SPONSOR: Sen. Hansen & Rep. Heffernan & Rep. Osienski & Rep. Phillips & Rep. Bush & Rep. Baumbach & Rep. Romer
Sens. Gay, Hoffner, Huxtable, Townsend, Walsh; Reps. Chukwuocha, Griffith, Harris, Lambert, Morrison, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 265
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLES 17, 26, AND 29 OF THE DELAWARE CODE RELATING TO THE DELAWARE ENERGY SOLUTIONS ACT OF 2024.

WHEREAS, emissions of greenhouse gases are contributing to climate change, threatening the health and well-being of the people of Delaware; and

WHEREAS, Delaware has the lowest mean elevation of any state in the nation and the State is particularly vulnerable to climate change impacts; and

WHEREAS, the Delaware General Assembly, recognizing the threat posed by climate change, enacted the Climate Change Solutions Act of 2023, requiring the State to establish strategies to ensure that greenhouse gas emissions shall be at or below net zero emissions no later than January 1, 2050; and

WHEREAS, the Climate Change Solutions Act will require Delaware to continue to adjust its legislative and regulatory framework to facilitate a regionwide transition to carbon-free energy resources; and

WHEREAS, key elements for facilitating this transition will be increased flexibility in connecting renewable energy resources to the transmission grid, and preparing for offshore wind to be a significant element of Delaware's energy future; and

WHEREAS, offshore wind power represents a significant opportunity for large scale renewable energy power for Delaware, reducing harmful emissions from power generation; and

WHEREAS, pricing for offshore wind projects in Atlantic waters are expected to continue a long-term downward trend, notwithstanding short-term uncertainty; and

WHEREAS, any contract for Delaware offshore wind development should ensure cost-effective projects from qualified, experienced developers; and

SD : FJM : CBK : 4761520228
LC : HVW : CBM : 5081520212
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WHEREAS, Delaware should aim to provide a pathway for all consumers of electricity in the State to participate in the benefits of any offshore wind contract, because any offshore wind project will realize economies of scale if the size of the project is larger; and

WHEREAS, the development of offshore wind facilities and other carbon-free energy resources are likely to bring additional economic benefits, including business and employment opportunities; and

WHEREAS, this Act shall be known as the Delaware Energy Solutions Act of 2024, and aims to prepare for and facilitate the upcoming energy transition, which transition will be an essential component of the implementation of the Climate Change Solutions Act, and will help ensure the best opportunities for Delaware and all Delawareans.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8052, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 8052. Definitions.

For the purposes of this subchapter:

( ) "Delaware Benchmark Price" shall have the meaning set forth in § 352 of Title 26.

( ) "Offshore Wind Contract" shall have the meaning set forth in § 352 of Title 26.

( ) "Qualified Offshore Wind Project" shall have the meaning set forth in § 352 of Title 26.

( ) "Qualified Purchasers" shall have the meaning set forth in § 352 of Title 26.

( ) "Renewable Energy Credit" ("REC") shall have the meaning set forth in § 352 of Title 26.

( ) "OSW Solicitation Requirements" shall mean the requirements for an offshore wind solicitation set forth in § 8056(d)(4) of this title.

Section 2. Amend § 8053, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8053. State Energy Office; State Energy Coordinator; establishment; powers and duties.

(c) The State Energy Office shall:

(12) Develop and conduct the solicitation or solicitations for the procurement of electric energy from offshore wind, as set forth in § 8056 of this Title, and participate ~~Participate~~ in offshore wind transmission planning with the regional transmission organization, the Delaware Public Service Commission, the Division of the Public Advocate, energy utilities, other stakeholders, and other states.

Section 3. Amend § 8056, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8056. Offshore wind transmission and procurement ~~analysis.~~ authority.

(d) Offshore wind procurement authority. –

(1) The State Energy Office is authorized and directed to develop and conduct a solicitation or solicitations, as it may deem necessary and appropriate, through a request for proposals for a single or multiple Offshore Wind Contracts relating to energy, capacity, ancillary services and RECs, or only RECs, generated by a Qualified Offshore Wind Project or Projects equal to an aggregate nameplate capacity of not more than 1,200 megawatts in accordance with the provisions of this section.

(2) The State Energy Office may, in its discretion, develop such solicitation or solicitations for a project that serves only Delaware (a "Delaware Solicitation") or in coordination with solicitations, requests for proposals, or other procurement processes conducted by other states and may consider proposals in connection with such other states' procurement processes (a "Coordinated Solicitation," and collectively with a Delaware Solicitation, a "Solicitation"). A Delaware Solicitation shall include project labor agreements, and may include requirements for community benefits agreements, supply chain requirements, workforce development, and conservation and mitigation elements.

(3) For both Delaware Solicitations and for Coordinated Solicitations, the State Energy Office is directed to ensure that the ratepayers of one utility never bear the costs of any project alone, either by using a Coordinated Solicitation, or by including at least one additional offtaker for any Delaware Solicitation. For Delaware Solicitations, the State Energy Office is directed to either identify an additional offtaker prior to issuance of a Solicitation (as set forth in section 8056(d)(6)) or the bidder must identify an additional offtaker (as is set forth in section 8056(d)(4)d).

(4) Any Delaware Solicitation shall require proposals to meet the following offshore wind solicitation requirements (the "OSW Solicitation Requirements"), which shall be weighted by the State Energy Office in any Solicitation,:

a. Have a term of at least 20 years.

b. Have a first-year price expressed in dollars per megawatt-hour that does not exceed 110% of the Delaware Benchmark Price, as adjusted for inflation to the anticipated starting date of commercial operation, provided that any price escalator for subsequent years shall be limited to a maximum of 2% per year. Furthermore, if the contract is only for the purchase of RECs with no requirement to either (i)

purchase energy, capacity, or ancillary services, or (ii) transfer revenues from the sales of such electricity products to Delaware electricity ratepayers, then such contract shall have a first-year price that does not exceed 110% of the weighted average cost per megawatt-hour of compliance, through REC procurement, net energy costs of renewable energy contracts, and alternative compliance payments, with the Renewable Energy Portfolio Standards Act for Commission-regulated public utilities during the 3 immediately preceding years, as adjusted for inflation to the anticipated starting date of commercial operation, provided that any price escalator for subsequent years shall be limited to a maximum of 2% per year.

c. Sell or transfer energy, capacity, and RECs, or only RECs, from a Qualified Offshore Wind Project.

d. shall identify at least one commitment to enter into a long-term contract to purchase offshore wind energy or renewable energy credits with businesses, nonprofit organizations, the State, municipalities or groups of municipalities, or with cooperative associations. The State Energy Office may identify in the Solicitation materials that this commitment has been secured prior to the Solicitation. However, if no such commitment is identified by the State Energy Office, then such commitment must be included as a part of the bid submitted by a project proponent.

e. Specify the avoided greenhouse gas emissions associated with the proposal and a calculation of the economic benefit to the State and Delawareans of such avoided greenhouse gas emissions calculated in total and on a per megawatt-hour basis.

f. Specify the avoided health impacts to the State and Delawareans associated with the proposal, including through avoided emissions of air pollutants, and a calculation of the economic benefit to the State and Delawareans of such avoided health impacts calculated in total and on a per megawatt-hour basis.

g. Specify the economic costs and benefits for the State and Delawareans associated with the proposal, including the number of in-state jobs created by the project; any increase in wages, taxes, receipts, in-state expenditures, and investments in Delaware offshore wind supply chain; and utilization of instate port and supply chain facilities, and a calculation of such economic costs and benefits to the State and Delawareans calculated in total and on a per megawatt-hour basis.

h. Specify the impacts to the electric transmission system and capacity and energy markets in Delaware and within the PJM Region and include a calculation of the economic benefits and costs to the

State and Delawareans of such transmission, capacity, and energy impacts calculated in total and on a per megawatt-hour basis.

i. Specify the expected bill impact for each class of service based upon the Delaware Benchmark Price.

(5) For any Coordinated Solicitation, any contract applicable to Delaware offtakers shall meet the requirements of section 8056(d)(4)(b) (the Delaware Benchmark Price). Contracts involving offtakers from other coordinating states need not meet the requirements of section 8056(d)(4)(b). Additionally, any proposal resulting from a Coordinated Solicitation is subject to paragraphs (d)(7) through (d)(9) of this Section.

(6) The State Energy Office may, prior to the issuance of Delaware Solicitation or a Coordinated Solicitation, enter agreements with potential offtakers, including but not limited to businesses, nonprofit organizations, the State, municipalities or groups of municipalities, or with cooperative associations, who are willing to enter long term contracts in the event that a project moves forward. Notwithstanding the provisions of Chapter 69 of Title 29 of the Delaware Code, the State of Delaware has authority to enter such an energy supply contract for any portion of the power supply needs of the State upon approval of the Director of the Office of Management and Budget.

(7) Prior to the issuance of any Delaware or Coordinated Solicitation, the State Energy Office shall present the proposed solicitation to the Renewable Energy Taskforce for review and recommendations in accordance with § 360(d)(4) of Title 26. The State Energy Office may, in its sole discretion, adopt or reject recommendations from the Renewable Energy Taskforce. Should the Renewable Energy Taskforce fail to provide recommendations within 60 days of being presented with the Solicitation, the State Energy Office may, in its sole discretion, move forward with a Solicitation without such recommendations.

(8) Following receipt of the recommendations of the Renewable Energy Taskforce, or the expiration of the 60-day period set forth in paragraph (d)(4) of this section, the State Energy Office shall present the Solicitation to the Public Service Commission for review and approval in accordance with § 365 of Title 26. The State Energy Office shall not issue any Solicitation not approved by the Public Service Commission. If the Public Service Commission issues a Preliminary Order, as defined in § 365 of Title 26, the State Energy Office shall issue the Solicitation.

(9) After receipt of proposals, from either a Delaware Solicitation or a Coordinated Solicitation, the State Energy Office shall determine whether a Delaware Solicitation proposal meets the OSW Solicitation Requirements, and whether any Coordinated Solicitation meets the requirements applicable to Coordinated

Solicitations in this section. Any Solicitation that does not meet such requirements, shall be excluded from further consideration. For any proposals which includes a price term at or below the requirements set forth in paragraph (d)(4)b, above, the State Energy Office may determine, in its sole discretion, whether to proceed to negotiate contract terms with the proposer based on consideration of the following factors:

a. The proposal's likelihood of achieving commercial operation.

b. The proposal's consistency with the Delaware Climate Action Plan and the Delaware Energy Plan.

c. Whether the proposal will result in a net reduction in greenhouse gas emissions from the electricity consumed within Delaware, or states bordering Delaware, or within the PJM region.

d. The proposal's impact on the ability of the State to meet the 2030 target and 2050 target for greenhouse gas emissions reductions set forth in § 10003 of Title 7 and to meet the minimum percentage of electric energy sales with eligible energy resources as required by §354(a) of Title 26.

e. Whether the proposal is competitive with new renewable or carbon-free energy projects of similar scale and production profile interconnecting to the PJM grid in Delaware, or states bordering Delaware.

f. The potential economic costs and benefits for the State and Delawareans associated with the proposal and the strength of economic benefit guarantees in the proposal.

g. The avoided costs of greenhouse gas emissions and other air pollutants.

h. The potential health benefits for the State and for Delawareans.

i. The availability and scale of suitable offshore wind locations.

j. The state of the offshore wind industry, the project applicant, and the associated supply chains.

k. The impacts, if any, of the proposal on the electric transmission system and capacity and energy markets, including the ability to facilitate future expansion of offshore wind energy delivery capability.

(10) If the State Energy Office moves forward with negotiation of contract terms on any proposal, such contract terms shall include project labor agreements, and may include community benefits agreements, supply chain requirements, workforce development requirements, and conservation and mitigation elements. The State Energy Office may approve the terms and conditions of an Offshore Wind Contract provided it determines that entering into an Offshore Wind Contract with such terms and conditions is in the public interest, which the State

Energy Office shall determine after consideration of the OSW Solicitation Requirements and the criteria set forth in this section. If the State Energy Office issues such approval, the Offshore Wind Contract shall be submitted to the Commission for approval pursuant to § 365 of Title 26.

Section 4. Amend § 201, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 201. General jurisdiction and powers.

(f) In the exercise of supervision and regulation over public utilities, the Commission may, upon application or on its own motion, after notice and hearing, alter a regulated utility's billing statements in the interest of increasing transparency and understanding. Alternatives include changes to fairly reflect costs associated with legislatively mandated public policy initiatives, such as compliance costs in greenhouse gas reduction programs and any increase in costs associated with state sponsored renewable energy projects.

Section 5. Amend § 202, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 202. Limitations on jurisdiction of Commission.

(a) Except insofar as may be necessary to implement §§ 203A and 203B of this title regarding the establishment and administration of retail electric service territories, and except as may be necessary to implement § 203C and § 203D of this title regarding the issuance of certificates of public convenience and necessity for water and wastewater utilities, and the review authorized under § 122 of Title 16, and except insofar as any entity agrees to participate in a proceeding before the Commission relating to an Offshore Wind Contract under § 365 of Title 26, the Commission shall not have any supervision or regulation over any public utility, or over the rates, property, property rights, equipment, facilities or franchises of any public utility that is municipally-owned or over any municipal electric company formed pursuant to Chapter 13 of Title 22.

Section 6. Amend § 352, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 352. Definitions.

As used in this subchapter:

( ) "Delaware Benchmark Price" means the sum of (a) the weighted average cost per megawatt-hour of compliance, through REC procurement, net energy costs of renewable energy contracts, and alternative compliance payments, with the Renewable Energy Portfolio Standards Act for Commission-regulated public utilities during the 3 immediately preceding years, and (b) the 3 year average, of the 3 immediately preceding

years, of the average of the winning bid prices in dollars per megawatt-hour that a Commission-regulated public utility has secured electric energy through its most recent competitive request for proposals for each of the following customer classes: (i) Residential and Small Commercial Industrial, (ii) Medium General Service – Secondary, (iii) Large General Service – Secondary, and (iv) General Service – Primary.

( ) "Offshore Wind Contract" shall mean an agreement under which the state or 1 or more Commission-regulated public utilities, municipal electric companies, rural electric cooperatives, or other Qualified Purchasers, individually or collectively, either directly or through an intermediary, purchase or transfer any attributes of electric energy generated from 1 or more qualified offshore wind projects. The agreement may include purchases or transfers of energy-related products such as energy, capacity, RECs, or ancillary services, or any combination of these.

( ) "OSW Solicitation Requirements" shall have the meaning set forth in § 8052 of Title 29.

( ) "Qualified Offshore Wind Project" shall mean a wind turbine electric generation facility located in the Atlantic Ocean and connected to the electric transmission system in the PJM region, and shall include the appurtenant transmission-related facilities and equipment that interconnects such project to the PJM region electric transmission system.

( ) "Qualified Purchasers" shall mean any entities interested in joining as a party to a Qualified Offshore Wind Contract who can demonstrate sufficient capital, history, or other necessary assurances as determined by the State Energy Office, after consultation with the Commission, of its ability to maintain its participation as an off-taker through the life of the contract.

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

§ 360. Renewable energy trading.

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

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

f. Establishing mechanisms to maximize in-state renewable energy generation and local manufacturing; ~~and~~

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

h. Evaluating Offshore Wind Contract solicitations, as set forth in paragraph (d)(4) of this section.

(4) The Renewable Energy Taskforce shall evaluate Offshore Wind Contract solicitations received from the State Energy Office pursuant to § 8056(d)(4) of Title 29 for consistency with the OSW Solicitation Requirements. The Renewable Energy Taskforce shall, within 60 days, provide to the State Energy Office (i) a recommendation to proceed with the solicitation as presented or (ii) recommendations on improvements to the solicitation. The State Energy Office shall have sole discretion on whether to incorporate such recommendations into the Offshore Wind Contract solicitation. If the State Energy Office has not received recommendations from the Renewable Energy Taskforce within 60 days, the State Energy Office may proceed with issuing the solicitation.

Section 8. Amend § 363, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 363. Special provisions for municipal electric companies and rural electric cooperatives.

(b) In the event that a municipal electric company or rural electric cooperative elects to exempt itself from the requirements of this subchapter, it shall submit a plan at the beginning of 2025 to its local regulatory authority, the Delaware General Assembly, and the Department of Natural Resources and Environmental Control detailing its approach to transitioning to increased of renewable energy purchases, including an evaluation of offshore wind resources and solar resources available in its service territory, and shall set forth a long-term plan detailing how the entity will contribute to helping the State achieve the carbon reduction goals set forth in Chapter 100 of Title 7. The entity shall submit an annual compliance report to its local regulatory authority, the Delaware General Assembly, and the Department of Natural Resources and Environmental Control detailing its progress toward yearly targets. If the State Energy Office has approved an Offshore Wind Contract, the annual compliance report shall detail the reporting entity's status of adoption of the Offshore Wind Contract. If the reporting entity declined to participate in a solicitation by the State Energy Office for an Offshore Wind Contract in the reporting period, the reporting entity shall detail in the report the reasons for its failure to participate, identify changes to the solicitation that would have resulted in its participation, and detail its plans to purchase offshore wind energy through other means, or its plans to otherwise increase its level of purchases of renewable energy resources.

(c) The Board of Directors for a rural electric cooperative or local regulatory authority of a municipal electric company shall base renewable energy portfolio standard decisions on the need, value and feasibility of the renewable energy resources pertaining to the economic and environmental well being of their members. The Board of Directors for a rural electric cooperative or local regulatory authority of a municipal electric company shall continue to evaluate all renewable energy resources including but not limited to: wind, including offshore wind, biomass, hydroelectric and solar and submit an annual report to the General Assembly and their membership as to their determination.

Section 9. Amend Title 26 of the Delaware Code by inserting a new § 365 and by making insertions as shown by underline as follows:

§ 365 Offshore Wind Contracts.

(a) Upon the development of a Solicitation for an Offshore Wind Contract, the State Energy Office shall submit a petition (the "Petition") to the Commission in accordance with paragraph (d)(5) of § 8056 of Title 29. Any Commission-regulated electric public utility shall be identified as parties to such Petition, and shall have the opportunity to participate in the proceeding before the Commission considering such Petition. All municipal electric companies and all rural electric cooperatives shall be served by mail with such Petition.

(b) Within 90 days of submission of such Petition, any municipal electric companies or rural electric cooperatives electing to participate in the Solicitation shall submit such election in writing to the Commission, and shall indicate the amount of energy, in megawatts, that such entity would accept under an Offshore Wind Contract negotiated pursuant to the Solicitation. Any entity that potentially qualifies as a Qualified Purchaser may also submit, in writing, a request to be considered a Qualified Purchaser, and shall indicate the amount of energy, in megawatts, that such entity would accept under an Offshore Wind Contract negotiated pursuant to the Solicitation. Submission of such election or request binds such entity to the jurisdiction of the Commission for the limited purpose of approval and enforcement of any eventual Offshore Wind Contract.

(c) The State Energy Office and the Commission shall confer regarding which proposed Qualified Purchasers should be included in any Solicitation. The State Energy Office shall have sole discretion regarding which proposed Qualified Purchasers shall be included in the Solicitation.

(d) The Commission shall, after opportunity for public comment, determine whether proceeding with the Solicitation is in the public interest. This determination shall be based upon the following factors:

(1) Whether the State Energy Office has complied with the technical requirements and analyses contemplated in the OSW Solicitation Requirements.

(2) Whether the Solicitation is consistent with the greenhouse gas emission reduction targets as outlined by Chapter 100, § 10003 of Title 7, in light of the price and availability of all other new renewable or carbon-free alternative energy sources at a similar scale and production profile interconnecting to the PJM grid in Delaware, or states bordering Delaware.

(3) Whether proceeding with the Solicitation is consistent with goals of the current Climate Action Plan.

(4) Whether proceeding with the Solicitation is consistent with meeting the minimum percentage of electric energy sales with eligible energy resources as required by § 354(a) of this title.

(5) That proceeding with the Solicitation will not adversely affect system reliability on the Delmarva Peninsula.

(6) That proceeding with the Solicitation will likely result in submitted bids in a range that would ultimately lead to rates that are just and reasonable. Any rate change arising from a project which conforms with the Delaware Benchmark Price shall be presumed to be just and reasonable. Participation in the Solicitation by municipal electric companies, rural electric cooperatives, or Qualified Purchasers, or the lack of such participation, shall not be a factor in whether the rates are just and reasonable.

Upon evaluation of the factors above, the Commission shall, if appropriate, issue an Order confirming such findings (the "Preliminary Order") within 180 days of submission of the Petition. No extension of this period shall be granted by PSC absent good cause.

(e) After issuance of the Preliminary Order, the State Energy Office shall issue the Solicitation. The docket shall remain open during the pendency of negotiations of any Offshore Wind Contract, and the State Energy Office shall confer with the staff of the Commission, and any parties to the Petition, in the development of terms of such Offshore Wind Contract. The State Energy Office shall have sole discretion over final contract terms.

(f) Any Offshore Wind Contract negotiated by the State Energy Office pursuant to paragraph (d)(7) of § 8056 of Title 29 shall be submitted to the Commission for final review and approval. The Commission's review shall be to determine whether proceeding with the final Offshore Wind Contract remains in the public interest, as defined by the factors set forth in § 365(d) above, and in light of the findings previously made by the Commission. Additionally, the Commission shall confirm, in light of its previous analysis, and in light of the actual winning bid, that proceeding with the Offshore Wind Contract would result in rates that are just and reasonable. Consistent with the initial analysis prior to a Preliminary Order, any rate change arising from a project which conforms with the Delaware Benchmark Price shall be presumed to be just and reasonable. Participation in the Solicitation by municipal electric companies, rural electric

cooperatives, or Qualified Purchasers, or the lack of such participation, shall not be a factor in whether the rates are just and reasonable.

Upon confirming the findings required in this section, with no further testimony or intervenors allowed, the Commission shall issue an order (the "Final Order") approving the Offshore Wind Contract, and the costs of such contract shall be passed on to the customers of all utilities which are parties to the Solicitation. The Commission shall issue a Final Order within 90 days of submission of the Offshore Wind Contract. No extension of this period shall be granted by PSC absent extraordinary circumstances.

(g) Upon a showing of necessity by the State Energy Office, and upon a finding of good cause by the Commission, any Solicitation can be considered on an adjusted schedule, either accelerated or extended, including when required to facilitate a Coordinated Solicitation with another state.

Section 10. Amend § 203E, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

(b) A person or entity seeking to begin the business of an electric transmission utility in this State shall first make application to the Commission for a certificate of public convenience and necessity approving the person or entity as an electric transmission utility authorized to provide transmission facilities. The application for a certificate of public convenience and necessity shall be in writing, shall be in such form as determined by the Commission, and shall contain such information as the Commission may prescribe. In determining whether to grant the certificate, the Commission shall consider:

(2) The impact of granting the certificate of public convenience and necessity application on the State's economy and the benefits to the State's ratepayers; ~~and~~

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public; and ~~public.~~

(4) Whether granting the certificate of public convenience and necessity application is consistent with the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

Section 11. Amend Title 26 of the Delaware Code by adding a new § 203F and by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 203F. Certificate of Public Convenience and Necessity for Renewable Energy Interconnection Facilities.

(a) Except as provided in § 203A(a)(3) of this title, no person or entity shall begin the business of a transmission facility, as defined in §1001(26) of this title, without having first obtained from the Commission a certificate that the present and future public convenience and necessity requires, or will be served by, the operation of such a business.

(b) The term "renewable energy interconnection facilities" means any transmission facilities which include transmission lines, conduits, or any other equipment necessary to connect any solar, wind, or other renewable energy project with 30 MW of capacity or higher to the PJM transmission grid. The term includes all "offshore wind interconnection facilities" as defined below.

(c) The term "offshore wind interconnection facilities" means all transmission lines, conduits and any other equipment that serve to connect an offshore wind power generation project or projects to the PJM transmission grid through any part of the State of Delaware or its territorial waters, whether those facilities are part of the PJM network or serving individual generation owners. All equipment located within the State of Delaware, including within 3 miles of the Delaware coast, through to the substation that connects the offshore wind power project to the PJM transmission grid, shall be included as a part of the "offshore wind interconnection facilities" for a particular offshore wind power generation project or networked offshore wind transmission facility.

(d) No individual, co-partnership, association, corporation, joint stock company, agency or department of the State, cooperative, or the lessees, trustees or receivers thereof, shall commence the operation of renewable energy interconnection facilities without having first obtained from the Commission a certificate that the present or future public convenience and necessity requires or will require the operation of such facilities.

(e) Specifically for offshore wind interconnection facilities, prior to any person or entity submitting an application for a certificate of public convenience and necessity for such facilities, such person or entity shall first obtain written approval from the State Energy Office confirming that such proposed offshore wind interconnection facilities are (i) consistent with the State Energy Plan, (ii) do not detrimentally impact the ability of the State to procure and transmit renewable energy resources to the citizens of Delaware, (iii) consistent with the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7, and (iv) do not adversely impact the future construction of additional offshore wind interconnection facilities, including those proposed by other developers.

(f) A person or entity seeking to commence operation of renewable energy interconnection facilities in this State shall make application to the Commission for a certificate of public convenience and necessity approving the person or entity as authorized to construct and operate such facilities. The application for a certificate of public convenience and necessity shall be (i) in writing, (ii) in such form as determined by the Commission, and (iii) contain such information as the Commission may prescribe.

(g) In determining whether to grant the certificate, the Commission shall consider:

(1) The need for and impact of any renewable energy interconnection facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services.

(2) Where such facilities are operating in a Delaware Department of Transportation right of way, the extent to which the renewable energy interconnection facilities impact the safe and effective operation of other utility facilities, or any other facilities, already in such right of way.

(3) The impact of granting the certificate of public convenience and necessity application on the State's economy, the impacts to the State's ratepayers, and whether the application is consistent with the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

(4) The extent to which the renewable energy interconnection facilities preclude or limit the ability of future renewable energy projects to use the same or nearby access locations or rights of way.

(5) The extent to which the project proponent is proposing to develop the renewable energy interconnection facilities in a manner that allows for or otherwise facilitates the future construction of additional renewable energy interconnection facilities, including those proposed by other developers, so as to minimize the environmental impacts of multiple entry points along the Delaware shore or through Delaware rights of way.

(6) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.

(7) The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company.

(8) The engineering and technical design of any transmission facilities proposed by the applicant.

(h) For all renewable energy interconnection facilities, the Commission shall allow the intervention of the State Energy Office to address the impact of the proposed facilities on (i) the State Energy Plan; (ii) the achievement of the State's greenhouse gas emissions reductions targets, as specified in § 10003 of Title 7.

(i) For all renewable energy interconnection facilities that are in whole or in part located in the jurisdiction of a local government, the Commission shall allow the intervention of such local government to address any public safety, environmental, or public interest considerations that such local government raises.

(j) Where such facilities are operating in a Delaware Department of Transportation right of way, the Commission shall allow the intervention of the Delaware Department of Transportation to address the impact of the proposed facilities on traffic safety and management. The Commission shall work with the Delaware Department of Transportation to ensure that the route of the interconnection facilities have the lowest possible impact on traffic safety and management considerations. Where the Delaware Department of Transportation establishes that alternate routes would have lower impact on traffic management, such routes shall be selected unless the costs associated with such route are, in the determination of the Commission, unreasonable.

(k) The Commission shall act on an application for a certificate of public convenience and necessity within 90 days of the submission of a completed application. For good cause shown, and if it finds that the public interest would be served, the Commission may extend the date of its action on an application for an additional period not to exceed 90 days. With the consent of the applicant, the Commission can extend the date of its action on an application beyond this second 90-day extension.

(l) Notwithstanding any other provision of this section, a certificate of public convenience and necessity for renewable energy interconnection facilities will not be granted if the Commission finds that the applicant is unwilling or unable to provide safe, adequate, and reliable transmission services, or is currently subject to a Commission finding that the applicant is unwilling or unable to provide safe, adequate, and reliable transmission services.

(m) No person or entity shall abandon or discontinue any renewable energy interconnection facility without first having received Commission approval for such abandonment or discontinuance. The Commission may require financial assurance, including a bonding requirement, as a part of any certificate of public convenience and necessity to ensure appropriate decommissioning of such facilities.

(n) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and necessity held by any applicant. Good cause shall consist of:

(1) A finding by the Commission of material noncompliance by the holder of the certificate with any conditions imposed in the certificate by the Commission, or with any order or rule of the Commission related to the same.

(2) A finding by the Commission that the holder of the certificate has failed in a material manner to provide safe, adequate, and reliable transmission services.

(o) The Commission shall have the authority to promulgate regulations to fully define the requirements necessary for the implementation of this section. Any proceedings under this section involving a certificate of public convenience and necessity shall be resolved within 6 months of initial application, and shall be conducted in accordance with the procedures set forth in subchapter III of Chapter 101 of Title 29.

(p) The provisions of this section 203F shall not apply to any offshore wind interconnection facilities, including any future modifications to such offshore wind interconnection facilities, associated with an offshore wind generation project which has submitted a request for a Federal Consistency Determination from the state's Coastal Management Program as of April 18, 2024, and which does not travel horizontally along a State of Delaware owned right of way. If, however, any proposed future modifications to the offshore wind interconnection facilities for such an offshore wind

generation project include a proposal to travel horizontally along a State of Delaware owned right of way, section 203F shall apply.

Section 12. Amend § 1001, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1001. Definitions.

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

(26) "Transmission facilities" means electric facilities located in Delaware, developed by public utilities or companies that are not public utilities, including those in offshore waters, and integrated with onshore electric facilities, and owned by a public utility that operate at voltages above 34,500 volts and that are used to transmit and deliver electricity to customers, including any customers taking electric service under interruptible rate schedules as of December 31, 1998, up through and including the point of physical connection with electric facilities owned by the customer. The term includes offshore wind interconnection facilities and renewable energy interconnection facilities as defined in § 203F of this title.

Section 13. Amend Title 17 of the Delaware Code by adding a new Chapter 20 and by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 20. PERMITTING OF RENEWABLE ENERGY INTERCONNECTION FACILITIES

§2001. Findings of public policy.

The General Assembly finds and declares as follows:

(1) Development of renewable energy sources and their connection to the electric power grid are declared to be matters of statewide concern and interest.

(2) The Delaware Department of Transportation is responsible for the care, management, and control of State-owned roadway rights-of-way.

(3) To foster the development of renewable energy and a clean energy future in this State, responsible and reasonable accommodation of renewable energy interconnection facilities in the State-owned roadway rights-of-way shall be encouraged as an integral part of the State's infrastructure.

§2002. Definitions.

For the purposes of this chapter:

(1) "Applicable Codes" means laws, rules, regulations, engineering standards, engineering guidance, and established best practices as recognized by the Department of Transportation or the Federal Highway Administration.

(2) "Department" means the Delaware Department of Transportation.

(3) “Eligible Energy Resource” or “Eligible Energy Resources” shall have the defined meaning in § 352 of Title 26.

(4) “Fair Market Rental Rate” means a recurring rate for the use of the State’s roadway rights-of-way based on a fair market appraisal of the use of that land.

(5) “Renewable energy developer” means a person or company, whether acting on its own behalf or acting as the agent of a renewable energy owner or renewable energy operator on a temporary basis, developing or constructing one or more eligible energy resources. A renewable energy developer may also be a renewable energy operator or a renewable energy owner.

(6) “Renewable energy operator” means a person or company, whether acting on its own behalf or acting as the agent of a renewable energy owner on a semi-permanent basis, operating 1 or more renewable energy resources.

(7) “Renewable energy owner” means a person or company who owns the renewable energy interconnection facilities to be located in the State-owned right-of-way.

(8) “Renewable energy entity” means any entity that is either a renewable energy developer, a renewable energy operator, a renewable energy owner, or any combination of these.

(9) “Renewable energy interconnection facilities” shall have the meaning defined in § 203F of Title 26.

(10) “Offshore wind interconnection facilities” shall have the meaning defined in § 203F of Title 26.

(11) “Right-of-Way” or “ROW” means all those lands owned by the State of Delaware in fee simple or lesser rights or under the management or control of the Department and operated as a public roadway, whether located within or outside incorporated municipalities. A ROW may include lands owned and operated by the State such as bicycle and pedestrian pathways, and recreational trails or railroads that are separate from State-owned roadway rights of way.

§ 2003. Regulations.

The Secretary of the Department shall have the authority to promulgate regulations to fully define the requirements necessary to implement the provisions of this chapter.

§ 2004. Permits.

(a) A renewable energy entity must first obtain a certificate of public convenience and necessity from the Public Service Commission under the provisions § 203F of Title 26, and thereafter may apply for a permit from the Department prior to constructing, modifying, or maintaining renewable energy interconnection facilities in the State’s ROW.

(b) The Department shall receive applications for, process, and issue such permits subject to the following requirements:

(1) The applicant shall, wherever possible, place renewable energy interconnection facilities underground, but the Department can authorize above-ground facilities where safety and other consideration allow such placement.

(2) Within 30 days of receiving an application, the Department will determine and notify the applicant whether the application is complete. If an application is incomplete, the Department must identify the missing information.

(3) The Department will process permits within 90 days either approving the permit request, or denying the permit request for cause based on the Department finding that the permit request fails to comply with any of the following:

a. Protection of the public health, safety and welfare along Delaware's roadways.

b Minimization of conflicts with the use of the State's ROW for the primary purpose of transportation.

c. Objective, reasonable design standards.

d. Applicable Codes including applicable provisions of the Delaware Utilities Manual Regulations, unless or until the Secretary of the Department promulgates regulations specific to accommodation of renewable energy interconnection facilities in the State ROW.

§2005. Use and occupancy agreement.

(a) In conjunction with the issuance of a permit by the Department under § 2004 of this title, the Department is authorized to enter into use and occupancy agreements with renewable energy entities for the locating of renewable energy interconnection facilities in the ROW under terms that:

(1) Protect the public health, safety and welfare along Delaware's roadways.

(2) Minimize conflicts with the use of the State's ROW for the primary purpose of transportation.

(3) May prohibit the renewable energy entity from owning and placing poles as part of renewable energy interconnection facilities in the State’s ROW.

(4) Establish a preference that renewable energy interconnection facilities be located underground, but would authorize above-ground facilities in a ROW near a roadway where safety and other considerations allow such facilities.

(5) Ensure that the renewable energy entity entering into a use and occupancy agreement has the financial, technical, organizational, and managerial resources needed to site and operate in the ROW for the full-term of the use and occupancy agreement.

(6) Are competitively neutral and nondiscriminatory.

(7) Charge a Fair Market Rental Rate for the use of the State's ROW by renewable energy entities.

(b) Such use and occupancy agreements shall be for a term of 30 years with an option to renew for additional 5-year terms subject to compliance with performance requirements set by the Department, and the authority of the Department to revoke such agreements for cause.

(c) Such use and occupancy agreements shall be non-assignable and non-transferable without the reasonable consent of the Department based on the assignee or transferee having the financial, technical, organizational, and managerial resources needed to operate in the ROW for the term of the use and occupancy agreement and protecting the public health, safety and welfare.

(d) Each renewable energy entity entering into a valid use and occupancy agreement shall comply with the Underground Utility Damage Prevention and Safety Act, Chapter 8 of Title 26, to the extent applicable.

(e) Notwithstanding the provisions hereof related to restrictions on assignment and transfer, a Renewable Energy Entity may pledge and/or collaterally assign its interest in the use and occupancy agreement and associated renewable energy interconnection facilities in the ordinary course of securing financing for any renewable energy interconnection facilities, or associated renewable energy project, without the consent of the Department, provided that no entity may take possession of the renewable energy interconnection facilities in a public right of way, and no entity may receive any interest under a use and occupancy agreement, unless and until the Department has provided its consent to such a transfer under the provisions of section 2005(c).

§ 2006. Removal of Renewable Energy Interconnection Facilities.

Any renewable energy entity wanting to decommission an existing renewable energy interconnection facility or cease operations thereof shall first obtain approval from the Public Service Commission. It shall thereafter notify the Department not less than 60 days prior to commencing such decommissioning or ceasing operations as to the disposition of their renewable energy interconnection facilities. Acceptable disposition includes removal of the interconnection facilities from the ROW, or transfer of the interconnection facilities to another renewable energy entity subject to the approval of the Department in accordance with the provisions of § 2004(c) of this chapter.

§ 2007. Relocation of renewable energy infrastructure.

Whenever it becomes necessary to relocate any renewable energy interconnection facilities due to expansion of the transportation system, or if the renewable energy interconnection facilities are found to interfere unreasonably with ingress and egress to adjacent properties or their development, or for reasons deemed in the public interest by the Department, the renewable energy entity shall relocate its infrastructure at its sole expense to a location mutually agreed upon by the renewable energy entity and the Department.