted.

17 “(12) RENEWABLE BIOMASS.—The term ‘re-
18 newable biomass’ means any of the following:

19 “(A) Crops, crop byproducts, or crop resi-
20 dues harvested from actively managed or fallow
21 agricultural land that was cleared prior to the
22 date of enactment of this section and is nonfor-
23 ested.

24 “(B) Planted trees, brush, slash, and all
25 residues from an actively managed tree planta-

1 tion located on land that was cleared prior to
2 the date of enactment of this section and is not
3 Federal land.

4 “(C) Precommercial-sized thinnings, slash,
5 brush, and residue from milled trees, from for-
6 ested land that is not—

7 “(i) old-growth or mature forest;

8 “(ii) identified under a State Natural
9 Heritage Program as rare, imperiled, or
10 critically imperiled; or

11 “(iii) Federal land.

12 “(D) Algae.

13 “(E) Nonhazardous plant matter derived
14 from waste such as separated yard waste, land-
15 scape right-of-way trimmings, or food waste
16 (but not municipal solid waste, recyclable waste
17 paper, painted, treated or pressurized wood, or
18 wood contaminated with plastic or metals).

19 “(F) Animal waste or animal byproducts,
20 including products of animal waste digesters.

21 “(G) Vegetative matter removed from
22 within 200 yards of any manmade structure or
23 campground.

24 “(H) Slash and precommercial-sized
25 thinnings harvested—

1 “(i) in environmentally sustainable
2 quantities, as determined by the appro-
3 priate Federal land manager; and

4 “(ii) from National Forest System
5 land or public lands (as defined in section
6 103 of the Federal Land Policy and Man-
7 agement Act of 1976 (43 U.S.C. 1702)),
8 other than—

9 “(I) components of the National
10 Wilderness Preservation System es-
11 tablished under the Wilderness Act
12 (16 U.S.C. 1131 et seq.);

13 “(II) Wilderness Study Areas, as
14 identified by the Bureau of Land
15 Management;

16 “(III) inventoried roadless areas
17 and all unroaded areas of at least
18 5,000 acres;

19 “(IV) old growth and late seral
20 stands;

21 “(V) components of the National
22 Landscape Conservation System ad-
23 ministered by the Bureau of Land
24 Management; and

25 “(VI) national monuments.

1 “(13) RENEWABLE ELECTRICITY.—The term
2 ‘renewable electricity’ means electricity generated
3 (including by means of a fuel cell) from a renewable
4 energy resource.

5 “(14) RENEWABLE ENERGY RESOURCE.—The
6 term ‘renewable energy resource’ means each of the
7 following:

8 “(A) Wind energy.

9 “(B) Solar energy.

10 “(C) Geothermal energy.

11 “(D) Renewable biomass.

12 “(E) Biogas derived exclusively from re-
13 newable biomass.

14 “(F) Biofuels derived exclusively from re-
15 newable biomass.

16 “(G) Qualified hydropower.

17 “(H) Marine and hydrokinetic renewable
18 energy, as that term is defined in section 632
19 of the Energy Independence and Security Act
20 of 2007 (42 U.S.C. 17211).

21 “(I) Landfill gas.

22 “(15) RETAIL ELECTRIC SUPPLIER.—

23 “(A) IN GENERAL.—The term ‘retail elec-
24 tric supplier’ means, for any given year, an
25 electric utility that sold not less than 1,000,000

1 megawatt hours of electric energy to electric
2 consumers for purposes other than resale dur-
3 ing the preceding calendar year.

4 “(B) INCLUSIONS AND LIMITATIONS.—For
5 purposes of determining whether an electric
6 utility qualifies as a retail electric supplier
7 under subparagraph (A)—

8 “(i) the sales of any affiliate of an
9 electric utility to electric consumers, other
10 than sales to the affiliate’s lessees or ten-
11 ants, for purposes other than resale shall
12 be considered to be sales of such electric
13 utility; and

14 “(ii) sales by any electric utility to an
15 affiliate, lessee, or tenant of such electric
16 utility shall not be treated as sales to elec-
17 tric consumers.

18 “(C) AFFILIATE.—For purposes of this
19 paragraph, the term ‘affiliate’ when used in re-
20 lation to a person, means another person that
21 directly or indirectly owns or controls, is owned
22 or controlled by, or is under common ownership
23 or control with, such person, as determined
24 under regulations promulgated by the Commis-
25 sion.

1 “(16) RETAIL ELECTRIC SUPPLIER’S BASE
2 AMOUNT.—The term ‘retail electric supplier’s base
3 amount’ means the total amount of electric energy
4 sold by the retail electric supplier, expressed in
5 megawatt hours, to electric customers for purposes
6 other than resale during the relevant calendar year,
7 excluding—

8 “(A) electricity generated by a hydro-
9 electric facility, other than qualified hydro-
10 power;

11 “(B) electricity generated by the combus-
12 tion of municipal solid waste;

13 “(C) electricity generated by a nuclear gen-
14 erating unit placed in service after the date of
15 enactment of this section; and

16 “(D) the proportion of electricity generated
17 by a fossil-fueled generating unit that is equal
18 to the proportion of greenhouse gases produced
19 by such unit that are captured and geologically
20 sequestered.

21 “(17) RETIRE AND RETIREMENT.—The terms
22 ‘retire’ and ‘retirement’ with respect to a Federal re-
23 newable electricity credit, means to disqualify such
24 credit for any subsequent use under this section, re-
25 gardless of whether the use is a sale, transfer, ex-

1 change, or submission in satisfaction of a compliance
2 obligation.

3 “(18) THIRD-PARTY EFFICIENCY PROVIDER.—

4 The term ‘third-party efficiency provider’ means any
5 retailer, building owner, energy service company, fi-
6 nancial institution or other commercial, industrial,
7 or nonprofit entity that is capable of providing elec-
8 tricity savings in accordance with the requirements
9 of this section.

10 “(19) TOTAL ANNUAL ELECTRICITY SAVINGS.—

11 The term ‘total annual electricity savings’ means
12 electricity savings during a specified calendar year
13 from measures implemented since the date of the en-
14 actment of this section, taking into account verified
15 measure lifetimes or verified annual savings attrition
16 rates, as determined in accordance with such regula-
17 tions as the Commission may promulgate and meas-
18 ured in megawatt hours.

19 “(b) ANNUAL COMPLIANCE OBLIGATION.—

20 “(1) IN GENERAL.—For each of calendar years
21 2014 through 2040, not later than March 31 of the
22 following calendar year, each retail electric supplier
23 shall submit to the Commission an amount of Fed-
24 eral renewable electricity credits and demonstrated
25 total annual electricity savings that, in the aggre-

1 gate, is equal to such retail electric supplier’s annual
2 combined target as set forth in subsection (d), ex-
3 cept as otherwise provided in subsection (g).

4 “(2) DEMONSTRATION OF SAVINGS.—For pur-
5 poses of this subsection, submission of demonstrated
6 total annual electricity savings means submission of
7 a report that demonstrates, in accordance with the
8 requirements of subsection (f), the total annual elec-
9 tricity savings achieved by the retail electric supplier
10 within the relevant compliance year.

11 “(3) RENEWABLE ELECTRICITY CREDITS POR-
12 TION.—Except as provided in paragraph (4), each
13 retail electric supplier must submit Federal renew-
14 able electricity credits equal to at least three quar-
15 ters of the retail electric supplier’s annual combined
16 target.

17 “(4) STATE PETITION.—

18 “(A) IN GENERAL.—Upon written request
19 from the Governor of any State (including, for
20 purposes of this paragraph, the Mayor of the
21 District of Columbia), the Commission shall in-
22 crease, to not more than half, the proportion of
23 the annual combined targets of retail electric
24 suppliers located within such State that may be
25 met through submission of demonstrated total

1 annual electricity savings, provided that such
2 increase shall be effective only with regard to
3 the portion of a retail electric supplier's annual
4 combined target that is attributable to elec-
5 tricity sales within such State.

6 “(B) CONTENTS.—A Governor's request
7 under this paragraph shall include an expla-
8 nation of the Governor's rationale for deter-
9 mining, after consultation with the relevant
10 State regulatory authority and other retail elec-
11 tricity ratemaking authorities within the State,
12 to make such request. The request shall specify
13 the maximum proportion of annual combined
14 targets (not more than half) that can be met
15 through demonstrated total annual electricity
16 savings, and the period for which such propor-
17 tion shall be effective.

18 “(C) REVISION.—The Governor of any
19 State may, after consultation with the relevant
20 State regulatory authority and other retail elec-
21 tricity ratemaking authorities within the State,
22 submit a written request for revocation or revi-
23 sion of a previous request submitted under this
24 paragraph. The Commission shall grant such
25 request, provided that—

1 “(i) any revocation or revision shall
2 not apply to the combined annual target
3 for any year that is any earlier than 2 cal-
4 endar years after the calendar year in
5 which such request is submitted, so as to
6 provide retail electric suppliers with ade-
7 quate notice of such change; and

8 “(ii) any revision shall meet the re-
9 quirements of subparagraph (A).

10 “(c) ESTABLISHMENT OF PROGRAM.—Not later than
11 1 year after the date of enactment of this section, the
12 Commission shall promulgate regulations to implement
13 and enforce the requirements of this section. In promul-
14 gating such regulations, the Commission shall, to the ex-
15 tent practicable—

16 “(1) preserve the integrity, and incorporate best
17 practices, of existing State and tribal renewable elec-
18 tricity and energy efficiency programs;

19 “(2) rely upon existing and emerging State,
20 tribal, or regional tracking systems that issue and
21 track non-Federal renewable electricity credits; and

22 “(3) cooperate with the States and Indian
23 tribes to facilitate coordination between State, tribal,
24 and Federal renewable electricity and energy effi-

1 ciency programs and to minimize administrative bur-
 2 dens and costs to retail electric suppliers.

3 “(d) ANNUAL COMPLIANCE REQUIREMENT.—

4 “(1) ANNUAL COMBINED TARGETS.—For each
 5 of calendar years 2014 through 2040, a retail elec-
 6 tric supplier’s annual combined target shall be the
 7 product of—

8 “(A) the required annual percentage for
 9 such year, as set forth in paragraph (2); and

10 “(B) the retail electric supplier’s base
 11 amount for such year.

12 “(2) REQUIRED ANNUAL PERCENTAGE.—For
 13 each of calendar years 2014 through 2040, the re-
 14 quired annual percentage shall be as follows:

“Year:	Required annual percentage:
2014	8
2015	10
2016	12
2017	14
2018	16
2019	18
2020	20
2021	22
2022	24
2023	26
2024	28
2025	30
2026	32
2027	34
2028	36
2029	38
2030	40
2031	42
2032	44
2033	46
2034	48
2035 through 2040	50.

1 “(e) FEDERAL RENEWABLE ELECTRICITY CRED-
2 ITS.—

3 “(1) IN GENERAL.—The regulations promul-
4 gated under this section shall include provisions gov-
5 erning the issuance, tracking, and verification of
6 Federal renewable electricity credits. Except as pro-
7 vided in paragraphs (2), (3), and (4) of this sub-
8 section, the Commission shall issue to each gener-
9 ator of renewable electricity, 1 Federal renewable
10 electricity credit for each megawatt hour of renew-
11 able electricity generated by such generator after
12 December 31, 2013. The Commission shall assign a
13 unique serial number to each Federal renewable
14 electricity credit.

15 “(2) GENERATION FROM CERTAIN STATE RE-
16 NEWABLE ELECTRICITY PROGRAMS.—Where renew-
17 able electricity is generated with the support of pay-
18 ments from a retail electric supplier pursuant to a
19 State renewable electricity program (whether
20 through State alternative compliance payments or
21 through payments to a State renewable electricity
22 procurement fund or entity), the Commission shall
23 issue Federal renewable electricity credits to such re-
24 tail electric supplier for the proportion of the rel-
25 evant renewable electricity generation that is attrib-

1 utable to the retail electric supplier’s payments, as
2 determined pursuant to regulations issued by the
3 Commission. For any remaining portion of the rel-
4 evant renewable electricity generation, the Commis-
5 sion shall issue Federal renewable electricity credits
6 to the generator, as provided in paragraph (1), ex-
7 cept that in no event shall more than 1 Federal re-
8 newable electricity credit be issued for the same
9 megawatt hour of electricity. In determining how
10 Federal renewable electricity credits will be appor-
11 tioned among retail electric suppliers and generators
12 in such circumstances, the Commission shall con-
13 sider information and guidance furnished by the rel-
14 evant State or States.

15 “(3) CERTAIN POWER SALES CONTRACTS.—Ex-
16 cept as otherwise provided in paragraph (2), when a
17 generator has sold renewable electricity to a retail
18 electric supplier under a contract for power from a
19 facility placed in service before the date of enact-
20 ment of this section, and the contract does not pro-
21 vide for the determination of ownership of the Fed-
22 eral renewable electricity credits associated with
23 such generation, the Commission shall issue such
24 Federal renewable electricity credits to the retail
25 electric supplier for the duration of the contract.

1 “(4) CREDIT MULTIPLIER FOR DISTRIBUTED
2 RENEWABLE GENERATION.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), the Commission shall issue 3
5 Federal renewable electricity credits for each
6 megawatt hour of renewable electricity gen-
7 erated by a distributed renewable generation fa-
8 cility.

9 “(B) ADJUSTMENT.—Except as provided
10 in subparagraph (C), not later than January 1,
11 2016, and not less frequently than every 4
12 years thereafter, the Commission shall review
13 the effect of this paragraph and shall, as nec-
14 essary, reduce the number of Federal renewable
15 electricity credits per megawatt hour issued
16 under this paragraph for any given energy
17 source or technology, but not below 1, to ensure
18 that such number is no higher than the Com-
19 mission determines is necessary to make dis-
20 tributed renewable generation facilities using
21 such source or technology cost competitive with
22 other sources of renewable electricity genera-
23 tion.

24 “(C) FACILITIES PLACED IN SERVICE
25 AFTER ENACTMENT.—For any distributed re-

1 newable generation facility placed in service
2 after the date of enactment of this section, sub-
3 paragraph (B) shall not apply for the first 10
4 years after the date on which the facility is
5 placed in service. For each year during such 10-
6 year period, the Commission shall issue to the
7 facility the same number of Federal renewable
8 electricity credits per megawatt hour as are
9 issued to that facility in the year in which such
10 facility is placed in service. After such 10-year
11 period, the Commission shall issue Federal re-
12 newable electricity credits to the facility in ac-
13 cordance with the current multiplier as deter-
14 mined pursuant to subparagraph (B).

15 “(5) CREDITS BASED ON QUALIFIED HYDRO-
16 POWER.—For purposes of this subsection, the num-
17 ber of Federal renewable electricity credits issued for
18 qualified hydropower shall be calculated—

19 “(A) based solely on the increase in aver-
20 age annual generation directly resulting from
21 the efficiency improvements or capacity addi-
22 tions described in subsection (a)(10)(A); and

23 “(B) using the same water flow informa-
24 tion used to determine a historic average an-

1 nual generation baseline for the hydroelectric
2 facility, as certified by the Commission.

3 “(6) GENERATION FROM MIXED RENEWABLE
4 AND NONRENEWABLE RESOURCES.—If electricity is
5 generated using both a renewable energy resource
6 and an energy source that is not a renewable energy
7 resource (as, for example, in the case of co-firing of
8 renewable biomass and fossil fuel), the Commission
9 shall issue Federal renewable electricity credits
10 based on the proportion of the electricity that is at-
11 tributable to the renewable energy resource.

12 “(7) PROHIBITION AGAINST DOUBLE-COUNT-
13 ING.—The Commission shall ensure that—

14 “(A) no Federal renewable electricity cred-
15 it is used more than once for compliance with
16 this section; and

17 “(B) except as provided in paragraph (4),
18 no more than 1 Federal renewable electricity
19 credit is issued for any megawatt hour of re-
20 newable electricity.

21 “(8) TRADING.—The lawful holder of a Federal
22 renewable electricity credit may sell, exchange,
23 transfer, submit for compliance in accordance with
24 subsection (b), or submit such credit for retirement
25 by the Commission.

1 “(9) BANKING.—A Federal renewable elec-
2 tricity credit may be submitted in satisfaction of the
3 compliance obligation set forth in subsection (b) for
4 the compliance year in which the credit was issued
5 or for any of the 3 immediately subsequent compli-
6 ance years. The Commission shall retire any Federal
7 renewable electricity credit that has not been retired
8 by April 2 of the calendar year that is 3 years after
9 the calendar year in which the credit was issued.

10 “(10) RETIREMENT.—The Commission shall re-
11 tire a Federal renewable electricity credit imme-
12 diately upon submission by the lawful holder of such
13 credit, whether in satisfaction of a compliance obli-
14 gation under subsection (b) or on some other basis.

15 “(f) ELECTRICITY SAVINGS.—

16 “(1) STANDARDS FOR MEASUREMENT OF SAV-
17 INGS.—As part of the regulations promulgated
18 under this section, the Commission shall prescribe
19 standards and protocols for defining and measuring
20 electricity savings and total annual electricity sav-
21 ings that can be counted towards the compliance ob-
22 ligation set forth in subsection (b). Such protocols
23 and standards shall, at minimum—

1 “(A) specify the types of energy efficiency
2 and energy conservation measures that can be
3 counted;

4 “(B) require that energy consumption esti-
5 mates for customer facilities or portions of fa-
6 cilities in the applicable base and current years
7 be adjusted, as appropriate, to account for
8 changes in weather, level of production, and
9 building area;

10 “(C) account for the useful life of meas-
11 ures;

12 “(D) include deemed savings values for
13 specific, commonly used measures;

14 “(E) allow for savings from a program to
15 be estimated based on extrapolation from a rep-
16 resentative sample of participating customers;

17 “(F) include procedures for counting CHP
18 savings, recycled energy savings, and fuel cell
19 savings;

20 “(G) count only measures and savings that
21 are additional to business-as-usual practices;

22 “(H) include procedures for documenting
23 measurable and verifiable electricity savings
24 achieved as a result of programs that address
25 market barriers to energy-saving goods and

1 services and result in long-term changes in the
2 market for such goods and services;

3 “(I) include procedures for counting elec-
4 tricity savings achieved by solar water heating
5 and solar light pipe technology that has the ca-
6 pability to provide measurable data on the
7 amount of megawatt-hours displaced;

8 “(J) establish methods for calculating
9 codes and standard savings, including the use
10 of verified compliance rates;

11 “(K) avoid double-counting of savings used
12 for compliance with this section, including sav-
13 ings that are transferred pursuant to paragraph
14 (3);

15 “(L) ensure that, except as provided in
16 subparagraph (N), the retail electric supplier
17 claiming the savings played a significant role in
18 achieving the savings (including through the ac-
19 tivities of a designated agent of the supplier or
20 through the purchase of transferred savings);

21 “(M) include savings from programs ad-
22 ministered by a retail electric supplier (or a re-
23 tail electricity distributor that is not a retail
24 electric supplier) that are funded by State, Fed-
25 eral, or other sources; and

1 “(N) in any State in which the State regu-
2 latory authority has designated 1 or more enti-
3 ties to administer electric ratepayer-funded effi-
4 ciency programs approved by such State regu-
5 latory authority, provide that electricity savings
6 achieved through such programs shall be dis-
7 tributed equitably among retail electric sup-
8 pliers in accordance with the direction of the
9 relevant State regulatory authority.

10 “(2) STANDARDS FOR THIRD-PARTY
11 VERIFICATION OF SAVINGS.—The regulations pro-
12 mulgated under this section shall establish proce-
13 dures and standards requiring third-party
14 verification of all reported electricity savings, includ-
15 ing requirements for accreditation of third-party
16 verifiers to ensure that such verifiers are profes-
17 sionally qualified and have no conflicts of interest.

18 “(3) TRANSFERS OF SAVINGS.—

19 “(A) BILATERAL CONTRACTS FOR SAVINGS
20 TRANSFERS.—Subject to the limitations of this
21 paragraph, a retail electric supplier may use
22 electricity savings transferred, pursuant to a bi-
23 lateral contract, from another retail electric
24 supplier, an owner of an electric distribution fa-
25 cility that is not a retail electric supplier, a

1 State, or a third-party efficiency provider to
2 meet the applicable compliance obligation under
3 subsection (b).

4 “(B) REQUIREMENTS.—Electricity savings
5 transferred and used for compliance pursuant
6 to this paragraph shall be—

7 “(i) measured and verified in accord-
8 ance with the procedures specified under
9 this subsection;

10 “(ii) reported in accordance with
11 paragraph (4) of this subsection; and

12 “(iii) achieved within the same State
13 as is served by the retail electric supplier.

14 “(C) REGULATORY APPROVAL.—Nothing
15 in this paragraph shall limit or affect the au-
16 thority of a State regulatory authority to re-
17 quire a retail electric supplier that is regulated
18 by such authority to obtain such authority’s au-
19 thorization or approval of a contract for trans-
20 fer of savings under this paragraph.

21 “(4) REPORTING SAVINGS.—

22 “(A) REQUIREMENTS.—The regulations
23 promulgated under this section shall establish
24 requirements governing the submission of re-
25 ports to demonstrate, in accordance with the

1 protocols and standards for measurement and
2 third-party verification established under this
3 subsection, the total annual electricity savings
4 achieved by a retail electric supplier within the
5 relevant year.

6 “(B) REVIEW AND APPROVAL.—The Com-
7 mission shall review each report submitted to
8 the Commission by a retail electric supplier and
9 shall exclude any electricity savings that have
10 not been adequately demonstrated in accord-
11 ance with the requirements of this subsection.

12 “(5) STATE ADMINISTRATION.—

13 “(A) DELEGATION OF AUTHORITY.—Upon
14 receipt of an application from the Governor of
15 a State (including, for purposes of this sub-
16 section, the Mayor of the District of Columbia),
17 the Commission may delegate to the State the
18 authority to review and verify reported elec-
19 tricity savings for purposes of determining dem-
20 onstrated total annual electricity savings that
21 may be counted towards a retail electric sup-
22 plier’s compliance obligation under subsection
23 (b). The Commission shall make a substantive
24 determination approving or disapproving a
25 State application under this subparagraph,

1 after notice and comment, within 180 days of
2 receipt of a complete application.

3 “(B) ALTERNATIVE MEASUREMENT AND
4 VERIFICATION PROCEDURES AND STAND-
5 ARDS.—As part of an application submitted
6 under subparagraph (A), a State may request
7 to use alternative measurement and verification
8 procedures and standards to those specified in
9 paragraphs (1) and (2), provided the State
10 demonstrates that such alternative procedures
11 and standards provide a level of accuracy of
12 measurement and verification at least equiva-
13 lent to the Federal procedures and standards
14 promulgated under paragraphs (1) and (2).

15 “(C) REVIEW OF STATE IMPLEMENTA-
16 TION.—The Commission shall, not less fre-
17 quently than once every 4 years, review each
18 State’s implementation of delegated authority
19 under this paragraph to ensure conformance
20 with the requirements of this section. The Com-
21 mission may, at any time, revoke the delegation
22 of authority under this section upon a finding
23 that the State is not implementing its delegated
24 responsibilities in conformity with this para-
25 graph. As a condition of maintaining its dele-

1 gated authority under this paragraph, the Com-
2 mission may require a State to submit a revised
3 application under subparagraph (A) if the Com-
4 mission has—

5 “(i) promulgated new or substantially
6 revised measurement and verification pro-
7 cedures and standards under this sub-
8 section; or

9 “(ii) otherwise substantially revised
10 the program established under this section.

11 “(g) ALTERNATIVE COMPLIANCE PAYMENTS.—

12 “(1) IN GENERAL.—A retail electric supplier
13 may satisfy the requirements of subsection (b) in
14 whole or in part by submitting in accordance with
15 this subsection, in lieu of each Federal renewable
16 electricity credit or megawatt hour of demonstrated
17 total annual electricity savings that would otherwise
18 be due, a payment equal to \$50, adjusted for infla-
19 tion on January 1 of each year following calendar
20 year 2014, in accordance with such regulations as
21 the Commission may promulgate.

22 “(2) PAYMENT TO STATE FUNDS.—Except as
23 otherwise provided in this paragraph, payments
24 made under this subsection shall be made directly to
25 the State or States in which the retail electric sup-

1 plier sells electric energy, in proportion to the por-
2 tion of the retail electric supplier’s base amount that
3 is sold within each relevant State, provided that such
4 payments are deposited directly into a fund in the
5 State treasury established for this purpose and that
6 the State uses such funds in accordance with para-
7 graphs (3) and (4). If the Commission determines at
8 any time that a State is in substantial noncompli-
9 ance with paragraph (3) or (4), the Commission
10 shall direct that any future alternative compliance
11 payments that would otherwise be paid to such State
12 under this subsection shall instead be paid to the
13 Commission and deposited in the United States
14 Treasury.

15 “(3) STATE USE OF FUNDS.—As a condition of
16 receipt of alternative compliance payments pursuant
17 to this subsection, a State shall use such payments
18 exclusively for the purposes of—

19 “(A) deploying technologies that generate
20 electricity from renewable energy resources; or

21 “(B) implementing cost-effective energy ef-
22 ficiency programs to achieve electricity savings.

23 “(4) REPORTING.—

24 “(A) IN GENERAL.—As a condition of re-
25 ceipt of alternative compliance payments pursu-

1 ant to this subsection, a State shall submit to
2 the Commission an annual report, in accord-
3 ance with such regulations as the Commission
4 may prescribe, containing a full accounting of
5 the use of such payments, including a detailed
6 description of the activities funded thereby and
7 demonstrating compliance with the require-
8 ments of this subsection.

9 “(B) DEADLINE.—A State submitting a
10 report under this paragraph shall do so—

11 “(i) not later than 12 months after
12 the date on which the first alternative com-
13 pliance payment is received; and

14 “(ii) every 12 months thereafter until
15 all such payments are expended.

16 “(h) INFORMATION COLLECTION.—The Commission
17 may require any retail electric supplier, renewable elec-
18 tricity generator, or such other entities as the Commission
19 determines appropriate, to provide any information the
20 Commission determines appropriate to carry out this sec-
21 tion. Failure to submit such information or submission of
22 false or misleading information under this subsection shall
23 be a violation of this section.

24 “(i) ENFORCEMENT AND JUDICIAL REVIEW.—

1 “(1) FAILURE TO SUBMIT CREDITS OR DEM-
2 ONSTRATE SAVINGS.—If any person fails to comply
3 with the requirements of subsection (b) or (g), such
4 person shall be liable to pay to the Commission a
5 civil penalty equal to the product of—

6 “(A) double the alternative compliance
7 payment calculated under subsection (g)(1),
8 and

9 “(B) the aggregate quantity of Federal re-
10 newable electricity credits, total annual elec-
11 tricity savings, or equivalent alternative compli-
12 ance payments that the person failed to submit
13 in violation of the requirements of subsections
14 (b) and (g).

15 “(2) ENFORCEMENT.—The Commission shall
16 assess a civil penalty under paragraph (1) in accord-
17 ance with the procedures described in section 31(d)
18 of the Federal Power Act (16 U.S.C. 823b(d)).

19 “(3) VIOLATION OF REQUIREMENT OF REGULA-
20 TIONS OR ORDERS.—Any person who violates, or
21 fails or refuses to comply with, any requirement of
22 a regulation promulgated or order issued under this
23 section shall be subject to a civil penalty under sec-
24 tion 316A(b) of the Federal Power Act (16 U.S.C.
25 8250–1(b)). Such penalty shall be assessed by the

1 Commission in the same manner as in the case of
2 a violation referred to in section 316A(b) of such
3 Act.

4 “(4) JUDICIAL REVIEW.—Any person aggrieved
5 by a final action taken by the Commission under
6 this section, other than the assessment of a civil
7 penalty under paragraphs (1) through (3), may use
8 the procedures for review described in section 313 of
9 the Federal Power Act (16 U.S.C. 825l). For pur-
10 poses of this paragraph, references to an order in
11 section 313 of such Act shall be deemed to refer also
12 to all other final actions of the Commission under
13 this section other than the assessment of a civil pen-
14 alty under paragraphs (1) through (3).

15 “(j) SAVINGS PROVISIONS.—Nothing in this section
16 shall—

17 “(1) diminish or qualify any authority of a
18 State, a political subdivision of a State, or an Indian
19 tribe to—

20 “(A) adopt or enforce any law or regula-
21 tion respecting renewable electricity or energy
22 efficiency, including any law or regulation es-
23 tablishing requirements more stringent than
24 those established by this section, provided that
25 no such law or regulation may relieve any per-

1 son of any requirement otherwise applicable
2 under this section; or

3 “(B) regulate the acquisition and disposi-
4 tion of Federal renewable electricity credits by
5 retail electric suppliers within the jurisdiction of
6 such State, political subdivision, or Indian tribe,
7 including the authority to require such retail
8 electric supplier to acquire and submit to the
9 Secretary for retirement Federal renewable
10 electricity credits in excess of those submitted
11 under this section; or

12 “(2) affect the application of, or the responsi-
13 bility for compliance with, any other provision of law
14 or regulation, including environmental and licensing
15 requirements.

16 “(k) SUNSET.—This section expires on December 31,
17 2041.”.

18 (b) CONFORMING AMENDMENT.—The table of con-
19 tents set forth in section 1(b) of the Public Utility Regu-
20 latory Policies Act of 1978 is amended by inserting after
21 the item relating to section 608 the following:

“Sec. 609. Rural and remote communities electrification grants.

“Sec. 610. Combined efficiency and renewable electricity standard.”.

1 **SEC. 3. CLARIFYING STATE AUTHORITY TO ADOPT RENEW-**
2 **ABLE ENERGY INCENTIVES.**

3 Section 210 of the Public Utility Regulatory Policies
4 Act of 1978 (16 U.S.C. 824a-3) is amended by adding
5 at the end thereof:

6 “(o) CLARIFICATION OF STATE AUTHORITY TO
7 ADOPT RENEWABLE ENERGY INCENTIVES.—Notwith-
8 standing any other provision of this Act or the Federal
9 Power Act, a State legislature or regulatory authority may
10 set the rates for a sale of electric energy by a facility gen-
11 erating electric energy from renewable energy sources pur-
12 suant to a State-approved production incentive program
13 under which the facility voluntarily sells electric energy.
14 For purposes of this subsection, ‘State-approved produc-
15 tion incentive program’ means a requirement imposed pur-
16 suant to State law, or by a State regulatory authority act-
17 ing within its authority under State law, that an electric
18 utility purchase renewable energy (as defined in section
19 609 of this Act) at a specified rate.”.

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