HB 408

WEST VIRGINIA LEGISLATURE

FOURTH EXTRAORDINARY SESSION, 2009

ENROLLED

House Bill No. 408

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)

Passed November 19, 2009

In Effect Ninety Days From Passage

ENROLLED

H. B. 408

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed November 19, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §24-2F-3, §24-2F-4, §24-2F-5 and §24-2F-9 of the Code of West Virginia, 1931, as amended, all relating to the Alternative and Renewable Energy Portfolio Act; limiting the use of supercritical technology to qualify as advanced coal technology for the purpose of determining credits; allowing the use of advanced supercritical technology to qualify as advanced coal technology for the purpose of determining credits; allowing the Public Service Commission to certify additional advanced coal technologies; allowing for the utilization of an independent and industry-recognized alternative and renewable energy resource credit tracking system; exempting certain credit pricing data from disclosure under the freedom of information act; allowing for the utilization of an independent and industry-recognized entity to verify and certify greenhouse gas emission reduction or offset projects; allowing credits for certain energy efficiency and demand-side projects undertaken pursuant to federal requirements; and requiring a study of the economic impacts of the Alternative and Renewable Energy Portfolio Act on coal and coal mining.

Be it enacted by the Legislature of West Virginia:

That §24-2F-3, §24-2F-4, §24-2F-5 and §24-2F-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.

§24-2F-3. Definitions.

Unless the context clearly requires a different meaning, as used in this article:

(1) "Advanced coal technology" means a technology that is used in a new or existing energy generating facility to reduce airborne carbon emissions associated with the combustion or use of coal and includes, but is not limited to, carbon dioxide capture and sequestration technology, supercritical technology, advanced supercritical technology as that technology is determined by the Public Service Commission, ultrasupercritical technology and pressurized fluidized bed technology and any other resource, method, project or technology certified by the commission as advanced coal technology.

(2) "Alternative and renewable energy portfolio standard" or "portfolio standard" means a requirement in any given year that requires an electric utility to own credits in an amount equal to a certain percentage of electric energy sold in the preceding calendar year by the electric utility to retail customers in this state.

(3) "Alternative energy resources" means any of the following resources, methods or technologies for the production or generation of electricity:

(A) Advanced coal technology;

(B) Coal bed methane;

(C) Natural gas;

(D) Fuel produced by a coal gasification or liquefaction facility;

(E) Synthetic gas;

(F) Integrated gasification combined cycle technologies;

(G) Waste coal;

(H) Tirederived fuel;

(I) Pumped storage hydroelectric projects;

(J) Recycled energy, which means useful thermal, mechanical or electrical energy produced from: (i) Exhaust heat from any commercial or industrial process; (ii) waste gas, waste fuel or other forms of energy that would otherwise be flared, incinerated, disposed of or vented; and (iii) electricity or equivalent mechanical energy extracted from a pressure drop in any gas, excluding any pressure drop to a condenser that subsequently vents the resulting heat; and

(K) Any other resource, method, project or technology certified as an alternative energy resource by the Public Service Commission.

(4) "Alternative and renewable energy resource credit" or "credit" means a tradable instrument that is used to establish, verify and monitor the generation of electricity from alternative and renewable energy resource facilities,

energy efficiency or demand-side energy initiative projects or greenhouse gas emission reduction or offset projects.

(5) "Alternative energy resource facility" means a facility or equipment that generates electricity from alternative energy resources.

(6) "Commission" or "Public Service Commission" means the Public Service Commission of West Virginia as continued pursuant to section three, article one of this chapter.

(7) "Customer-generator" means an electric retail customer who owns and operates a customer-sited generation project utilizing an alternative or renewable energy resource or a net metering system in this state.

(8) "Electric utility" means any electric distribution company or electric generation supplier that sells electricity to retail customers in this state. Unless specifically provided for otherwise, for the purposes of this article, the term "electric utility" may not include rural electric cooperatives, municipally-owned electric facilities or utilities serving less than thirty thousand residential electric customers in West Virginia.

(9) "Energy efficiency or demand-side energy initiative project" means a project in this state that promotes customer energy efficiency or the management of customer consumption of electricity through the implementation of:

(A) Energy efficiency technologies, equipment, management practices or other strategies utilized by residential, commercial, industrial, institutional or government customers that reduce electricity consumption by those customers;

(B) Load management or demand response technologies, equipment, management practices, interruptible or curtailable tariffs, energy storage devices 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;

(C) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including, but not limited to, the reuse of energy from exhaust gases or other manufacturing by-products that can be used in the direct production of electricity at the customer's facility;

(D) Customer-sited generation, demand-response, energy efficiency or peak demand reduction capabilities, whether new or existing, that the customer commits for integration into the electric utility's demand-response, energy efficiency or peak demand reduction programs; or

(E) Infrastructure and modernization projects that help promote energy efficiency, reduce energy losses or shift load from periods of higher demand to periods of lower demand, including the modernization of metering and communications (also known as "smart grid"), distribution automation, energy storage, distributed energy resources and investments to promote the electrification of transportation.

(10) "Greenhouse gas emission reduction or offset project" means a project to reduce or offset greenhouse gas emissions from sources in this state other than the electric utility's own generating and energy delivery operations. Greenhouse gas emission reduction or offset projects include, but are not limited to:

(A) Methane capture and destruction from landfills, coal mines or farms;

(B) Forestation, afforestation or reforestation; and

(C) Nitrous oxide or carbon dioxide sequestration through reduced fertilizer use or no-till farming.

(11) "Net metering" means measuring the difference between electricity supplied by an electric utility and electricity generated from an alternative or renewable energy resource facility owned or operated by an electric retail customer when any portion of the electricity generated from the alternative or renewable energy resource facility is used to offset part or all of the electric retail customer's requirements for electricity.

(12) "Reclaimed surface mine" means a surface mine, as that term is defined in section three, article three, chapter twenty-two of this code, that is reclaimed or is being reclaimed in accordance with state or federal law.

(13) "Renewable energy resource" means any of the following resources, methods, projects or technologies for the production or generation of electricity:

(A) Solar photovoltaic or other solar electric energy;

(B) Solar thermal energy;

(C) Wind power;

(D) Run of river hydropower;

(E) Geothermal energy, which means a technology by which electricity is produced by extracting hot water or steam from geothermal reserves in the earth's crust to power steam turbines that drive generators to produce electricity;

(F) Biomass energy, which means a technology by which electricity is produced from a nonhazardous organic material that is available on a renewable or recurring basis, including pulp mill sludge;

(G) Biologically derived fuel including methane gas, ethanol not produced from corn, or biodiesel fuel;

(H) Fuel cell technology, which means any electrochemical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion; and

(I) Any other resource, method, project or technology certified by the commission as a renewable energy resource.

(14) "Renewable energy resource facility" means a facility or equipment that generates electricity from renewable energy resources.

(15) "Waste coal" means a technology by which electricity is produced by the combustion of the by-product, waste or residue created from processing coal (such as gob).

§24-2F-4. Awarding of alternative and renewable energy resource credits.

(a) *Credits established.* -- The Public Service Commission shall establish a system of tradable credits to establish, verify and monitor the generation and sale of electricity generated from alternative and renewable energy resource facilities. The credits may be traded, sold or used to meet the portfolio standards established in section five of this article.

(b) *Awarding of credits.* -- Credits shall be awarded as follows:

(1) An electric utility shall be awarded one credit for each megawatt hour of electricity generated or purchased from an alternative energy resource facility located within the geographical boundaries of this state or located outside of the geographical boundaries of this state but within the service territory of a regional transmission organization, as that term is defined in 18 C.F.R. §35.34, that manages the transmission system in any part of this state;

(2) An electric utility shall be awarded two credits for each megawatt hour of electricity generated or purchased from a renewable energy resource facility located within the geographical boundaries of this state or located outside of the geographical boundaries of this state but within the service territory of a regional transmission organization, as that term is defined in 18 C.F.R. §35.34, that manages the transmission system in any part of this state;

(3) An electric utility shall be awarded three credits for each megawatt hour of electricity generated or purchased from a renewable energy resource facility located within the geographical boundaries of this state if the renewable energy resource facility is sited upon a reclaimed surface mine; and

(4) A customer-generator shall be awarded one credit for each megawatt hour of electricity generated from an alternative energy resource facility and shall be awarded two credits for each megawatt hour of electricity generated from a renewable energy resource facility.

(c) *Acquiring of credits permitted.* --

(1) An electric utility may meet the alternative and renewable energy portfolio standards set forth in this article by purchasing additional credits. Credits may be bought or sold by an electric utility or customer-generator or banked

and used to meet an alternative and renewable energy portfolio standard requirement in a subsequent year.

(2) Each credit transaction shall be reported by the selling entity to the Public Service Commission on a form provided by the commission.

(3) As soon as reasonably possible after the effective date of this section, the commission shall establish a registry of data, or use an independent and industry-recognized system, that shall track credit transactions and shall list the following information for each transaction: (i) The parties to the transaction; (ii) the number of credits sold or transferred; and (iii) the price paid. Information contained in the registry shall be available to the public, except that pricing information concerning individual transactions shall be confidential and exempt from disclosure under subdivision (5), subsection (a), section four, article one, chapter twenty-nine-b of this code.

(4) The commission may impose an administrative transaction fee on a credit transaction in an amount not to exceed the actual direct cost of processing the transaction by the commission.

(d) *Credits for certain emission reduction or offset projects.* --

(1) The commission may award credits to an electric utility for greenhouse gas emission reduction or offset projects. For each ton of carbon dioxide equivalent reduced or offset as a result of an approved greenhouse gas emission reduction project, the commission shall award an electric utility one credit: *Provided,* That the emissions reductions and offsets are verifiable and certified in accordance with rules promulgated by the commission: *Provided, however,* That the commission has previously approved the greenhouse

gas emission reduction and offset project for credit in accordance with section six of this article.

(2) The commission shall consult and coordinate with the Secretary of the Department of Environmental Protection or an independent and industry-recognized entity to verify and certify greenhouse gas emission reduction or offset projects. The Secretary of the Department of Environmental Protection shall provide assistance and information to the Public Service Commission and may enter into interagency agreements with the commission to effectuate the purposes of this subsection.

(3) Notwithstanding the provisions of this subsection, an electric utility may not be awarded credits for a greenhouse gas emission reduction or offset project undertaken pursuant to any obligation under any other state law, policy or regulation.

(e) *Credits for certain energy efficiency and demand-side energy initiative projects.* --

(1) The commission may award credits to an electric utility for investments in energy efficiency and demand-side energy initiative projects. For each megawatt hour of electricity conserved as a result of an approved energy efficiency or demand-side energy initiative project, the commission shall award one credit: *Provided,* That the amount of electricity claimed to be conserved is verifiable and certified in accordance with rules promulgated by the commission: *Provided, however,* That the commission has approved the energy efficiency or demand-side energy initiative project for credit in accordance with section six of this article.

(2) Notwithstanding the provisions of this subsection, an electric utility may not be awarded credit for an energy

efficiency or demand-side energy initiative project undertaken pursuant to any obligation under any other state law, policy or regulation.

§24-2F-5. Alternative and renewable energy portfolio standard; compliance assessments.

(a) *General rule.* -- Each electric utility doing business in this state shall be required to meet the alternative and renewable energy portfolio standards set forth in this section. In order to meet these standards, an electric utility each year shall own an amount of credits equal to a certain percentage of electricity, as set forth in subsections (c) and (d) of this section, sold by the electric utility in the preceding year to retail customers in West Virginia.

(b) *Counting of credits towards compliance.* -- For the purpose of determining an electric utility's compliance with the alternative and renewable energy portfolio standards set forth in subsections (c) and (d) of this section, each credit shall equal one megawatt hour of electricity sold by an electric utility in the preceding year to retail customers in West Virginia. Furthermore, a credit may not be used more than once to meet the requirements of this section. No more than ten percent of the credits used each year to meet the compliance requirements of this section may be credits acquired from the generation or purchase of electricity generated from natural gas. No more than ten percent of the credits used each year to meet the compliance requirements of this section may be credits acquired from the generation or purchase of electricity generated from supercritical technology.

(c) *Twenty-five percent by 2025.* -- On and after January 1, 2025, an electric utility shall each year own credits in an amount equal to at least twenty-five percent of the electric

energy sold by the electric utility to retail customers in this state in the preceding calendar year.

(d) *Interim portfolio standards.* --

(1) For the period beginning January 1, 2015, and ending December 31, 2019, an electric utility shall each year own credits in an amount equal to at least ten percent of the electric energy sold by the electric utility to retail customers in this state in the preceding calendar year; and

(2) For the period beginning January 1, 2020, and ending December 31, 2024, an electric utility shall each year own credits in an amount equal to at least fifteen percent of the electric energy sold by the electric utility to retail customers in this state in the preceding calendar year.

(e) *Double-counting of credits prohibited.* -- Any portion of electricity generated from an alternative or renewable energy resource facility that is used to meet another state's alternative energy, advanced energy, renewable energy or similar energy portfolio standard may not be used to meet the requirements of this section. An electric utility that is subject to an alternative energy, advanced energy, renewable energy or similar energy portfolio standard in any other state shall list, in the alternative and renewable energy portfolio standard compliance plan required under section six of this article, any such requirements and shall indicate how it satisfied those requirements. The electric utility shall provide in the annual progress report required under section six of this article any additional information required by the commission to prevent double-counting of credits.

(f) *Carryover.* -- An electric utility may apply any credits that are in excess of the alternative and renewable energy portfolio standard in any given year to the requirements for any future year portfolio standard:

Provided, That the electric utility determines to the satisfaction of the commission that such credits were in excess of the portfolio standard in a given year and that such credits have not previously been used for compliance with a portfolio standard.

(g) *Compliance assessments.* --

(1) On or after January 1, 2015, and each year thereafter, the commission shall determine whether each electric utility doing business in this state is in compliance with this section. If, after notice and a hearing, the commission determines that an electric utility has failed to comply with an alternative and renewable energy portfolio standard, the commission shall impose a compliance assessment on the electric utility which shall equal at least the lesser of the following:

(A) Fifty dollars multiplied by the number of additional credits that would be needed to meet an alternative and renewable energy portfolio standard in a given year; or

(B) Two hundred percent of the average market value of credits sold in a given year multiplied by the number of additional credits needed to meet the alternative and renewable energy portfolio standard for that year.

(2) Compliance assessments collected by the commission pursuant to this subsection shall be deposited into the Alternative and Renewable Energy Resources Research Fund established in section eleven of this article.

(h) *Force majeure.* --

(1) Upon its own initiative or upon the request of an electric utility, the commission may modify the portfolio standard requirements of an electric utility in a given year or years or recommend to the Legislature that the portfolio

standard requirements be eliminated if the commission determines that alternative or renewable energy resources are not reasonably available in the marketplace in sufficient quantities for the electric utility to meet the requirements of this article.

(2) In making its determination, the commission shall consider whether the electric utility made good faith efforts to acquire sufficient credits to comply with the requirements of this article. Such good faith efforts shall include, but are not limited to, banking excess credits, seeking credits through competitive solicitations and seeking to acquire credits through long-term contracts. The commission shall assess the availability of credits on the open market. The commission may also require that the electric utility solicit credits before a request for modification may be granted.

(3) If an electric utility requests a modification of its portfolio standard requirements, the commission shall make a determination as to the request within sixty days.

(4) Commission modification of an electric utility's portfolio standard requirements shall apply only to the portfolio standard in the year or years modified by the commission. Commission modification may not automatically reduce an electric utility's alternative and renewable energy portfolio standard requirements in future years.

(5) If the commission modifies an electric utility's portfolio standard requirements, the commission may also require the electric utility to acquire additional credits in subsequent years equivalent to the requirements reduced by the commission in accordance with this subsection.

(i) *Termination* -- The provisions of this section shall have no force and effect after June 30, 2026.

§24-2F-9. Interagency agreements; alternative and renewable energy resource planning assessment.

(a) *Interagency agreements.* -- The commission may enter into interagency agreements with the Department of Environmental Protection and the Division of Energy to carry out the responsibilities set forth in this article.

(b) *Alternative and renewable energy resource planning assessment.* -- The commission, in cooperation with the Department of Environmental Protection and the Division of Energy, shall conduct an ongoing alternative and renewable energy resource planning assessment for this state that shall, at a minimum: (i) Identify current and operating alternative and renewable energy resource facilities in this state; (ii) assess the potential to add future generating capacity in this state from alternative and renewable energy resource facilities; (iii) assess the conditions of the alternative and renewable energy resource marketplace, including costs associated with alternative and renewable energy; (iv) assess the economic impacts of this article on coal and coal mining in West Virginia; (v) recommend methods to maintain or increase the relative competitiveness of the alternative and renewable energy resource market in this state; and(vi) recommend to the Legislature additional compliance goals for alternative and renewable energy portfolio standards beyond 2025.

The commission shall report the initial results of its assessment to the Governor, the President of the Senate and the Speaker of the House of Delegates within three years of the effective date of this article and shall report the ongoing results of the assessment on a yearly basis thereafter, except that on or before January 1, 2012, the commission, in collaboration with the Public Energy Authority, shall report the initial results of its assessment to the Joint Committee on Government and Finance.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 7th day of December, 2009.

Governor

PRESENTED TO THE
GOVERNOR

NOV 25 2009

Time 10:30