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Carson, Griffith, K. Johnson, Morrison, Osienski, Wilson-
Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 2

AN ACT TO AMEND TITLES 6, 26, AND 29 OF THE DELAWARE CODE RELATING TO COMMUNITY OWNED ENERGY GENERATING FACILITIES AND RENEWABLE ENERGY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend § 352, Title 26 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 352. Definitions.

4 (3) “Community-owned energy generating facility” has the meaning given in §1001 of this title.

5 (4) “Unsubscribed energy” means any community-owned energy generating facility percentage of
6 output that is not allocated to any customer.

7 Section 2. Amend § 360, Title 26 of the Delaware Code by making deletions as shown by strike through and
8 insertions as shown by underline as follows:

9 § 360. Renewable energy trading.

10 (d) The Renewable Energy Taskforce shall be formed for the purpose of making recommendations about
11 the establishment of trading mechanisms and other structures to support the growth of renewable energy markets in
12 Delaware.

13 (2) The Taskforce shall be charged with making recommendations about and reporting on the following and
14 matters related thereto:

15 b. Establishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of
16 renewable, distributed renewable, and solar energy ~~technologies~~ technologies, including community-owned energy
17 generating facilities, in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural
18 electric cooperatives;

19 g. Ensuring that residential, commercial, and utility scale photovoltaic and solar thermal systems of various sizes
20 sizes, including community-owned energy generating facilities, are financially viable and cost-effective investments in
21 Delaware.

22 Section 3. Amend § 1001, Title 26 of the Delaware Code by making deletions as shown by strike through and
23 insertions as shown by underline as follows:

24 § 1001. Definitions.

25 As used in the chapter, unless the context otherwise requires:

26 (5) “Community-owned energy generating facility” means a renewable energy generating ~~facility~~ facility, located
27 in the service area of a utility under the regulation of the Public Service Commission, that has multiple owners or customers
28 who share the output of the generator, which may be located either as a stand-alone facility or behind the meter of a
29 participating owner or customer. The facility shall be interconnected to the distribution system and operated in parallel with
30 an electric distribution company’s transmission and distribution facilities.

31 Section 4. Amend § 1014, Title 26 of the Delaware Code by making deletions as shown by strike through and
32 insertions as shown by underline as follows and by redesignating accordingly:

33 § 1014. Public purpose programs and consumer education.

34 (e) The rules and regulations promulgated for net energy metering by the Commission, municipal electric
35 companies, and electric cooperatives during any period of exemption under § 223 of this title shall:

36 ~~(2) Provide for customers participating in a community-owned energy generating facility to be credited in~~
37 ~~kilowatt-hours (kWh), valued at an amount per kWh equal to supply service charges according to each account’s rate~~
38 ~~schedule for any excess production of the community-owned energy generating facility. For customers that host a~~
39 ~~community-owned energy generating facility or where all participating customers are located on the same distribution~~
40 ~~feeder as a community-owned energy generating facility, credit in kWh shall be valued according to each account’s rate~~
41 ~~schedule and the rules and regulations promulgated for net energy metering under paragraph (e)(1) or (3) of this section.~~
42 ~~Excess kWh credits shall be credited to subsequent billing periods to offset customers’ consumption in those billing~~
43 ~~periods. At the end of the annualized billing period, a community may request a payment from the electric supplier for any~~
44 ~~excess kWh credits. The payment shall be calculated by multiplying the excess kWh credits by the supply service rate of~~
45 ~~the account hosting the community-owned energy generating facility. Such payment shall be made to the account hosting~~
46 ~~the community-owned energy generating facility, and may be credited to the account through monthly billing if less than~~
47 ~~\$25. Any excess kWh credits shall not reduce any fixed monthly customer charges imposed by the electric supplier. The~~

48 customers participating in a community-owned energy generating facility retain ownership of all RECs associated with
49 electric energy produced unless the customer has relinquished such ownership by contractual agreement with a third party.
50 (3) As an alternative to paragraph (e)(2) of this section above, electric suppliers, DEC, DP&L, and municipal electric
51 companies may elect to make payment to the account hosting the community-owned energy generating facility for the value
52 of the generated electricity as established by the Public Service Commission for those utilities regulated by the
53 Commission, and by the Board of Directors or other governing body of any utility not regulated by the Commission.

54 (9) Absent the promulgation of rules and regulations pursuant to paragraph (e)(3) of this section, individual
55 customers may aggregate their individual meters in conjunction with a community-owned energy generating facility,
56 provided that:

57 a. A community includes customers sharing a unique set of interests; and

58 b. Electric suppliers, DEC, DP&L, and municipal electric companies shall only allow meter aggregation for
59 customer accounts of which they provide electric supply service; and

60 c. A community-owned energy generating facility is designed to produce no more than 110% of the community's
61 aggregate electrical consumption of its individual customers, calculated on the average of the 2 previous 12-month periods
62 of actual electrical usage at the time of installation of energy generating equipment. For new building construction,
63 electrical consumption will be estimated at 110% of the consumption of units of similar size and characteristics at the time
64 of installation of energy generating equipment; and

65 d. A community-owned energy generating facility shall not exceed a capacity of the sum total of the individual
66 unit allowances as defined under paragraph (d)(1) of this section among the participants of a community-owned energy
67 generating facility; and

68 e. Community-owned energy generating facilities may include technologies defined under § 352(6)a. h. of this
69 title;

70 f. Before a community-owned net energy metering system may be formed and served by an electric supplier,
71 DP&L, DEC, or municipal electric company, the community proposing a community-owned energy generating facility
72 shall file with the Delaware Energy Office and the electric supplier, DP&L, DEC, or the appropriate municipal electric
73 company the following information:

74 1. A list of individual meters the community desires to aggregate identified by name, address, and account
75 number; and

76 2. A description of the energy generating facility, including the facility's host location, capacity, and fuel type or
77 generating technology; and

78 3. The quantity of kWh credits attributed to each customer, which the electric supplier, DP&L, DEC, or the
79 appropriate municipal electric company shall true-up at the end of the annualized billing period;

80 g. A community may change its list of aggregated meters no more than quarterly by providing 90 days' written
81 notice to the electric supplier, DP&L, DEC, or the appropriate municipal electric company; and

82 h. If the community removes individual customers from the aggregate, the community shall either replace the
83 removed customers, reduce the generating capacity of the community-owned energy generating facility to remain compliant
84 with the provisions provided under paragraphs (e)(9)c. and d. of this section, or negotiate with the electric supplier, DP&L,
85 DEC, or the appropriate municipal electric company to establish a mutually acceptable agreement for any excess kWh
86 credit;

87 i. An electric supplier, DP&L, DEC, or municipal electric companies may require that customers participating in a
88 community-owned energy generating facility have their meters read on the same billing cycle; and

89 j. Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation as
90 either public utilities or an electric supplier.

91 (f) Individual customers may aggregate their individual meters in conjunction with a community owned energy
92 generating facility provided that:

93 (1) The Commission promulgates rules and regulations that provide for customers participating in a community-
94 owned energy generating facility to be credited for the customers' subscribed percentage of generation valued at the sum of
95 the volumetric (kWh) components of the distribution service charges and supply service charges for residential customers
96 and the sum of the volumetric energy (kWh) components of the distribution service charges and supply service charges for
97 nonresidential customers according to each participating customer account's rate schedule. At the end of the annualized
98 billing period, a customer may request a refund from the electric distribution company.

99 (2) A customer may not receive credit for more than 110% of the customer's expected aggregate electrical
100 consumption, calculated on the average of the 2 previous 12-month periods of actual electrical usage at the time of
101 subscription with the community-owned energy generating facility. For new building construction, electrical consumption
102 will be estimated at 110% of the consumption of units of similar size and characteristics. On an annual basis, an electric
103 distribution company shall be permitted to audit individual customer's subscribed amounts to ensure the associated usage
104 does not exceed 110% of the customer's annual usage. The community-owned energy generating facility shall provide
105 updated individual customer's subscribed percentage as required. In the event the community-owned energy generating
106 facility does not provide the required update within 30 days after notification by the electric distribution company, the
107 electric distribution company shall be permitted to set the customer's percentage to zero. Customers of a community-owned

108 energy generating facility shall only pay for credits received. A community-owned energy generating facility may update
109 customer allocation percentages on a monthly basis.

110 (3) Any unsubscribed energy that constitutes 10% or less of the community-owned energy generating facility shall
111 be compensated using the average annual locational marginal price of energy in the DPL Zone based on the prior calendar
112 year. Any unsubscribed energy that is greater than 10% of the community-owned energy generating facility not allocated
113 shall not be compensated by the electric distribution company.

114 (4) An electric distribution company shall use energy generated from a community-owned energy generating
115 facility to offset purchases from wholesale electricity suppliers for standard offer service.

116 (5) Excess credits shall be credited to subsequent billing periods to offset the customers' charges in those billing
117 periods.

118 (6) The community-owned energy generating facility shall ensure that the net-metering credits from the
119 community-owned energy generating facility are accurate. The amount of electricity generated each month available for
120 allocation as subscribed or unsubscribed energy shall be determined by a revenue quality production meter installed and
121 paid for by the owner of the community-owned energy generating facility. Further, the community-owned energy
122 generating facility shall be responsible for any additional costs incurred by the electric distribution company, including
123 billing-related costs associated with community-owned energy generating facility customers.

124 (7) The community-owned energy generating facility will retain ownership of all RECs and SRECs associated
125 with the electric energy it produces unless it has relinquished such ownership by contractual agreement with a third party or
126 its customers.

127 (8) The community-owned energy generating facility shall not have subscriptions larger than 200 kilowatts
128 constituting more than 60% of its capacity. The community-owned energy generating facility host's self-consumption is
129 not included in this calculation.

130 (9) The electric distribution company shall only allow meter aggregation for customer accounts for which they
131 provide electric distribution service.

132 (10) A community-owned energy generating facility shall not exceed a capacity of 4 megawatts and all costs
133 associated with the interconnection are the responsibility of the community-owned energy generating facility.

134 (11) Community-owned energy generating facilities may include technologies defined under § 352(6)a.-h. of this
135 title.

136 (12) A community-owned energy generating facility seeking to provide service to customers must apply for and
137 obtain a Certificate to Operate from the Commission, and pay an application fee of \$750. Community-owned energy

138 generating facilities are not required to obtain a Certificate of Public Convenience and Necessity from the Commission. To
139 obtain a Certificate to Operate, a community-owned energy generating facility must provide the following:

140 a. A completed interconnection study or signed interconnection agreement with the electric distribution
141 company.

142 b. Proof of site control.

143 c. Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and
144 federal regulations.

145 (13) If a community-owned energy generating facility fails to comply with orders, rules, or regulations
146 promulgated or issued by the Commission governing such a facility, or any other laws, rules, or regulations that apply to
147 such a facility, the Commission may impose penalties, including monetary assessments, and may suspend or revoke the
148 Certificate to Operate, and impose other sanctions permitted by law.

149 (14) Every 3 years, the community-owned energy generating facility must certify to the Public Service
150 Commission in writing that it meets the low-income eligibility criteria provided in this chapter.

151 (15) Community-owned energy generating facilities are subject to the fees and charges in §114 of this title. In
152 addition, community-owned energy generating facilities are required to pay the annual gross revenue assessment in § 115
153 of this title, and the “gross operating revenue” shall equal the sum of the net-metering credits produced by the community-
154 owned energy generating facility and the revenue derived from unsubscribed energy.

155 (16) Before a community-owned energy generating facility receives permission to operate pursuant to the
156 interconnection process from the electric distribution company, a community-owned energy generating facility shall
157 provide the electric distribution company with the following information:

158 a. A list of individual meters the community-owned energy generating facility desires to aggregate identified
159 by name, address, and account number.

160 b. A description of the energy generating facility, including the facility’s host location, capacity, and fuel type
161 or generating technology.

162 c. The subscribed percentage of generation attributed to each customer, which the electric distribution
163 company shall true-up at the end of the annualized billing period.

164 d. Certification that the subscription level of each customer does not exceed 110% of that customer’s expected
165 aggregate electrical consumption calculated on the average of the two previous 12-month periods of actual
166 electrical usage at the time of subscription with the community-owned energy generating facility.

167 e. Before a community-owned energy generating facility receives permission to interconnect with an electric
168 distribution company, the community-owned energy generating facility must certify to the electric distribution
169 company and the Commission that participants in the community-owned energy generating facility include at least
170 15% low income customers whose gross annual income, by family size, is at or below 200% of the Federal
171 Poverty Guidelines, or 60% of the state median household income published by the United States Census Bureau,
172 whichever is greater.

173 (17) A community-owned energy generating facility may change its list of aggregated meters no more than
174 monthly by providing 30 days written notice to the electric distribution company.

175 (18) An electric distribution company may require that customers participating in a community-owned energy
176 generating facility have their meters read on the same billing cycle.

177 (19) Neither customers nor owners of community-owned energy generating facilities shall be subject to regulation
178 as either public utilities or an electric supplier, except as set forth in this section.

179 (20) Community-owned energy generating facilities shall be subject to regulation under the purview of the
180 Commission, and the Commission will engage in rule-making in consultation with the Consumer Protection Unit of the
181 Delaware Department of Justice. In addition to the promulgation of rules and regulations pursuant to this section relating to
182 net energy metering, the Commission may promulgate rules and regulations with respect to community-owned energy
183 generating facilities and §1014 to protect customers, including provisions related to standardized customer information
184 billing, service terms and conditions, dispute procedures, and portability and transferability of contracts. Community-
185 owned energy generating facilities shall not solicit customers by means of telemarketing where such telemarketing is
186 prohibited by applicable laws and regulations.

187 (21) All community-owned energy generating facilities shall consent to the jurisdiction of the Delaware courts for
188 acts or omissions arising from their activities in the State.

189 (22) Community-owned energy generating facilities must adhere to State and the Federal Energy Regulatory
190 Commission rules.

191 (23) The Commission shall open a rule-making docket to promulgate the rules and regulations for community-
192 owned energy generating facilities called for in this section by August 1, 2021, and the rules and regulations must be
193 promulgated no later than March 11, 2022, unless the deadline is extended by law.

194 (24) A violation of any provision of this chapter related to community-owned energy generating facilities, and any
195 rules or regulations promulgated pursuant to this section shall be deemed an unlawful practice under § 2513 of Title 6 and a
196 violation of subchapter II of Chapter 25 of Title 6.

197 Section 5. Amend § 2513(b)(3), Title 6 of the Delaware Code by making deletions as shown by strike through and
198 insertions as shown by underline as follows:

199 (b)(3) To matters subject to the jurisdiction of the Public Service Commission, or of the Insurance Commissioner
200 of this ~~State~~. State, except for matters covered by § 1014 of Title 26, but only as they relate to community-owned energy
201 generating facilities.

202 Section 6. Amend § 2520(b), Title 29 of the Delaware Code by making deletions as shown by strike through and
203 insertions as shown by underline as follows:

204 (b) The scope of authority of the Director to initiate administrative proceedings or take civil enforcement action
205 does not extend to matters within the jurisdiction of the Public Service Commission or of the Insurance Commissioner
206 of the ~~State~~. State, except for matters covered by § 1014 of Title 26, but only as they relate to community-owned energy
207 generating facilities.

SYNOPSIS

In order to lower the cost of energy and accelerate the adoption of community-based solar photovoltaic systems in the State, this bill eliminates current barriers to such systems and sets up a regulatory process to be implemented by the Public Service Commission with consumer protection provided by the Department of Justice. More specifically, this bill:

1. Allows for multiple types of ownership models, defined as “community-owned energy generating facilities,” to exist and compete in the marketplace;
2. Increases the maximum size of these systems to 4 megawatts (MW);
3. Eliminates the requirement that all customers of a system must be located on the same distribution feeder;
4. Eliminates the requirement that all customers of a system must be identified before the system can be built;
5. Provides for the regulation of these systems by the Public Service Commission and sets forth the fee and requirements for a Certificate to Operate;
6. Provides compensation to the system owner for 10% or less of unsubscribed energy;
7. Requires each system owner to certify that it serves at least 15% low income customers; and
8. Provides that the Public Service Commission will engage in rule-making in consultation with the Consumer Protection Unit of the Delaware Department of Justice and promulgate rules and regulations by March 11, 2022.

Author: Senator Hansen