

Appendix B. Renewable Portfolio Standard Proposal

SEC. 201. RENEWABLE PORTFOLIO STANDARD.

(a) In General.—Title VI of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) is amended by adding at the end the following:

“SEC. 610. FEDERAL RENEWABLE PORTFOLIO STANDARD.

“(a) Renewable Energy Requirement.—

“(1) IN GENERAL.—Each electric utility that sells electricity to electric consumers shall obtain a percentage of the base amount of electricity it sells to electric consumers in any calendar year from new renewable energy or existing renewable energy. The percentage obtained in a calendar year shall not be less than the amount specified in the following table: [Modifications made to the table below]2,L0(0,0,0,4,0,17),tp0,p10,10/12,g1,t1,s100n,xls95n

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“Calendar year:Minimum annual percentage:

2010 through 20123.75

2013 through 20167.50

2017 through 201911.25

2020 through 203015.0

“(2) MEANS OF COMPLIANCE.—An electric utility shall meet the requirements of paragraph (1) by—

“(A) generating electric energy using new renewable energy or existing renewable energy;

“(B) purchasing electric energy generated by new renewable energy or existing renewable energy;

“(C) purchasing renewable energy credits issued under subsection (b); or

“(D) a combination of the foregoing.

“(b) Renewable Energy Credit Trading Program.—

“(1) IN GENERAL.—Not later than January 1, 2007, the Secretary shall establish a renewable energy credit trading program to permit an electric utility that does not generate or purchase enough electric energy from renewable energy to meet its obligations under subsection (a)(1) to satisfy such requirements by purchasing sufficient renewable energy credits.

“(2) ADMINISTRATION.—As part of the program, the Secretary shall—

“(A) issue renewable energy credits to generators of electric energy from new renewable energy;

“(B) sell renewable energy credits to electric utilities at the rate of 1.9 cents per kilowatt-hour (as adjusted for inflation under subsection (g));

“(C) ensure that a kilowatt hour, including the associated renewable energy credit, shall be used only once for purposes of compliance with this section; and

“(D) allow double credits for generation from facilities on Indian land, and triple credits for generation from small renewable distributed generators (meaning those no larger than 1 megawatt).

“(3) DURATION.—Credits under paragraph (2)(A) may only be used for compliance with this section for 3 years from the date issued.

“(4) TRANSFERS.—An electric utility that holds credits in excess of the amount needed to comply with subsection (a) may transfer such credits to another electric utility in the same utility holding company system.

“(5) EASTERN INTERCONNECT.—In the case of a retail electric supplier that is a member of a power pool located in the Eastern Interconnect and that is subject to a State renewable portfolio standard program that provides for compliance primarily through the acquisition of certificates or credits in lieu of the direct acquisition of renewable power, the Secretary shall issue renewable energy credits in an amount that corresponds to the kilowatt-hour obligation represented by the State certificates and credits issued pursuant to the State program to the extent the State certificates and credits are associated with renewable resources eligible under this section.

“(c) Enforcement.—

“(1) CIVIL PENALTIES.—Any electric utility that fails to meet the renewable energy requirements of subsection (a) shall be subject to a civil penalty.

“(2) AMOUNT OF PENALTY.—The amount of the civil penalty shall be determined by multiplying the number of kilowatt-hours of electric energy sold to electric consumers in violation of subsection (a) by the greater of 1.9 cents (adjusted for inflation under subsection (g)) or 200 percent of the average market value of renewable energy credits during the year in which the violation occurred.

“(3) MITIGATION OR WAIVER.—The Secretary may mitigate or waive a civil penalty under this subsection if the electric utility was unable to comply with subsection (a) for reasons outside of the reasonable control of the utility. The Secretary shall reduce the amount of any penalty determined under paragraph (2) by an amount paid by the electric utility to a State for failure to comply with the requirement of a State renewable energy program if the State requirement is greater than the applicable requirement of subsection (a).

“(4) PROCEDURE FOR ASSESSING PENALTY.—The Secretary shall assess a civil penalty under this subsection in accordance with the procedures prescribed by section 333(d) of the Energy Policy and Conservation Act of 1974 (42 U.S.C. 6303).

“(d) State Renewable Energy Account Program.—

“(1) IN GENERAL.—The Secretary shall establish, not later than December 31,

2008, a State renewable energy account program.

“(2) DEPOSITS.—All money collected by the Secretary from the sale of renewable energy credits and the assessment of civil penalties under this section shall be deposited into the renewable energy account established pursuant to this subsection. The State renewable energy account shall be held by the Secretary and shall not be transferred to the Treasury Department.

“(3) USE.—Proceeds deposited in the State renewable energy account shall be used by the Secretary, subject to appropriations, for a program to provide grants to the State agency responsible for developing State energy conservation plans under section 362 of the Energy Policy and Conservation Act (42 U.S.C. 6322) for the purposes of promoting renewable energy production, including programs that promote technologies that reduce the use of electricity at customer sites such as solar water heating.

“(4) ADMINISTRATION.—The Secretary may issue guidelines and criteria for grants awarded under this subsection. State energy offices receiving grants under this section shall maintain such records and evidence of compliance as the Secretary may require.

“(5) PREFERENCE.—In allocating funds under this program, the Secretary shall give preference—

“(A) to States in regions which have a disproportionately small share of economically sustainable renewable energy generation capacity; and

“(B) to State programs to stimulate or enhance innovative renewable energy technologies.

“(e) Rules.—The Secretary shall issue rules implementing this section not later than 1 year after the date of enactment of this section.

“(f) Exemptions.—This section shall not apply in any calendar year to an electric utility—

“(1) that sold less than 4,000,000 megawatt-hours of electric energy to electric consumers during the preceding calendar year; or

“(2) in Hawaii.

“(g) Inflation Adjustment.—Not later than December 31 of each year beginning in 2008, the Secretary shall adjust for inflation the price of a renewable energy credit under subsection (b)(2)(B) and the amount of the civil penalty per kilowatt-hour under subsection (c)(2).

“(h) State Programs.—Nothing in this section shall diminish any authority of a State or political subdivision thereof to adopt or enforce any law or regulation respecting renewable energy, but, except as provided in subsection (c)(3), no such law or regulation shall relieve any person of any requirement otherwise applicable under this section. The Secretary, in consultation with States having such renewable energy programs, shall, to the maximum extent practicable, facilitate coordination between the Federal program and State programs.

“(i) Recovery of Costs.—

“(1) IN GENERAL.—The Commission shall issue and enforce such regulations as are necessary to ensure that an electric utility recovers all prudently incurred costs associated with compliance with this section.

“(2) APPLICABLE LAW.—A regulation under paragraph (1) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791a et seq.).

“(j) Definitions.—In this section:

“(1) BASE AMOUNT OF ELECTRICITY.—The term ‘base amount of electricity’ means the total amount of electricity sold by an electric utility to electric consumers in a calendar year, excluding—

“(A) electricity generated by a hydroelectric facility (including a pumped storage facility but excluding incremental hydropower); and

“(B) electricity generated through the incineration of municipal solid waste.

“(2) DISTRIBUTED GENERATION FACILITY.—The term ‘distributed generation facility’ means a facility at a customer site.

“(3) EXISTING RENEWABLE ENERGY.—The term ‘existing renewable energy’ means, except as provided in paragraph (7)(B), electric energy generated at a facility (including a distributed generation facility) placed in service prior to January 1, 2003, from solar, wind, or geothermal energy, ocean energy, biomass (as defined in section 203(a) of the Energy Policy Act of 2005), or landfill gas.

“(4) GEOTHERMAL ENERGY.—The term ‘geothermal energy’ means energy derived from a geothermal deposit (within the meaning of section 613(e)(2) of the Internal Revenue Code of 1986).

“(5) INCREMENTAL GEOTHERMAL PRODUCTION.—

“(A) IN GENERAL.—The term ‘incremental geothermal production’ means for any year the excess of—

“(i) the total kilowatt hours of electricity produced from a facility (including a distributed generation facility) using geothermal energy; over

“(ii) the average annual kilowatt hours produced at such facility for 5 of the previous 7 calendar years before the date of enactment of this section after eliminating the highest and the lowest kilowatt hour production years in such 7-year period.

“(B) SPECIAL RULE.—A facility described in subparagraph (A) that was placed in service at least 7 years before the date of enactment of this section shall commencing with the year in which such date of enactment occurs, reduce the amount calculated under subparagraph (A)(ii) each year, on a cumulative basis, by the average percentage decrease in the annual kilowatt hour production for the 7-year period described in subparagraph (A)(ii) with such cumulative sum not to exceed 30 percent.

“(6) INCREMENTAL HYDROPOWER.—The term ‘incremental hydropower’ means additional energy generated as a result of efficiency improvements or capacity additions made on or after the date of enactment of this section or the effective date of an existing applicable State renewable portfolio standard program at a hydroelectric facility that was placed in service before that date. The term does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or capacity additions. Efficiency improvements and capacity additions shall be measured on the basis of the same water flow information used to determine a historic average annual generation baseline for the hydroelectric facility and certified by the Secretary or the Federal Energy Regulatory Commission.

“(7) NEW RENEWABLE ENERGY.—The term ‘new renewable energy’ means—

“(A) electric energy generated at a facility (including a distributed generation facility) placed in service on or after January 1, 2003, from—

“(i) solar, wind, or geothermal energy or ocean energy;

“(ii) biomass (as defined in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)));

“(iii) landfill gas; or

“(iv) incremental hydropower; and

“(B) for electric energy generated at a facility (including a distributed generation facility) placed in service prior to the date of enactment of this section—

“(i) the additional energy above the average generation in the 3 years preceding the date of enactment of this section at the facility from—

“(I) solar or wind energy or ocean energy;

“(II) biomass (as defined in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)));

“(III) landfill gas; or

“(IV) incremental hydropower.

“(ii) incremental geothermal production.

“(8) OCEAN ENERGY.—The term ‘ocean energy’ includes current, wave, tidal, and thermal energy.

“(k) Sunset.—This section expires on December 31, 2030.”.

(b) Table of Contents Amendment.—The table of contents of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. prec. 2601) is amended by adding at the end of the items relating to title VI the following:

“Sec.610.Federal renewable portfolio standard.”.