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 and for capacity payments to alternative
13 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," "force majeure" and "reporting
18 period" in section 2 of the act of November 30, 2004 (P.L.1672,
19 No.213), known as the Alternative Energy Portfolio Standards
20 Act, are amended and the section is amended by adding
21 definitions to read:
22 Section 2. Definitions.
23 The following words and phrases when used in this act shall
have the meanings given to them in this section unless the context clearly indicates otherwise:

"Alternative energy credit." A tradable instrument that is used to establish, verify and monitor compliance with this act. A unit of credit shall equal one megawatt hour of electricity from an alternative energy source and shall only be used to satisfy the requirement to purchase Tier I, Tier II or Tier III alternative energy credits. The alternative energy credit shall remain the property of the alternative energy system until the alternative energy credit is voluntarily transferred by the alternative energy system.

* * *

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

(1) Solar photovoltaic or other solar electric energy.
(2) Solar thermal energy.
(3) Wind power.
(4) Large-scale hydropower, which shall mean the production of electric power by harnessing the hydroelectric potential of moving water impoundments, including pumped storage that does not meet the requirements of low-impact hydropower under paragraph (5).
(5) Low-impact hydropower consisting of any technology that produces electric power and that harnesses the hydroelectric potential of moving water impoundments, provided such incremental hydroelectric development:
   (i) does not adversely change existing impacts to aquatic systems;
   (ii) meets the certification standards established
by the Low Impact Hydropower Institute and American
Rivers, Inc., or their successors;
(iii) provides an adequate water flow for protection
of aquatic life and for safe and effective fish passage;
(iv) protects against erosion; and
(v) protects cultural and historic resources.
(6) Geothermal energy, which shall mean electricity
produced by extracting hot water or steam from geothermal
reserves in the earth's crust and supplied to steam turbines
that drive generators to produce electricity.
(7) Biomass energy, which shall mean the generation of
electricity utilizing the following:
(i) organic material from a plant that is grown for
the purpose of being used to produce electricity or is
protected by the Federal Conservation Reserve Program
(CRP) and provided further that crop production on CRP
lands does not prevent achievement of the water quality
protection, soil erosion prevention or wildlife
enhancement purposes for which the land was primarily set
aside; or
(ii) any solid nonhazardous, cellulosic waste
material that is segregated from other waste materials,
such as waste pallets, crates and landscape or right-of-
way tree trimmings or agricultural sources, including
orchard tree crops, vineyards, grain, legumes, sugar and
other crop by-products or residues.
(8) Biologically derived methane gas, which shall
include methane from the anaerobic digestion of organic
materials from yard waste, such as grass clippings and
leaves, food waste, animal waste and sewage sludge. The term
also includes landfill methane gas.

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

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

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

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

(i) energy efficiency technologies, management practices or other strategies in residential, commercial, institutional or government customers that reduce 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.

* * *

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

"Load-serving entities." As follows:

(1) Entities or the duly designated agents of the entities, including load aggregators or power marketers,
that:

(i) serve end users within the PJM region; and

(ii) have been granted the authority or have an obligation under a State law, local ordinance, regulation or franchise to sell electric energy to end users located within the PJM region.

(2) The term shall include end use customers that qualify under State rules or utility retail tariffs to manage directly their own supply of electric power and energy and use of transmission and ancillary services.

* * *

"PJM." The PJM Interconnection, L.L.C. regional transmission organization or its successor.

* * *

["Reporting period."] "Reporting period" or "reporting year."

The 12-month period from June 1 through May 31. A reporting year shall be numbered according to the calendar year in which it begins and ends.

* * *

"Tier I projected price." The Tier I projected price shall equal the average of the Tier I futures price for the current reporting year and the subsequent two reporting years. For the purposes of calculating the Tier I projected price, the Tier I futures price for each reporting year shall be the average of the closing price on each trade date during the calendar year that ends immediately prior to the start of the current reporting year for alternative energy credits that are eligible to meet the Tier I renewable energy requirement in this Commonwealth.

"Tier III alternative energy credit reporting period price."
As follows:

(1) Except as provided under paragraph (2), the Tier III alternative energy credit reporting period price shall be determined by the commission 60 days before the start of each reporting year.

(2) For the first reporting period for the Tier III program, the commission may determine the Tier III alternative energy credit reporting period price no later than 60 days after the start of the reporting year.

(3) The Tier III alternative energy credit reporting period price shall be equal to the Tier I projected price and shall not be less than the Tier III price floor or greater than the Tier III price cap.

"Tier III alternative energy source." A zero-emission alternative energy source that:

(1) Is derived from:

   (i) Solar photovoltaic and solar thermal energy.

   (ii) Wind power.

   (iii) Low-impact hydropower.

   (iv) Geothermal energy.

   (v) Nuclear fission.

(2) Satisfies all of the following:

   (i) The alternative energy source is interconnected with capacity injection rights within the regional transmission organization with responsibility for this Commonwealth.

   (ii) If the alternative energy source were to cease operation or fail to come in-service, all of the following would occur:

(A) The ability of this Commonwealth or regions...
of this Commonwealth to maintain or decrease existing levels of volatile organic compounds or to comply with Federal or State air pollution control programs, standards or goals is reduced.

(B) The carbon dioxide emissions that result from electricity consumed in this Commonwealth are negatively impacted.

(C) The ability of this Commonwealth to maintain or decrease existing levels of carbon monoxide, lead, ground-level ozone, particulate matter, nitrogen oxide or sulfur dioxide is negatively impacted.

(3) On or after January 1, 2017, satisfies any of the following:

(i) Regardless of the alternative energy source's location, did not receive tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions or reimbursements from another state calculated in whole or in part using a metric that provides value for emissions not produced by the alternative energy source.

(ii) Is not wholly owned by a municipal or cooperative corporation or a group, association or consortium of a municipal or cooperative corporations.

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

"Tier III price cap." As follows:

(1) Except as provided under paragraph (2), the Tier III price cap shall be initially equal to the product of 65% and the weighted average price of credits that were retired for
Tier I compliance for the reporting year ending May 31, 2017,
as reflected in the commission's 2017 Annual Report of

(2) If the Commonwealth participates in a Statewide
emissions fee program or a regional multistate greenhouse gas
program, the initial Tier III price cap shall be adjusted
annually by the ratio of the average price for allowances
under the program for the previous reporting year in price
per ton divided by $15 per ton.

"Tier III price floor." As follows:

(1) Except as provided under paragraph (2), the Tier III
price floor shall be initially equal to the product of 50% and the weighted average price of credits that were retired
for Tier I compliance for the reporting year ending May 31,
2017, as reflected in the commission's 2017 Annual Report of

(2) If the Commonwealth participates in a Statewide
emissions fee program or a regional multistate greenhouse gas
program, the initial Tier III price floor shall be adjusted
annually by the ratio of the average price for allowances
under the program for the previous reporting year in price
per ton divided by $15 per ton.

"Tier III program." The period commencing at the beginning
of the 14th reporting year on June 1, 2019, to May 31, 2020.

* * *

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

Section 3. Alternative energy portfolio standards.

(a) General compliance and cost recovery.--

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

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

(2.1) Beginning June 1, 2019, and each year thereafter, Tier III alternative energy credits shall be purchased by electric distribution companies as described under subsection (c.1), provided, however, that an electric distribution company shall be excused from its obligations under this section to the extent that the commission determines that force majeure exists.

(3) All costs for:

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

(ii) payments for Tier I and Tier II alternative energy credits[,] in both cases] that are voluntarily acquired by an electric distribution company during the cost recovery period on behalf of its customers shall be deferred as a regulatory asset by the electric distribution company and fully recovered, with a return on the unamortized balance, pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) as a cost of generation supply under 66 Pa.C.S. § 2807 (relating to duties of electric distribution companies) in the first year after the expiration of its cost-recovery period. After the cost-recovery period, any direct or indirect costs for the purchase by electric distribution companies of resources to comply with this section, including, but not limited to, the purchase of electricity generated from Tier I and Tier II alternative energy sources, payments for alternative energy credits, cost of credits banked, payments to any third party administrators for performance under this act and costs levied by a regional transmission organization to ensure that Tier I and Tier II alternative energy sources are reliable, shall be recovered on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 as a cost of generation supply under 66 Pa.C.S. § 2807.

(4) Any direct and indirect costs incurred by electric distribution companies to comply with subsection (c.1) and sections 8.1 and 8.2, including, but not limited to,
purchase of Tier III alternative energy credits and payments
to any third-party administrators for performance under this
act shall be recovered on a full and current basis pursuant
to a nonbypassable adjustment clause under 66 Pa.C.S. § 1307.
(b) Tier I and solar photovoltaic shares.--

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

(2) The total percentage of the electric energy sold by
an electric distribution company or electric generation
supplier to retail electric customers in this Commonwealth
that must be sold from solar photovoltaic technologies is:

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

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

* * *
(c.1) Tier III share.--

(1) During the Tier III program, electric distribution companies shall purchase Tier III alternative energy credits equal to 50% of the total electric energy, net of system losses, sold in a reporting period in a service territory by the electric distribution companies and electric generation suppliers in accordance with section 8.1(c)(3).

Notwithstanding any other provision of law, the obligations of electric distribution companies under this subsection shall not be subject to 66 Pa.C.S. § 2807(e)(3.5) or (3.7). Nothing in this subsection shall be construed to obligate an electric distribution company to purchase electric energy from a Tier III alternative energy source.

(2) This subsection shall expire after an effective cost of carbon emissions exists in this Commonwealth that is equal to no less than an average of $15 per ton over three consecutive reporting periods as a result of the enactment of a Statewide emissions fee program or participation by the Commonwealth in a regional multistate greenhouse gas program.

(3) Upon the enactment of a Statewide emissions fee program or participation by the Commonwealth in a regional multistate greenhouse gas program, the commission shall submit a notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(4) This subsection shall expire on the date the notice under paragraph (3) is published in the Pennsylvania Bulletin.

* * *

(e) Alternative energy credits.--

(1) The commission shall establish an alternative energy
credits program as needed to implement this act. The
provision of services pursuant to this section shall be
exempt from the competitive procurement procedures of 62
Pa.C.S. (relating to procurement).
(2) The commission shall approve an independent entity
to serve as the alternative energy credits program
administrator. The administrator shall have those powers and
duties assigned by commission regulations. Such powers and
duties shall include, but not be limited to, the following:
   (i) To create and administer an alternative energy
credits certification, tracking and reporting program.
This program should include, at a minimum, a process for
qualifying alternative energy systems and determining the
manner credits can be created, accounted for, transferred
and retired.
   (ii) To submit reports to the commission at such
times and in such manner as the commission shall direct.
(3) All qualifying alternative energy systems must
include a qualifying meter to record the cumulative electric
production to verify the [advanced] alternative energy credit
value. Qualifying meters will be approved by the commission
as defined in paragraph (4).
(4) (i) An electric distribution company or electric
generation supplier shall comply with the applicable
requirements of this section by purchasing sufficient
alternative energy credits and submitting documentation
of compliance to the program administrator.
   (ii) For purposes of this subsection, one
alternative energy credit shall represent one megawatt
hour of qualified alternative electric generation,
whether self-generated, purchased along with the electric commodity or separately through a tradable instrument and otherwise meeting the requirements of commission regulations and the program administrator.

(5) The alternative energy credits program shall include provisions requiring a reporting period as defined in section 2 for all covered entities under this act. The alternative energy credits program shall also include a true-up period as defined in section 2. The true-up period shall provide entities covered under this act the ability to obtain the required number of alternative energy credits or to make up any shortfall of the alternative energy credits they may be required to obtain to comply with this act. A force majeure provision shall also be provided for under the true-up period provisions.

(6) An electric distribution company and electric generation supplier may bank or place in reserve Tier I and Tier II alternative energy credits produced in one reporting year for compliance in either or both of the two subsequent reporting years, subject to the limitations set forth in this subsection and provided that the electric distribution company and electric generation supplier are in compliance for all previous reporting years. In addition, the electric distribution company and electric generation supplier shall demonstrate to the satisfaction of the commission that such credits:

(i) were in excess of the alternative energy credits needed for compliance in the year in which they were generated and that such excess credits have not previously been used for compliance under this act;
(ii) were produced by the generation of electrical energy by alternative energy sources and sold to retail customers during the year in which they were generated; and

(iii) have not otherwise been nor will be sold, retired, claimed or represented as part of satisfying compliance with alternative or renewable energy portfolio standards in other states.

(7) An electric distribution company or an electric generation supplier with sales that are exempted under subsection (d) may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost-recovery period and after the effective date of this act. Bankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources during a reporting year which exceeds the volume of sales from such sources by an electric distribution company or electric generation supplier during the 12-month period immediately preceding the effective date of this act. All credits banked under this subsection shall be available for compliance with subsections (b) and (c) for no more than two reporting years following the conclusion of the cost-recovery period.

(8) The commission or its designee shall develop a registry of pertinent information regarding all available alternative energy credits, credit transactions among electric distribution companies and electric generation suppliers, the number of alternative energy credits sold or transferred and the price paid for the sale or transfer of the credits. The registry shall provide current information
to electric distribution companies, electric generation
suppliers and the general public on the status of alternative
energy credits created, sold or transferred within this
Commonwealth.

(9) The commission may impose an administrative fee on
an alternative energy credit transaction. The amount of this
fee may not exceed the actual direct cost of processing the
transaction by the alternative energy credits administrator.
The commission is authorized to utilize up to 5% of the
alternative compliance fees generated under subsection (f)
for administrative expenses directly associated with this
act.

(10) The commission shall establish regulations
governing the verification and tracking of energy efficiency
and demand-side management measures pursuant to this act,
which shall include benefits to all utility customer classes.
When developing regulations, the commission must give
reasonable consideration to existing and proposed regulations
and rules in existence in the regional transmission
organizations that manage the transmission system in any part
of this Commonwealth. All verified reductions shall accrue
credits starting with the passage of this act.

(11) The commission shall within 120 days of the
effective date of this act develop a depreciation schedule
for alternative energy credits created through demand-side
management, energy efficiency and load management
technologies and shall develop standards for tracking and
verifying savings from energy efficiency, load management and
demand-side management measures. The commission shall allow
for a 60-day public comment period and shall issue final
standards within 30 days of the close of the public comment period.

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

(f) Alternative compliance payment.--

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

(2) The commission shall conduct a review of each determination made under subsections (b) (and) (c) and (c.1). If, after notice and hearing, the commission determines that an electric distribution company or electric generation supplier has failed to comply with subsections (b) (and) (c) and (c.1), as applicable, the commission shall impose an alternative compliance payment on that electric distribution company or electric generation supplier.

(3) The alternative compliance payment, with the exception of the solar photovoltaic share compliance requirement set forth in subsection subsections (b) (2) and (c.1), shall be $45 times the number of additional alternative energy credits needed in order to comply with subsection (b) or (c).
(4) The alternative compliance payment for the solar photovoltaic share shall be 200% of the average market value of solar renewable energy credits sold during the reporting period within the service region of the regional transmission organization, including, where applicable, the levelized up-front rebates received by sellers of solar renewable energy credits in other jurisdictions in the PJM [Interconnection, L.L.C. transmission organization (PJM) or its successor.] region.

(4.1) The alternative compliance payment for the Tier III share shall be 200% of the Tier III alternative energy credit reporting period price for the applicable reporting period times the number of additional alternative energy credits needed in order to comply with subsection (c.1).

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

(g) Transfer to sustainable development funds.--

(1) Notwithstanding the provisions of 66 Pa.C.S. §§ 511 (relating to disposition, appropriation and disbursement of assessments and fees) and 3315 (relating to disposition of fines and penalties), alternative compliance payments imposed
pursuant to this act for failure to comply with subsections (b) and (c) shall be paid into Pennsylvania's Sustainable Energy Funds created under the commission's restructuring orders under 66 Pa.C.S. Ch. 28 (relating to restructuring of electric utility industry). Alternative compliance payments shall be paid into a special fund of the Pennsylvania Sustainable Energy Board, established by the commission under Docket M-00031715, and made available to the Regional Sustainable Energy Funds under procedures and guidelines approved by the Pennsylvania Energy Board.

(2) The alternative compliance payments for failure to comply with subsections (b) and (c) shall be utilized solely for projects that will increase the amount of electric energy generated from alternative energy resources for purposes of compliance with subsections (b) and (c).

(3) The alternative compliance payments for failure to comply with subsection (c.l) shall be divided as follows:

(i) Fifty percent shall be paid consistent with paragraphs (1) and (2).

(ii) Fifty percent shall be utilized by the alternative energy credits program administrator to pay Tier III alternative energy sources for Tier III alternative energy credits that were otherwise not purchased due to the failure to comply with subsection (c.l).

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

Section 4. Portfolio requirements in other states.

If an electric distribution supplier or electric generation company provider supplier sells electricity in any
other state and is subject to renewable energy portfolio
requirements in that state, they shall list any such requirement
and shall indicate how it satisfied those renewable energy
portfolio requirements. To prevent double-counting, the electric
distribution [supplier] company or electric generation company
shall not satisfy Pennsylvania's alternative energy portfolio
requirements using alternative energy used to satisfy another
state's portfolio requirements or alternative energy credits
already purchased by individuals, businesses or government
bodies that do not have a compliance obligation under this act
unless the individual, business or government body sells those
credits to the electric distribution company or electric
generation supplier. Energy derived from alternative energy
sources inside the geographical boundaries of this Commonwealth
shall be eligible to meet the compliance requirements under this
act. Energy derived from alternative energy sources located
outside the geographical boundaries of this Commonwealth but
within the service territory of a regional transmission
organization that manages the transmission system in any part of
this Commonwealth shall only be eligible to meet the compliance
requirements of electric distribution companies or electric
generation suppliers located within the service territory of the
same regional transmission organization. For purposes of
compliance with this act, alternative energy sources located in
[the PJM Interconnection, L.L.C. regional transmission
organization (PJM) or its successor] PJM's service territory
shall be eligible to fulfill compliance obligations of all
Pennsylvania electric distribution companies and electric
generation suppliers. Energy derived from alternative energy
sources located outside the service territory of a regional
transmission organization that manages the transmission system
in any part of this Commonwealth shall not be eligible to meet
the compliance requirements of this act. Electric distribution
companies and electric generation suppliers shall document that
this energy was not used to satisfy another state's renewable
energy portfolio standards.

Section 6. Health and safety standards.

The department shall cooperate with the Department of Labor
and Industry as necessary in developing health and safety
standards, as needed, regarding facilities generating energy
from Tier I and Tier II alternative energy sources. The
department shall establish appropriate and reasonable health and
safety standards to ensure uniform and proper compliance with
this act by owners and operators of facilities generating energy
from Tier I and Tier II alternative energy sources as defined in
this act.

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

Section 7. Interagency responsibilities.

* * *

(d) Enforcement.—In addition to any powers expressly
specified under this act, the commission may enforce the
provisions of this act in accordance with the commission's
regulations and orders and the commission may modify or rescind
the regulations or orders. Nothing in this subsection shall be
construed to exclude any authority which the commission would
otherwise have under this act or 66 Pa.C.S. (relating to public
utilities).

Section 5. The act is amended by adding sections to read:

Section 8.1. Tier III alternative energy sources.
(a) Participation.--An alternative energy source seeking to apply for participation in the Tier III program shall file a written notice with the commission. The written notice shall contain all of the following information:

1. The alternative energy source's qualifications as a Tier III alternative energy source.
2. The estimated generation of the alternative energy resources consistent with subsection (b)(2).
3. The alternative energy source's commitment to sell the entire output of the alternative energy source as Tier III credits for at least six reporting periods with the commission no later than 90 days after the start of the first Tier III program reporting period. The provisions of subsection (b) shall apply for the entire first reporting period if the alternative energy source is designated as a Tier III alternative energy source by the commission.

(b) Review.--

1. The alternative energy source shall submit the notice filed under subsection (a) to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin in the first available issue after filing the notice with the commission. Any comments in response to the notice filed under subsection (a) shall be submitted no later than 20 days after the notice is published in the Pennsylvania Bulletin and any reply comments shall be submitted no later than 10 days after the initial comments are submitted.
2. The commission shall review each notice filed under subsection (a) and all comments submitted under this paragraph and rank each applicant for participation in the Tier III program from first to last based on how well the
alternative energy source satisfies the criteria specified under this act. No later than 90 days after reviewing each notice filed under subsection (a), the commission shall select the applicants that will participate in the Tier III program according to their ranking. Beginning with the top-ranked applicant and continuing in rank order, the commission shall select applicants up to the point at which the combined sum of megawatt hours of estimated generation by all selected applicants equals approximately 50% of the total number of megawatt hours of electricity distributed by electric distribution companies in this Commonwealth, net of system losses, for the latest calendar year reported in the most recent Electric Power Outlook or other report reviewing the generation, transmission and distribution capacity in this Commonwealth published by the commission. For the purposes of this calculation, the estimated generation shall be as follows:

(i) For existing alternative energy resources fueled by nuclear fission, the estimated generation shall be equal to the product of 77% multiplied by 8,760 hours per year multiplied by the nameplate capacity of the plant.

(ii) For existing alternative energy resources not fueled by nuclear fission, the estimated generation shall be equal to the generation output of the resources in the calendar year which concludes immediately prior to the date upon which qualification applications are due.

(iii) For new alternative energy resources, the estimated generation is equal to the product of 8,760 hours per year multiplied by the nameplate capacity of the resource multiplied by the average capacity factor of
similar existing resources.

(3) The commission shall select the marginal applicant to participate in the Tier III program if the addition of 50% of the estimated generation produced by the marginal applicant does not cause the combined sum of megawatt hours of estimated generation from all selected applicants, including the marginal unit, to exceed 50% of the total number of megawatt hours of electricity distributed by electric distribution companies in this Commonwealth in the calendar year which concludes immediately prior to the date upon which qualification applications are due.

(4) Once designated as a Tier III alternative energy source, an alternative energy source shall continue to be considered a Tier III alternative energy source as long as the alternative energy source continues to meet the criteria specified under this act.

(c) Transfers and payments.--

(1) No later than 35 days after the close of each reporting period, each Tier III alternative energy source shall transfer all Tier III alternative energy credits for the reporting period to the alternative energy credit program administrator. The program administrator shall hold the Tier III alternative energy credits on behalf of the Tier III alternative energy sources for the sole purpose of administering the Tier III program.

(2) No later than seven days after all Tier III alternative energy sources have transferred the credits under paragraph (1), each electric distribution company shall purchase Tier III alternative energy credits from the alternative energy credit program administrator at the Tier
III alternative energy credit reporting period price for the reporting period to satisfy each electric distribution company's Tier III obligations.

(3) No later than seven days after each electric distribution company purchases Tier III alternative energy credits under paragraph (2), the alternative energy credit program administrator shall pay each Tier III alternative energy source for the Tier III alternative energy credits transferred to the alternative energy credit program administrator under paragraph (1) in accordance with the following:

(i) If the total quantity of Tier III alternative energy credits transferred to the alternative energy credit program administrator is less than the sum of the Tier III shares for all electric distribution companies in this Commonwealth, then each electric distribution company's Tier III share for that delivery year shall be each electric distribution company's proportional share of transferred Tier III credits. An electric distribution company's proportional share shall be a percentage equal to the total electric energy sold in a service territory by the electric distribution company and electric generation suppliers divided by the total electric energy sold by all electric distribution companies and electric generation suppliers in this Commonwealth.

(ii) If the sum of Tier III alternative energy credits transferred to the alternative energy credit program administrator from all Tier III alternative energy sources is greater than the sum of the Tier III shares for all electric distribution companies in this Commonwealth, the alternative energy credit program administrator shall prorate the Tier III alternative energy credits transferred to the alternative energy credit program administrator under paragraph (1) in accordance with the following:

...
Commonwealth, then each Tier III alternative energy source shall be paid for each of the Tier III alternative energy source's prorated share of transferred Tier III credits. Tier III alternative energy credits transferred to the program administrator that exceed the sum of the Tier III shares for all electric distribution companies in this Commonwealth shall be retired. An alternative energy source's prorated share shall be a percentage equal to the sum of Tier III shares for all electric distribution companies in this Commonwealth divided by the sum of Tier III alternative energy credits transferred to the program administrator from all Tier III alternative energy sources. Credits purchased by electric distribution companies may not be transferred, sold or assigned to any other entity.

(d) Suspension of operations.--

(1) A designated Tier III alternative energy source shall be excused from the designated Tier III alternative energy source's commitment to operate for at least six reporting periods and shall no longer receive Tier III alternative energy credits if any of the following apply:

(i) The designated Tier III alternative energy source suspends or ceases operations, despite the designated Tier III alternative energy source's reasonable efforts to continue operations, due to an event beyond the designated Tier III alternative energy source's control, including, but not limited to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, labor or material shortage, sabotage or explosion. The designated Tier III alternative energy source...
source shall no longer be excused from performance and payment of Tier III alternative credits after the conclusion of an event specified under this subparagraph.

(ii) The General Assembly enacts a new law imposing a material new tax, special assessment or fee on the generation of electricity, the ownership or leasehold of a generating unit or the privilege or occupation of the generation, ownership or leasehold of generation units by a designated Tier III alternative energy source.

(iii) The Congress of the United States or General Assembly enacts a law that materially reduces the Tier III alternative energy credit reporting period price.

(iv) The Federal Government or the Commonwealth takes final action relating to the provision of Tier III alternative energy credits that has the effect of eliminating a material portion of a designated Tier III alternative energy source's anticipated future revenue, taking into account the benefits to be provided to a designated Tier III alternative energy source under the Tier III program.

(v) The designated Tier III alternative energy source requires capital expenditures in excess of $40,000,000 that were not known or reasonably foreseeable at the time of the submission of the alternative energy source's qualifications under subsection (a) as a Tier III alternative energy source and the capital expenditures are expenditures that a prudent owner or operator of a designated Tier III alternative energy source would not undertake.

(vi) The United States Nuclear Regulatory Commission
terminates the designated Tier III alternative energy source's license.

(e) Expiration.--

(1) This section shall expire after an effective cost of carbon emissions exists in this Commonwealth that is equal to no less than an average of $15 per ton over three consecutive reporting periods as a result of the enactment of a Statewide emissions fee program or participation by the Commonwealth in a regional multistate greenhouse gas program. Tier III alternative energy sources shall receive payments for Tier III alternative energy credits as provided under subsection (c) for credits generated prior to the effective date of the enactment of a Statewide emissions fee program or participation by the Commonwealth in a regional multistate greenhouse gas program.

(2) Upon the enactment of a Statewide emissions fee program or participation by the Commonwealth in a regional multistate greenhouse gas program, the commission shall submit a notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(3) This section shall expire on the date the notice under paragraph (2) is published in the Pennsylvania Bulletin.

Section 8.2. Capacity payments to alternative energy sources.

(a) Program.--The alternative energy credits program administrator shall establish and administer a program in which alternative energy systems may opt to supply and be paid for capacity through a means other than the centralized base residual auction for capacity operated by PJM as authorized by the Federal Energy Regulatory Commission. The duties of the
program administrator shall include, but not be limited to, all of the following:

(1) Establishing a process by which an alternative energy system is permitted to notify PJM, consistent with requirements approved by the Federal Energy Regulatory Commission, of the decision to opt out of the centralized base residual auction for capacity and sell the alternative energy system's capacity through other mechanisms.

(2) Providing any determinations required by PJM with respect to an alternative energy system, including a calculation of the commensurate amount of customer load that will not participate in the centralized base residual auction for capacity as a result of an alternative energy system's decision to sell the alternative energy system's capacity, though other mechanisms. If consistent with requirements approved by the Federal Energy Regulatory Commission, the alternative energy system's capacity shall be calculated pro rata across all load-serving entities in this Commonwealth.

(3) Determining the amount that will be paid for the capacity of an alternative energy system that opts out of the centralized base residual auction for capacity for each applicable reporting period, which shall be equal to the generation capacity of the alternative energy system as determined in accordance with PJM requirements multiplied by the locational delivery area price established by PJM in the centralized base residual auction for capacity or successor mechanism approved by the Federal Energy Regulatory Commission for the location where the alternative energy system is located.

(b) Payments.—In the event that PJM does not operate a
settlement mechanism under which alternative energy systems that
make elections under subsection (a) can receive payments from
load-serving entities, the alternative energy credits program
administrator shall calculate the total amount due to the
alternative energy system under subsection (a)(3) and notify the
electric distribution company of the electric distribution
company's share of the amount based upon the electric
distribution company's pro rata share of the electric energy
sold to retail electric customers in this Commonwealth during
the applicable reporting period. No later than seven days after
the electric distribution company receives the notice under this
subsection, the electric distribution company shall pay the
amount to the program administrator. The electric distribution
company shall then forward the amount due to the alternative
energy system under subsection (a)(3).

(c) Deadline.--The alternative energy credits program
administrator shall establish the program under subsection (a)
within 90 days after the later of the following:

(1) The effective date of this section.

(2) The date when PJM rules that allow alternative
energy systems to opt out of the centralized base residual
auction are authorized by the Federal Energy Regulatory
Commission.

Section 6. This act shall take effect in 60 days.