AN ACT

Amending the act of November 30, 2004 (P.L.1672, No.213), entitled, "An act providing for the sale of electric energy generated from renewable and environmentally beneficial sources, for the acquisition of electric energy generated from renewable and environmentally beneficial sources by electric distribution and supply companies and for the powers and duties of the Pennsylvania Public Utility Commission," further providing for definitions, for alternative energy portfolio standards, for portfolio requirements in other states, for health and safety standards and for interagency responsibilities; and providing for Tier III alternative energy sources credit program and for capacity payments to alternative energy sources.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "alternative energy credit," "alternative energy sources" and "reporting period" in section 2 of the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, are amended and the section is amended by adding definitions to read:

Section 2. Definitions.

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." As follows:

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

(2) 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 one of the following:

   (i) Tier I;

   (ii) Tier II; or

   (iii) Tier III alternative energy credits.

(3) 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.

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

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"Reporting period or reporting year." The 12-month period from June 1 through May 31. A reporting year shall be numbered 2019D04315
according to the calendar year in which it begins and ends.

"Tier I projected price." The figure, equal to the average of the Tier I futures prices for the current reporting year and the subsequent two reporting years, established by the commission for each reporting year as 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 alternative energy requirement in this Commonwealth.

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

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

(1) Solar photovoltaic or other solar electric energy.
(2) Solar thermal energy.
(3) Wind power.
(4) Low-impact hydropower.
(5) Geothermal energy.
(6) Nuclear fission or fusion.

"Tier III price cap." The figure, equal to the product of 60% 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 Alternative Energy Portfolio Standards Act of 2004.
"Tier III price floor." The figure, 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 Alternative Energy Portfolio Standards Act of 2004.

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

Section 2. Section 3(a), (b)(3), (f), (g) and (h) 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.--

   (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.

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(2.1) Beginning June 1, 2019, and each year thereafter, Tier III alternative energy credits shall be purchased by electric distribution companies under subsection (c.1), except that an electric distribution company or an electric generation supplier shall be excused from its obligation 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[.]; and

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

(b) Tier I and solar photovoltaic shares.—

* * *

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

* * *

(f) Alternative compliance payment.—

(1) At the end of each program reporting 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)], (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)], (c) and (c.1), except as set forth in section 8.1(g)(2), 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 (b)(2) and the Tier III share requirement set forth in subsection (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.

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

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

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

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

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] company or electric generation [company] supplier provider sells electricity in any other state and is subject to [renewable] alternative energy portfolio requirements in that state, they shall list any such requirement and shall indicate how it satisfied those [renewable] alternative energy portfolio requirements. To prevent double-counting, the electric distribution [supplier] company or electric generation [company] supplier 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 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 alternative 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 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 alternative
energy sources as defined in this act. Alternative energy
sources fueled by nuclear fission shall continue to comply with
health and safety standards established by Federal regulatory
agencies.

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

Section 7. Interagency responsibilities.
(d) Enforcement of provisions.—In addition to any powers expressly granted under this act, the commission shall enforce the provisions of this act in accordance with the commission’s regulations and orders and the following shall apply:

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

(2) Nothing in this subsection shall be construed to exclude any authority granted to the commission under 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 credit program.

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

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

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

(i) the ability of Pennsylvania, or regions of Pennsylvania, to maintain or decrease existing levels of volatile organic compounds or to comply with one or more Federal or State air pollution control programs,
(ii) the carbon dioxide emissions would increase as a result of electricity consumed in this Commonwealth; and

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

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

(i) regardless of the Tier III alternative energy source's location, did not receive tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions or reimbursements from any other 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 those corporations; and

(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.

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

(1) The source's qualifications as a Tier III alternative energy source.
(2) The source's total estimated generation calculated as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Availability of Tier III credits.—

(1) The commission shall determine the number of Tier III credits available at the beginning of the first Tier III program period as being equal to 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 Electric Power Outlook edition published on the effective date of this paragraph.

(2) The commission shall then determine, at the beginning of each Tier III reporting year, the amount of Tier III credits available to Tier III alternative energy sources derived from nuclear fission by setting the Tier III capacity
percentage between 77% and 83%, based upon the availability
of Tier III alternative energy sources not derived from
nuclear fission that are estimated to be available and
eligible to receive Tier III credits in each reporting
period, multiplied by 8,760 hours per year multiplied by the
nameplate capacity of the plant.
(e) Selection for Tier III program.--

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

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

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

(f) Tier III alternative energy source designation.--Once
designated, an alternative energy source shall continue to be
considered a Tier III alternative energy source for the time
period committed to under subsection (b)(4) as long as the
alternative energy source continues to meet the criteria under this section.

(q) Transfer and payment for Tier III alternative energy credits.—

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

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

(i) If the total quantity of Tier III alternative energy credits available 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 reporting year shall be the company's proportional share of Tier III credits; and no alternative compliance payments shall be assessed under section 3(f)(4.1). 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 available 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, then each Tier III alternative energy source shall be paid for the source's prorated share of Tier III credits. Tier III alternative energy credits available that exceed the sum of the Tier III shares for all electric distribution companies in this Commonwealth shall be retired. A Tier III alternative energy source's prorated share shall be a percentage equal to the sum of the Tier III shares for all electric distribution companies in this Commonwealth divided by the sum of Tier III alternative energy credits available from all Tier III alternative energy sources.

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

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

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

(2) The Commonwealth 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.

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

(4) The Federal Government or the Commonwealth takes
final action related 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.

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

(i) Penalties.--

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

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

(i) If the Tier III alternative energy source ceases
generation following the first reporting period, 100% of
the amount received under subsection (g)(2) and section 3(g)(3)(ii).

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

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

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

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

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

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

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

(6) The commission has the following powers:

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

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

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

(C) making findings upon pertinent questions of fact.

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

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

(B) determining the amount to be refunded to the electric distribution company's customers as a result of the cost recovery under section 3(a)(3)(iii) for
the customer costs associated with the reporting periods during the Tier III alternative energy source's most recent time period committed to under subsection (b)(4).

(i) Tier III alternative energy source audits.—

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

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

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

(iii) Confirmation that the alternative energy source did not, regardless of the alternative energy source's location, receive tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions or reimbursements from any other state calculated in whole or in part using a metric that provides value for
(iv) Confirmation that the alternative energy source is not wholly owned by:

(A) a municipal or cooperative association; or
(B) a group, association or consortium of a municipal or cooperative association.

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

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

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

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

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

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

(i) the Governor;

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

(iii) the chairperson and minority chairperson of the Environmental Resources and Energy Committee of the
House of Representatives;

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

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

(k) Administrative expenses.--

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

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

Section 8.2. Capacity payments to alternative energy sources.

(a) Election to participate in fixed resource requirement program.--If permitted by the Federal Energy Regulatory Commission, the commission shall create 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 the regional transmission organization. As permitted by the Federal Energy Regulatory Commission, the program shall include:

(1) establishing a process through which an alternative energy system is permitted to notify the regional transmission organization, 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 its capacity through other mechanisms;

(2) providing any determinations required by the regional transmission organization with respect to such alternative energy systems, 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 the alternative energy system's decision to sell its capacity though other mechanisms, which, if consistent with requirements approved by the Federal Energy Regulatory Commission, shall be calculated pro rata across all load serving entities in this Commonwealth; and

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

(b) Payments.—If the regional transmission organization does not operate a settlement mechanism under which alternative energy systems that make elections under subsection (a) can receive payments from regional transmission organization load serving entities, the commission shall calculate the total
amount due to each system under subsection (a)(3) and notify
each electric distribution company of its share of that 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. Each
electric distribution company shall pay the amount to each
alternative energy system under subsection (a)(3), as determined
by the commission.

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

(1) the effective date of this subsection; or

(2) the date on which the regional transmission
organization rules that allow alternative energy systems to
opt out of the centralized base residual auction are accepted
or approved by the Federal Energy Regulatory Commission.

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